



Eugene City Council

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EUGENE CITY COUNCIL AGENDA

April 17, 2019

12:00 p.m. CITY COUNCIL WORK SESSION
Harris Hall, 125 East 8th Avenue
Eugene, Oregon 97401

Meeting of April 17, 2019;
Her Honor Mayor Lucy Vinis Presiding

Councilors

Betty Taylor, President
Mike Clark
Chris Pryor
Jennifer Yeh

Emily Semple, Vice President
Greg Evans
Claire Syrett
Alan Zelenka

12:00 p.m. EUGENE CITY COUNCIL WORK SESSION
Harris Hall, 125 East 8th Avenue
Eugene, Oregon 97401

- 1. WORK SESSION: Municipal Court Presiding Judge**
- 2. WORK SESSION: Local Options for Inclusionary Zoning**

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EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Work Session: Local Options for Inclusionary Zoning

Meeting Date: April 17, 2019
Department: Planning and Development
www.eugene-or.gov

Agenda Item Number: 2
Staff Contact: Stephanie Jennings
Contact Telephone Number: 541-682-5529

ISSUE STATEMENT

City Council requested a work session to discuss the local opportunities to support affordable housing enacted through SB 1533 by the State of Oregon. In this session, staff will review the state's enabling legislation for inclusionary zoning, use of this tool in Oregon, and considerations for use of this tool in Eugene.

BACKGROUND

Residents of communities throughout Oregon are experiencing housing challenges related to affordability, quality and stability. In response to these challenges, the State of Oregon passed a suite of legislative measures in 2016 including SB 1533.

Through SB 1533, the State of Oregon enabled two new tools for local jurisdictions to increase the availability of affordable housing. The first tool is a limited form of inclusionary zoning, which allows jurisdictions to require inclusion of affordable units in multifamily structures with 20 or more units. The second tool is the ability to create local affordable housing trust funds through a construction excise tax.

Council previously discussed inclusionary zoning on April 12, 2017. At that time, council directed staff to gather community perspectives, analyze housing market conditions and come back for discussion at a future date. This AIS describes the parameters of inclusionary zoning as permitted by the State as well as related City policies and plans. A copy of the enabling legislation is provided as Attachment A and a letter from the Intergovernmental Housing Policy Board is provided as Attachment B. The City Council presentation will include the additional information requested by council.

Inclusionary zoning is a policy typically implemented at the local level to incorporate units affordable to low or moderate-income households as a part of a market rate development. While hundreds of inclusionary zoning policies have been adopted by local jurisdictions across the country, they vary significantly in their scope, focus and impact. Given that the success of inclusionary zoning programs is dependent on the actions of private developers, programs are typically calibrated to local conditions for market rate development.

SB 1533 enabled Oregon jurisdictions to implement a limited form of inclusionary zoning in their communities through adoption of a local ordinance. There are multiple limitations build into the enabling legislation and the most significant restrictions are as follows:

- Building Type – Applies only to multifamily structures that contain 20 or more units.
- Affordability - Local jurisdictions may require up to 20 percent of units in structures be affordable to households earning 80 percent of Area Median Income and above.
- Incentives – The local jurisdiction must offer incentives to partially offset the cost of including affordable units. If a local jurisdiction adopts inclusionary zoning and a CET, a portion of the CET revenue must be reserved for inclusionary zoning incentives.
- Fee in Lieu – Developers must be offered the option to pay a fee in lieu of including units in their development. These fees may be used to subsidize affordable housing development.

The City of Portland is the sole jurisdiction in Oregon that has adopted an inclusionary zoning program. Portland's inclusionary zoning program commenced in February 2017 following an extensive analysis of market conditions and a lengthy community process. Over the past two years, Portland has permitted 422 inclusionary housing units spread across 65 housing developments.

PREVIOUS COUNCIL DIRECTION

[April 12, 2017, Work Session](#)

City Council received an introductory presentation on SB 1533 and directed staff to gather information on policy options for Inclusionary Zoning.

COUNCIL OPTIONS

Council options are as follows:

1. Provide direction to staff for next steps for exploration of an inclusionary zoning program.
2. Take no further action.

CITY MANAGER'S RECOMMENDATION

City Manager has no recommendation at this time.

SUGGESTED MOTION

No motion applicable.

ATTACHMENTS

- A. SB 1533
- B. Letter from the Intergovernmental Housing Policy Board

FOR MORE INFORMATION

Staff Contact: Stephanie Jennings
Telephone: 541-682-5529
Staff E-Mail: sjennings@eugene-or.gov

**Enrolled
Senate Bill 1533**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Workforce and General Government)

CHAPTER

AN ACT

Relating to affordable housing; creating new provisions; amending ORS 197.309, 320.170, 320.176 and 320.186 and section 1, chapter 829, Oregon Laws 2007; repealing section 9, chapter 829, Oregon Laws 2007; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 197.309 is amended to read:

197.309. (1) **As used in this section:**

(a) **“Affordable housing” means housing that is affordable to households with incomes equal to or higher than 80 percent of the median family income for the county in which the housing is built.**

(b) **“Multifamily structure” means a structure that contains three or more housing units sharing at least one wall, floor or ceiling surface in common with another unit within the same structure.**

[(1)] (2) Except as provided in subsection [(2)] (3) of this section, a [city, county or] metropolitan service district may not adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178[,] a requirement, that has the effect of establishing the sales **or rental** price for a housing unit or residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale **or rent** to [any] a particular class or group of purchasers **or renters**.

[(2)] (3) [This] **The provisions of subsection (2) of this section [does] do** not limit the authority of a [city, county or] metropolitan service district to:

(a) Adopt or enforce a [land] use regulation, [functional plan] provision or [condition of approval] **requirement** creating or implementing an incentive, contract commitment, density bonus or other voluntary regulation, provision or [condition] **requirement** designed to increase the supply of moderate or lower cost housing units; or

(b) Enter into an affordable housing covenant as provided in ORS 456.270 to 456.295.

(4) **Notwithstanding ORS 91.225, a city or county may adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178 a requirement, that has the effect of establishing the sales or rental price for a new multifamily structure, or that requires a new multifamily structure to be designated for sale or rent as affordable housing.**

(5) **A regulation, provision or requirement adopted or imposed under subsection (4) of this section:**

(a) May not require more than 20 percent of housing units within a multifamily structure to be sold or rented as affordable housing;

(b) May apply only to multifamily structures containing at least 20 housing units;

(c) Must provide developers the option to pay an in-lieu fee, in an amount determined by the city or county, in exchange for providing the requisite number of housing units within the multifamily structure to be sold or rented at below-market rates; and

(d) Must require the city or county to offer a developer of multifamily structures, other than a developer that elects to pay an in-lieu fee pursuant to paragraph (c) of this subsection, at least one of the following incentives:

(A) Whole or partial fee waivers or reductions.

(B) Whole or partial waivers of system development charges or impact fees set by the city or county.

(C) Finance-based incentives.

(D) Full or partial exemption from ad valorem property taxes on the terms described in this subparagraph. For purposes of any statute granting a full or partial exemption from ad valorem property taxes that uses a definition of "low income" to mean income at or below 60 percent of the area median income and for which the multifamily structure is otherwise eligible, the city or county shall allow the multifamily structure of the developer to qualify using a definition of "low income" to mean income at or below 80 percent of the area median income.

(6) A regulation, provision or requirement adopted or imposed under subsection (4) of this section may offer developers one or more of the following incentives:

(a) Density adjustments.

(b) Expedited service for local permitting processes.

(c) Modification of height, floor area or other site-specific requirements.

(d) Other incentives as determined by the city or county.

(7) Subsection (4) of this section does not restrict the authority of a city or county to offer developers voluntary incentives, including incentives to:

(a) Increase the number of affordable housing units in a development.

(b) Decrease the sale or rental price of affordable housing units in a development.

(c) Build affordable housing units that are affordable to households with incomes equal to or lower than 80 percent of the median family income for the county in which the housing is built.

(8)(a) A city or county that adopts or imposes a regulation, provision or requirement described in subsection (4) of this section may not apply the regulation, provision or requirement to any multifamily structure for which an application for a permit, as defined in ORS 215.402 or 227.160, has been submitted as provided in ORS 215.416 or 227.178 (3), or, if such a permit is not required, a building permit application has been submitted to the city or county prior to the effective date of the regulation, provision or requirement.

(b) If a multifamily structure described in paragraph (a) of this subsection has not been completed within the period required by the permit issued by the city or county, the developer of the multifamily structure shall resubmit an application for a permit, as defined in ORS 215.402 or 227.160, as provided in ORS 215.416 or 227.178 (3), or, if such a permit is not required, a building permit application under the regulation, provision or requirement adopted by the city or county under subsection (4) of this section.

(9)(a) A city or county that adopts or imposes a regulation, provision or requirement under subsection (4) of this section shall adopt and apply only clear and objective standards, conditions and procedures regulating the development of affordable housing units within its jurisdiction. The standards, conditions and procedures may not have the effect, either individually or cumulatively, of discouraging development of affordable housing units through unreasonable cost or delay.

(b) Paragraph (a) of this subsection does not apply to:

(A) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(B) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(c) In addition to an approval process for affordable housing based on clear and objective standards, conditions and procedures as provided in paragraph (a) of this subsection, a city or county may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(A) The developer retains the option of proceeding under the approval process that meets the requirements of paragraph (a) of this subsection;

(B) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(C) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in paragraph (a) of this subsection.

(10) If a regulation, provision or requirement adopted or imposed by a city or county under subsection (4) of this section requires that a percentage of housing units in a new multifamily structure be designated as affordable housing, any incentives offered under subsection (5)(d) or (6) of this section shall be related in a manner determined by the city or county to the required percentage of affordable housing units.

SECTION 2. ORS 320.170 is amended to read:

320.170. (1) [*Construction taxes may be imposed by*] A school district, as defined in ORS 330.005, **may impose a construction tax only** in accordance with ORS 320.170 to 320.189.

(2) Construction taxes imposed by a school district must be collected, subject to ORS 320.179, by a local government, local service district, special government body, state agency or state official that issues a permit for structural improvements regulated by the state building code.

SECTION 3. Section 1, chapter 829, Oregon Laws 2007, is added to and made a part of ORS 320.170 to 320.189.

SECTION 4. Section 1, chapter 829, Oregon Laws 2007, is amended to read:

Sec. 1. (1) A local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117, may not impose a tax on the privilege of constructing improvements to real property except as provided in [*sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189.**

(2) Subsection (1) of this section does not apply to:

(a) A tax that is in effect as of May 1, 2007, or to the extension or continuation of such a tax, provided that the rate of tax does not increase from the rate in effect as of May 1, 2007;

(b) A tax on which a public hearing was held before May 1, 2007; or

(c) The amendment or increase of a tax adopted by a county for transportation purposes prior to May 1, 2007, provided that the proceeds of such a tax continue to be used for those purposes.

(3) For purposes of [*this section and sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189**, construction taxes are limited to privilege taxes imposed under [*sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189** and do not include any other financial obligations such as building permit fees, financial obligations that qualify as system development charges under ORS 223.297 to 223.314 or financial obligations imposed on the basis of factors such as income.

SECTION 5. ORS 320.176 is amended to read:

320.176. (1) Construction taxes imposed [*under ORS 320.170 to 320.189*] **by a school district pursuant to ORS 320.170** may be imposed only on improvements to real property that result in a new structure or additional square footage in an existing structure and may not exceed:

(a) \$1 per square foot on structures or portions of structures intended for residential use, including but not limited to single-unit or multiple-unit housing; and

(b) \$0.50 per square foot on structures or portions of structures intended for nonresidential use, not including multiple-unit housing of any kind.

(2) In addition to the limitations under subsection (1) of this section, a construction tax imposed on structures intended for nonresidential use may not exceed \$25,000 per building permit or \$25,000 per structure, whichever is less.

(3)(a) For years beginning on or after June 30, 2009, the limitations under subsections (1) and (2) of this section shall be adjusted for changes in construction costs by multiplying the limitations set forth in subsections (1) and (2) of this section by the ratio of the averaged monthly construction cost index for the 12-month period ending June 30 of the preceding calendar year over the averaged monthly construction cost index for the 12-month period ending June 30, 2008.

(b) The Department of Revenue shall determine the adjusted limitations under this section and shall report those limitations to entities imposing construction taxes. The department shall round the adjusted limitation under subsection (2) of this section to the nearest multiple of \$100.

(c) As used in this subsection, "construction cost index" means the Engineering News-Record Construction Cost Index, or a similar nationally recognized index of construction costs as identified by the department by rule.

SECTION 6. ORS 320.186 is amended to read:

320.186. A school district may pledge construction taxes **imposed pursuant to ORS 320.170** to the payment of obligations issued to finance or refinance capital improvements as defined in ORS 320.183.

SECTION 7. Sections 8 and 9 of this 2016 Act are added to and made a part of ORS 320.170 to 320.189.

SECTION 8. (1) The governing body of a city or county may impose a construction tax by adoption of an ordinance or resolution that conforms to the requirements of this section and section 9 of this 2016 Act.

(2)(a) A tax may be imposed on improvements to residential real property that result in a new residential structure or additional square footage in an existing residential structure, including remodeling that adds living space.

(b) An ordinance or resolution imposing the tax described in paragraph (a) of this subsection must state the rate of the tax. The tax may not exceed one percent of the permit valuation for residential construction permits issued by the city or county either directly or through the Building Codes Division of the Department of Consumer and Business Services.

(3)(a) A tax may be imposed on improvements to commercial and industrial real property, including the commercial and industrial portions of mixed-use property, that result in a new structure or additional square footage in an existing structure, including remodeling that adds living space.

(b) An ordinance or resolution imposing the tax described in paragraph (a) of this subsection must state the rate and base of the tax.

(4) Taxes imposed pursuant to this section shall be paid at the time specified in ORS 320.189 to the city or county that imposed the tax.

(5)(a) This section and section 9 of this 2016 Act do not apply to a tax described in section 1 (2), chapter 829, Oregon Laws 2007.

(b) Conformity of a tax imposed pursuant to this section by a city or county to the requirements of this section and section 9 of this 2016 Act shall be determined without regard to any tax described in section 1 (2), chapter 829, Oregon Laws 2007, that is imposed by the city or county.

SECTION 9. (1) As soon as practicable after the end of each fiscal quarter, a city or county that imposes a construction tax pursuant to section 8 of this 2016 Act shall deposit the construction tax revenues collected in the fiscal quarter just ended in the general fund of the city or county.

(2) Of the revenues deposited pursuant to subsection (1) of this section, the city or county may retain an amount not to exceed four percent as an administrative fee to recoup the expenses of the city or county incurred in complying with this section.

(3) After deducting the administrative fee authorized under subsection (2) of this section and paying any refunds, the city or county shall use the remaining revenues received under section 8 (2) of this 2016 Act as follows:

(a) Fifty percent to fund developer incentives allowed or offered pursuant to ORS 197.309 (5)(c) and (d) and (7);

(b) Fifteen percent to be distributed to the Housing and Community Services Department to fund home ownership programs that provide down payment assistance; and

(c) Thirty-five percent for programs and incentives of the city or county related to affordable housing as defined by the city or county, respectively, for purposes of this section and section 8 of this 2016 Act.

(4) After deducting the administrative fee authorized under subsection (2) of this section and paying any refunds, the city or county shall use 50 percent of the remaining revenues received under section 8 (3) of this 2016 Act to fund programs of the city or county related to housing.

SECTION 10. Section 9, chapter 829, Oregon Laws 2007, is repealed.

SECTION 11. A city or county may not adopt a regulation, provision or requirement under ORS 197.309, as amended by section 1 of this 2016 Act, until the 180th day after the effective date of this 2016 Act.

SECTION 12. This 2016 Act takes effect on the 91st day after the date on which the 2016 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

Passed by Senate February 26, 2016

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House March 3, 2016

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2016

Approved:

.....M.,....., 2016

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2016

.....
Jeanne P. Atkins, Secretary of State

MEMO

Date: January 11, 2019
To: Eugene City Council
From: Intergovernmental Housing Policy Board
Subject: Inclusionary zoning

The Housing Policy Board spent some time last year studying inclusionary zoning. Here are our findings.

The 2016 Oregon legislature adopted a new law allowing local governments to [1] adopt a tax on new construction (called here a “CET”) for the purpose of “housing”, and [2] implement inclusionary housing requirements (commonly called ‘inclusionary zoning’ or here “IZ”). This memorandum discusses the latter of those.

The City can adopt an ordinance “that has the effect of establishing the sales or rental price for a new multifamily structure, or that requires a new multifamily structure to be designated for sale or rent as affordable housing.” The “sales or rental” phrase is intended to include not just rental apartments, but also for example, condominiums. A “multifamily structure” is a single structure containing at least twenty units. “Affordable housing” means housing that is “affordable to households with incomes equal to or higher than 80 percent of the median family income.”

There are numerous requirements:

1. No more than 20% of the units can be required to be affordable.
 2. It applies only to multi-family structures of at least 20 units.
 3. Developers must be allowed to pay an in-lieu fee.
 4. The regulations must contain and “apply only clear and objective standards, conditions and procedures regulating the development of affordable housing units” which “may not have the effect, either individually or cumulatively, of discouraging development of affordable housing units through unreasonable cost or delay.” This doesn’t not apply to “historic areas.”
 5. The City must provide at least one of the following incentives:
 - whole or partial fee waivers or reductions
 - whole or partial waivers of SDCs
 - finance-based incentives
 - full or partial exemption from property taxes
- In addition, the City may offer any of the following incentives:
- density adjustments
 - expedited service for the permitting process
 - modification of height, for area, or other sited-specific requirements

- other incentives determined by the City

The City may also offer voluntary incentives:

- increase the number of affordable housing units in the development
- decrease the sale or rental price of the affordable units
- make units affordable to lower income families

While the statute does not *require* a jurisdiction to adopt a CET if it adopts IZ, it is impractical not to do so, since the cost of the mandatory incentives would then have to come out of general funds.

If the City chooses not to adopt a mandatory IZ ordinance, it can still adopt a voluntary IZ ordinance. That is what Corvallis has done.

WHAT OTHERS HAVE DONE

While nine jurisdictions in Oregon have already adopted a CET, only Portland has adopted IZ.

RECOMMENDATIONS

The Housing Policy Board recommends that the City not adopt mandatory inclusionary zoning. The reasons are as follows:

- It is unlikely to affect many developments, since most developments have fewer than 20 units in a single structure.
- It directs 50% of proceeds of the residential CET to incentivizing those properties. That means a lot of CET money could be directed to not very many developments.
- It does nothing to assist families below 80% of AMI.
- While requiring set-asides to families at or above 80%, it does not require those units to be rented or sold to families meeting that qualification, so families earning 200% of AMI can rent or buy those units.

On the other hand, the Housing Policy Board suggests that the City explore voluntary inclusionary zoning. This would allow a developer who is willing to include affordable housing units in a development to negotiate incentives with the City. No incentives would be mandatory. Corvallis has adopted voluntary inclusionary zoning but we are not aware yet how that is working.