



MEMORANDUM

Code Audit Findings

Florence Housing Implementation Plan

DATE June 8, 2022
TO Wendy Farley- Campbell, Planning Director, City of Florence
FROM Darci Rudzinski and Emma Porricolo, MIG | APG
CC Florence HIP Project Management Team

INTRODUCTION

The Florence Housing Implementation Plan (HIP) will provide recommended housing programs and funding strategies that will guide future housing development in the City. The project includes a review of the requirements in the Florence City Code (FCC) Title 10 (Zoning Code) and Title 11 (Subdivision Code) and local compliance with recent State legislation related to residential development. With prior grant funding from DLCD, Florence updated Titles 10 and 11 in 2019 to reduce barriers to development. This project will complete the next step of amendments and reflects more recent guidance on complying with State legislation.

The intended outcomes of the Florence HIP are:

- Update City policies related to transitional housing, consistent with State Statutes.
- Provide the City with implementable programs to increase the availability of affordable housing in the City.
- Remove inconsistencies in the Zoning Code (Title 10), Subdivision Code (Title 11) related to housing land use permitting and address internal conflicts created by administering required code provisions.
- Ensure that the City codes are consistent with State housing definitions and requirements.
- Provide the City with research, information, and strategies to inform a future new short-term rental housing policy.

This memorandum is intended to provide a summary of the code issues related to residential development and identifying areas of the code that are not in compliance with state requirements. The audit will guide a subsequent step in the project, developing specific code recommendations and amendments.

LEGISLATIVE BACKGROUND

Clear and Objective Standards

Oregon Revised Statute (ORS) 197.307(4) requires that local governments adopt and apply clear and objective standards, conditions, and procedures regulating the development of “needed housing.” This is to ensure that communities do not use discretionary or subjective criteria to deny housing projects. The clear and objective standards, conditions, and procedures can't discourage housing through unreasonable cost or delay. This includes development standards such as setbacks and building height that apply to housing at the time of building permit, as well as land use application criteria that apply to partitions, subdivisions, site reviews, conditional use permits and planned unit developments that will provide housing.

What makes a standard “clear and objective”? Clear and objective standards have definitions and/or measurement that provide for consistent interpretation of the standard. In other words, any two people applying the same standard to a development would get the same result, and there is no need for the reviewer to use their discretion in applying the standard.

Clear and objective **standards** should:

- Address all aspects of building and site design that are important to the City, recognizing that what is important may vary based on the type of residential building or its location (zone) within the City.
- Work for typical sites and circumstances but recognize that the clear and objective track will not work in all situations.
- Ensure that a development meeting the standards will meet the City’s design expectations. The standards should not be set so low that the community is unhappy with the results, but not be so strict that applicants must always opt for the discretionary track.

ORS 197.307(4)

Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

Review criteria provide the basis for making a decision about an application (i.e., if the criteria are met, the application can be approved). Given this, the applicable review criteria need to be clear and objective as well as the standards.

In addition, the use of discretion in approving or denying an application also impacts whether public notice and opportunity to comment are required – in general, decisions based on clear and objective land use standards do not necessarily require a process that allows the public to review and comment on that decision.

Alternative Discretionary Track. Jurisdictions can also offer a discretionary review process or “track” as an alternative to the clear and objective track, provided the applicant retains the option of proceeding under the clear and objective approval process. This second track can provide flexibility and allows for consideration of creative solutions through discretionary review. There are a number of ways this can be accomplished in a Development Code. Three approaches that are often used include:

- Allow discretionary adjustments to individual standards.
- Provide a system of parallel guidelines and standards where for each topic or principle, there are both standards and guidelines.
- Adopt separate sets of standards and guidelines, which are not necessarily parallel in structure or comparable in substance.¹

Natural Resource and Natural Hazard Protection

Clear and objective standards for residential development also apply to proposed development in areas where there are natural resource or hazard protections. Balancing of the sometimes competing objectives of natural resources preservation and housing development is challenging, especially in a coastal area such as Florence.

In a recent Enforcement Order Advisory, the Land Conservation and Development Commission (LCDC) held that a local government waiving application of code standards that are subjective, (not clear and objective) was no longer in compliance with its responsibilities to protect natural resources under Goal 5. This means that when subjective standards are the only option for a local program to implement a statewide land use goal, a local government must amend its code to include a path with clear and objective standards.² In opposition to a jurisdiction’s housing needs objectives, clear and objective standards may result in a de facto prohibition of residential development in natural resource areas

¹ For example, the City of Portland currently uses this approach for development within its Design Overlay for areas outside of the Central City. Portland allows applicants to either meet the objective standards of the Community Design Standards or go through the Design Review process using the Community Design Guidelines. One of the primary criticisms of this approach in the City of Portland is that a development designed following the Community Design Standards will not necessarily meet the Community Design Guidelines. As a result, if an applicant finds they cannot meet all of the Community Design Standards, they may have to fully redesign the building in order to meet the Community Design Guidelines.

² *Local Government to Correct Regulations that Limit Housing Development in Natural Resource Areas*, LCDC Enforcement Order Advisory, August 27, 2020.

ORS 197.307(6)

In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government 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...

subject to protection. Jurisdictions must figure out how to balance providing opportunities for housing development and protection of the natural resources through application of clear and objective standards.

Recent Housing Legislation

The following recent legislation also relates to residential development, focusing on transitional housing, occupancy limits associated with familial relationships, and affordable housing.

- HB 2916 (2019) – ORS 446.265 allows jurisdictions the option of permitting transitional housing. Pursuant to the provision, transitional housing is “accommodations are intended to be used by individuals or families on a limited basis for seasonal, emergency or transitional housing purposes and may include yurts, huts, cabins, fabric structures, tents and similar accommodations.”
- House Bill 2583 (2021) – eliminates occupancy limits for “families.” This has implications for group living standards.
- Housing and shelter-related legislation (2021):
 - Senate Bill 8 – Affordable Housing on Non-Residential Lands Requirement
 - House Bill 2008 – Affordable Housing on Religious Properties
 - House Bill 3261 – Hotel/Motel Conversions to Emergency Shelters or Affordable Housing
 - House Bill 2006 – Emergency Shelters

The findings in the following section describe pertinent legislation in more detail and summarizes how Florence currently addresses State requirement in city code.

AUDIT FINDINGS

Clear and Objective

In 2019, the City received grant funds to work with consultants to amend processes and criteria that hinder development of needed housing. This work included updating permitted uses and development standards to ensure that the City’s mix and density of allowed housing can accommodate its housing needs. The resulting amendments updated residential standards to be clear and objective, specifically in Title 10, Chapters 2, 6, 10, and Title 11, Chapter 2.

Some sections of Title 10 and 11 retain discretionary standards for residential development. Also, there has been additional guidance from DLCD and from LUBA decisions regarding clear and objective standards, specifically as it relates to natural resources protection. The clear and objective code audit and update for this project is focused on specific chapters, as described in Project Objective 1:

“Address potential conflicts between clear and objective housing requirements and Goals 5 (Natural Resources) and 17 (Coastal Shorelands) implementing policies; align Professional Office District criteria with clear and objective housing requirements.”

Natural Resources and Natural Hazards Protection

The City has several natural resource and hazard overlay provisions found in Title 10, Chapter 7 (Special Development Standards), and Chapter 19 (Estuary, Shorelands, and Beaches and Dunes) that are related to the Oregon Statewide Planning Goals 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces),⁷ (Areas Subject to Natural Hazards), and Goal 17 (Coastal Shorelands).

Chapter 7 includes regulations for steep slopes, soils, cutbanks, wetlands, riparian, and tsunami hazard areas. For each natural resource or hazard, there are regulations for how to determine where the areas are located and what standards apply to those areas. The three areas regulated by Chapter 7 are: wetlands and riparian areas,³ potential problem areas, and tsunami hazard overlay areas.⁴

Key findings for Chapter 7 concluded:

- For Potential Problem Areas, some standards in 10-7-3 that apply to the area are not clear and objective. For example, 10-7-3.G. says “In general [Brallier and Heceta Soils] are not suitable for development...” In addition, where the Potential Problem Area standards apply could be more clearly described.
- Wetland and riparian areas have clear and objective applicability and standards.
- In the Tsunami Hazard Overlay Area, the Evacuation Route Improvement Requirements includes standards that leave some discretion when it comes to compliance. For example, FCC 10-7-5-G.1.b. requires “frontage improvements to designated evacuation routes that are located on or contiguous to the proposed development site, where such improvements are identified in the Evacuation Route Plan.” The code does not define “contiguous” to a site is discretionary. And requirements for improvements, such as “all-weather surface paths” and “clearance sufficient to prevent obstructions” require more specifications.
- Site Investigation Reports are required for all development in wetland, riparian, and Potential Problem Areas (FCC 10-7-2 and 10-7-3). The submittal requirements and potential conditions of approval imposed on the development are not clear and objective.

Chapter 19 regulates three districts and six overlays spread across three categories: estuary, shorelands, and beaches and dunes.⁵ Residential development is permitted in five (5) of the nine districts, as shown in Table 1.

³ Maps of Significant Riparian Reaches and Significant Wetlands can be found at <https://www.ci.florence.or.us/planning/local-wetland-and-riparian-inventory>

⁴ The Tsunami Hazard Overlay is based on the Tsunami Inundation Map from the Oregon Department of Geology and Mineral Industries (DOGAMI). See the map at: https://www.ci.florence.or.us/sites/default/files/fileattachments/planning/page/8682/tim_1_-_local_source_tsunami.pdf

⁵ To see where the overlays are located, see the [Estuary and Coastal Shorelands Overlays Map](#) and [Beach and Dune Overlay Map](#). See the [City of Florence Zoning Map](#) for estuary district locations,

Table 1. Residential Development Permitting in Estuary, Shorelands, and Beaches and Dunes

District	Residential Development Permitted
Estuary Districts	
Natural Estuary District	Not permitted
Conservation Estuary District	Not permitted
Development Estuary District	Not permitted
Coastal Shorelands Overlay Districts	
Shoreland Residential Overlay District	Permitted (when residential development is permitted in base zone)
Mixed Development Overlay District	Permitted (when residential development is permitted in base zone)
Dredge Materials/Mitigation Site Overlay District	Not permitted
Natural Resource Conservation Overlay District	Permitted
Prime Wildlife Overlay	Permitted
Beach and Dune Overlay District	
Beaches and Dunes Overlay District	Permitted (when residential development is permitted in base zone) ⁶

Key findings for Chapter 19 concluded:

- Standards related to clearing of existing vegetation in the Shoreland Residential Overlay District (FCC 10-19-6), Natural Resource Conservation Overlay District (FCC 10-19-10), and Beaches and Dunes Overlay District (FCC 10-19-12) are discretionary.
- Approval criteria in the Mixed Development Overlay District (FCC 10-19-7) require that the benefits of the development outweigh negative environmental impacts (i.e., “the long term economic development or improved public recreational use outweigh the negative impacts...”). This determination is subject to interpretation and therefore is discretionary.
- Requirements for exterior building materials in the Natural Resource Conservation and Prime Wildlife Overlays are discretionary.
- Site Investigation Reports are required for all development in the Beaches and Dunes Overlay District. The Phase 2 Site Investigation Report code reference on the forms is out of date.
- In the Beaches and Dunes Overlays the conditional use approval criteria has several discretionary requirements, specifically related to environmental effects and other adverse effects of the development.

⁶ In the Beaches and Dunes Overlay, residential development is permitted only as a conditional use and is prohibited in certain topographical/geological areas per FCC 10-19-12-B-1.

Clear and Objective Audit Summary

The table below provides a summary of initial key findings from the audit of Title 10, Zoning Code. While the focus of the audit was on Chapters 7, 19 and 25, a more general review was conducted of sections related to housing development and clear and objective standards.⁷ Findings are summarized in Table 2.

Table 2. Title 10 Clear and Objective Audit Summary

TITLE 10 CHAPTER	KEY FINDINGS
CH. 2 DEFINITIONS	<ul style="list-style-type: none"> • Definition of calculations of density allows omission of utilities from the calculation. However, it does not clarify or differentiate between public vs. private ownership of utilities.
CH. 7 SPECIAL DEVELOPMENT STANDARDS (WETLANDS, RIPARIAN AREAS AND TSUNAMI HAZARD OVERLAY)	<ul style="list-style-type: none"> • Potential Problem Areas standards in 10-7-3 do not have clear and objective standards. In addition, where the Potential Problem Area standards apply could be more clearly described. • Scope and reach of the transportation improvements required of a development to comply with the Tsunami Evacuation Route Improvement Requirements is not clear. The standards that the improvements must be built to are also vague (e.g., all-weather surface paths). • Submittal requirements and potential conditions of approval imposed on the development per the Site Investigation process are not clear and objective.
CH 10. RESIDENTIAL DISTRICTS	<ul style="list-style-type: none"> • There may be some procedural requirements to reference appropriate State law, rather than embedding the standards in the code.
CH 15. COMMERCIAL DISTRICTS	<ul style="list-style-type: none"> • Residential height standards directs readers to FCC 10-10-5, but does not clarify what height standards in that section apply, high density or medium density standards. • References to density standards for single Family/ duplex/duet uses in Commercial and Highway Districts and everywhere they are a conditional use, compared to other zones or where permitted outright, do not specify which density standard applies (i.e. medium or high density). This discrepancy could lead to inconsistent application of the standards on a case-by-case basis. There should be clear direction when and how what standards apply to residential development.
CH 16. HIGHWAY DISTRICT	<ul style="list-style-type: none"> • See Chapter 15 comment above regarding residential height standards.

⁷ Note that additional comments have been provided to City Staff as part of an annotated review of all comments are summarized in the table.

TITLE 10 CHAPTER	KEY FINDINGS
CH. 19 ESTUARY, SHORELANDS, AND BEACHES AND DUNES	<ul style="list-style-type: none"> Discretionary standards for clearing of and disturbance to existing vegetation. Discretionary standards related to building materials in the Natural Resource Conversation Overlay. Site Investigation reports have code reference error. Approval criteria that site adverse environment effects, do not provide the parameters to make the standard clear and objective.
CH. 25 PROFESSIONAL OFFICE/INSIUTITONAL ZONING DISTRICT	<ul style="list-style-type: none"> Missing definitions or clarity on certain terms (e.g., Greentrees). Design Criteria and screening standards include discretionary requirements regarding size and materials (e.g., buildings shall generally relate in scale and design features to surrounding buildings).

Potential approaches to address clear and objective compliance issues:

- Prohibit new dwellings in the resource and hazard zones as a use permitted outright. Residential development can be permitted only as an “exception” in the zone when it meets certain criteria. This approach allows the standards applicable to residential development to be discretionary.
- Revise the standards and criteria in the zones clear and objective for residential development. Encourage pushing discretionary decisions based on natural resource reports to a City Engineers decisions to omit discretion from the development code.

Discussion Questions

How can the City best balance the protection of natural resources with the need to provide more housing? How can the City meet natural resources protection objectives and provide land for needed housing?

What are the implications of prohibiting residential development in the natural resource protections districts and overlays? What overlays and districts could prohibit residential development outright, permitting housing only as an exception once certain discretionary standards are met?

What type of design elements are important to require of residential and mixed-use development in the Professional Office Zone (e.g., ground floor windows, building materials, etc.)?

House Bill 2583 (2021)

HB 2583 prohibits jurisdictions from establishing or enforcing occupancy limits for dwelling units that are based on the familial or nonfamilial relationships among any occupants. The Title 10 definition of family is:

“A person living alone or any of the following groups living together as a single non-profit unit and sharing common living area: A. Any number of persons related by blood, marriage, adoption, guardianship or other duly-authorized custodial relations. B. A maximum of 5 unrelated persons.”

This definition includes familial relationships and is therefore not compliant with House Bill 2583. In addition, “family” is referenced in the definition of dwelling in the code, as well as in the definitions for types of dwellings, including: single family detached, duplex, tri-plex, four-plex/quad-plex, and multiple/multi-family.⁸ The definition of “Boarding House” references single family-units. Note that the definition of “Group Care Home” does not include any reference to family and does not conflict with State requirements.

With the passage of HB 2583, the City’s definition of dwelling will need to be revised to omit familial relationships as a basis for occupancy requirements. This will require changing the definition of dwelling and each definition for the types of dwellings permitted in Florence.

To address the issue related to the “Boarding House” definition, some jurisdictions are considering following the City of Portland’s lead and defining “Household Living” as the residential occupancy of a dwelling unit that contains eight or fewer bedrooms and “Group Living” as the residential occupancy of a dwelling unit that contains more than eight bedrooms or occupancy of a congregate housing facility. This approach avoids any regulations based on familial relationships or number of residents and instead focuses on the overall residential capacity of dwellings or congregate housing facilities by regulating the number of bedrooms.

House Bill 2916 (2019)

Under provisions that implement HB 2916 (ORS 446.265), the State allows jurisdictions the option of permitting transitional housing. Pursuant to the provision, transitional housing is “accommodations (that) are intended to be used by individuals or families on a limited basis for seasonal, emergency or transitional housing purposes and may include yurts, huts, cabins, fabric structures, tents and similar accommodations.” The transitional housing accommodations are limited to persons who lack permanent or safe shelter or cannot be placed in other low income housing. Pursuant to the provision, the City has the authority to limit the maximum amount of time that an individual or family may use the accommodations.

The State provisions allow some requirements to be placed on transitional housing. Accommodations may be required to provide parking facilities, walkways, and access to water, toilets, showers, laundry, cooking, telephone or other services either through separate or shared facilities.⁹

Note that some elements of House Bill 2916 can be implemented outside FCC Titles 10 and 11, in other sections of the FCC. This project is focused on policy implications for the Zoning and Subdivision Code that sets standards for the physical development of property; those Titles do not regulate operations once constructed.

⁸ Found in Title 10, Chapter 2.

⁹ Note: According to ORS 446.265, the Oregon Health Authority may develop public health best practices for shared health and sanitation facilities for transitional housing accommodations.

Transitional housing is not permitted in residential zones, pursuant to FCC 10-10-2. In Florence, transitional housing is defined as:

“A congregate facility designed to provide housing to shelter families and individuals offered on a short-term basis. The facility may offer meals, lodging and associated services on site, aimed at helping people move towards self-sufficiency. Transitional facilities are not considered bed and breakfast inns / boarding houses, hotels or motels.”

Beyond the definition of transitional housing, there are no standards in Title 10 or 11 that are directly associated with this housing type. Provisions that have been adopted by other jurisdictions include:

- City of Salem requires a temporary use permit for “managed temporary villages.” “Improvised camps” are not permitted under manager temporary villages standards. The standards include limitations on location, number of units, and a limit on number of residents per unit. Additionally, there are some operational standards that require an on-site manager to be present at all times and requires all villages to have at least two restrooms, handwashing facilities, secure covered storage for belongings and solid waste collection. Minimum setback, fencing, and bicycle parking standards also apply to the “temporary managed villages
- City of Bend is in the process of developing standards that establish different types of non-traditional housing - hardship housing, temporary shelters, and group, outdoor, or multi-room shelters - and standards for each. Standards include, but are not limited to, a maximum number of units and off-street parking requirements.

Discussion Questions

What type of transitional housing should the City permit (e.g., shelter buildings, temporary shelters with little to no structures)? What types have previously existed or been attempted in the City?

The current Title 10 definition of “transitional housing” is vague on the types of transitional housing permitted. Should Title 10 clearly designate the types of transitional housing are permitted?

In what zones should transitional housing be permitted?

What standards should be required of transitional housing? Examples include on-site management, storage requirements for personal items, and bicycle parking.

Housing and Shelter-related Legislation (2021)

This section describes four housing and shelter-related bills that passed in 2021. Of these, three - Senate Bill 8, House Bill 2008, and House Bill 3261 - could potentially be addressed in Florence’s Zoning and Subdivision Codes (Title 10 and 11).¹⁰

- **SB 8** requires cities to allow affordable housing, which meets a specific definition and criteria, on a wide range of sites. Affordable housing that is owned by a public body or religious nonprofit must be allowed in any zone. Affordable housing that is owned by other types of organizations must be allowed on property zoned for commercial uses, religious institutions, public lands, or industrial

¹⁰ House Bill 2006 is also a recent state legislation related to housing and shelters. It requires cities to allow siting of qualifying emergency shelters in all zones; however, this section is scheduled to sunset on July 1, 2022.

lands except those specifically for "heavy industrial." SB 8 provides height and density bonuses in areas zoned for residential uses. However, it does not specify any densities for those zones that do not otherwise allow housing.

- **HB 2008** is similar to SB 8 but limited to affordable housing on property that is owned by religious nonprofits and also provides a somewhat different definition of affordable housing. It requires jurisdictions to allow the development of affordable housing on property not zoned for housing provided the property is contiguous to a zone that does allow housing and is not zoned for industrial uses. Density is based on standards for the contiguous zone that allows housing.
- **HB 3261** requires jurisdictions to allow the conversion of a hotel or motel to an emergency shelter or affordable housing when certain criteria and standards are met. HB 3261 provides another specific definition of "affordable housing."
- **HB 4064** requires all cities and counties in the state to allow siting of individual manufactured homes or individual prefabricated structures on any land zoned to allow for single-family dwellings. Manufactured homes and prefabricated structures on individual lots cannot be subject to any standards that do not apply to single-family site-built, detached structures, with the exception of any protective measures adopted pursuant to statewide planning goals or for exterior thermal envelope requirements.

Currently, the Titles 10 and 11 do not include any special provisions specifically related to affordable housing. If the City wished to amend the code to address these new requirements, the following approach could be considered:

- Amend definition of affordable housing to be consistent with criteria set in the housing and shelter-related bills.
- Add a new chapter which includes the affordable housing and shelter provisions required by these statutes.
- Amend base zones sections related to permitted uses, and in most zones the height and density standards as well, to reference a new chapter.
- Where hotels and motels are permitted, include a cross-reference to the standards for conversion in the new chapter.

The following City Code recommendations pertain to manufactured homes:

- Amend definitions in Title 10-2 as needed for consistency with ORS 446.003 for manufactured home, mobile home, manufactured home park, manufactured dwelling park, and mobile home park.
- Add definitions in Title 10-2 for pre-fabricated structure as defined in ORS 455.010, RV Park as defined in ORS 197.492(2), and recreational structure as defined in ORS 215.010(5).
- Remove the following requirements, or set standards for single family detached dwellings and amend 10-10-10 to the same standards for manufactured homes:
 - minimum size standard requirement
 - multi-sectional requirement
 - back fill and skirting requirement
 - siding and roofing (color, material, and appearance) requirements

- Edit Mobile Home/Manufactured Home Residential District purpose statement in 10-10-1-C, removing statement about blending with conventional housing design features.

It should be noted that the House Bill and Senate Bill requirements described above will apply in Florence regardless of whether the City amends the City Code to incorporate them. If not locally codified, the City would be required to apply the State's requirements directly to any applicable permit or land use application.

Discussion Questions

If the standards in the Florence City Code do not conflict with the provisions in SB 8, HB 2008, and HB 3261, is it important to incorporate the standards into the code?

Which standards associated with recent State legislation are important to codify?

SUMMARY AND NEXT STEPS

There are various standards throughout the Florence City Code that are not clear and objective. The code audit focused on the standards that apply to natural resources and hazards zones in Chapters 7 and 19, and generally identified other sections of the FCC that would benefit from more objective language and requirements. Specifically, the building design standards for residential development in the Chapter 25, Professional Office/Institutional Zoning District could be updated in order to be clear and objective. In addition, recent State legislation informs some other recommended updates, primarily associated with affordable housing and transitional housing.

This audit and its recommendations are intended to aid Stakeholder Advisory Team (SAT) discussion, focus and refine desired modifications, and inform proposed, specific FCC amendments to follow. Project next steps will include developing draft FCC text for SAT review and discussion. Amendments that will represent significant changes to existing code sections or requirements will require additional community, City Staff, and local decision-makers discussions. These are expected to occur in the scheduled Stakeholder Advisory Team meetings, Open House, and Planning Commission and City Council Work Session for the Florence HIP project.