



Home Builders Association
of Metropolitan Portland

June 16, 2021

Subject: HBA Analysis of Oregon City Ordinance No. 21-1009, Annexation Code Amendments
Title 14, Chapter 14.04

On June 16, 2021, Oregon City (the “City”) adopted revised Chapter 14.04 Annexation Code Amendments (“Amendments”) on second reading. The Amendments violate clear and objective standards that regulate the development of housing pursuant to Oregon Revised Statute (ORS) 197.307(4).

Importantly, ORS 197.304(4) applies to all land with a residential comprehensive plan designation inside an Urban Growth Boundary (UGB), and does not include an exception for such land outside city limits. As such, the city’s annexation code, which regulates the development of residentially designated land— and therefore housing—must have a clear and objective path for bringing land in to City limits.

The proposed Amendments contain subjective factors regulating the development of housing. Since each housing-related annexation approval factor may be weighted discretionarily, the annexation code is not clear in its regulation of annexation for the purposes of the development of housing.

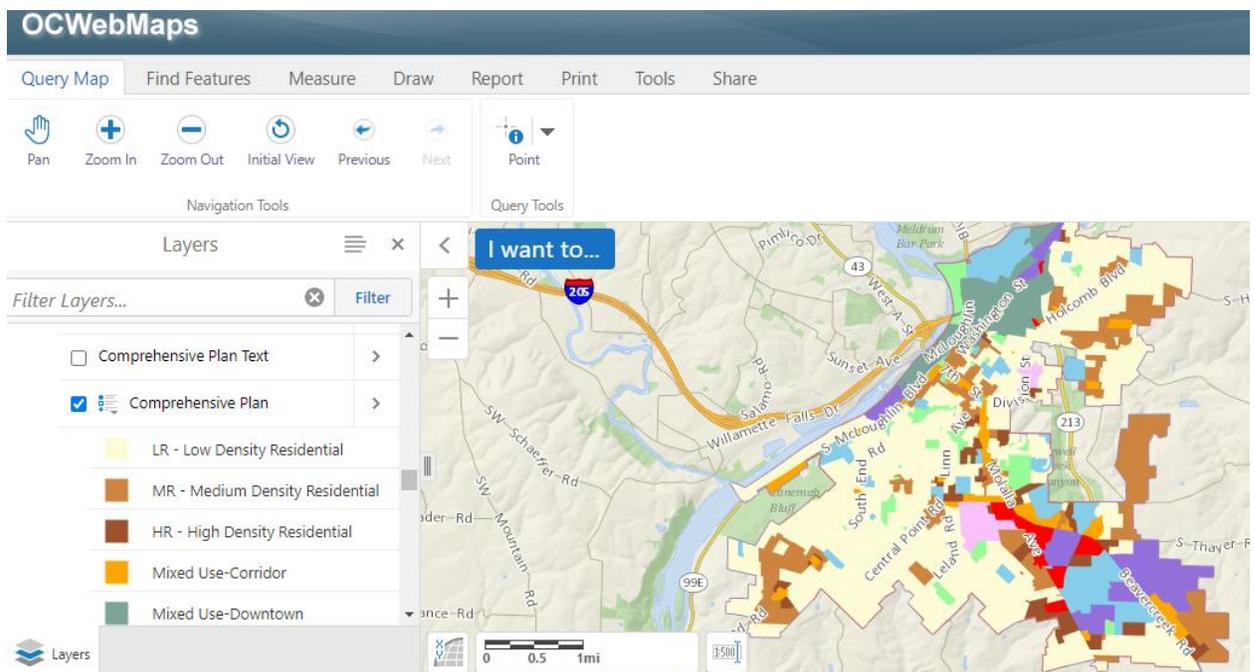
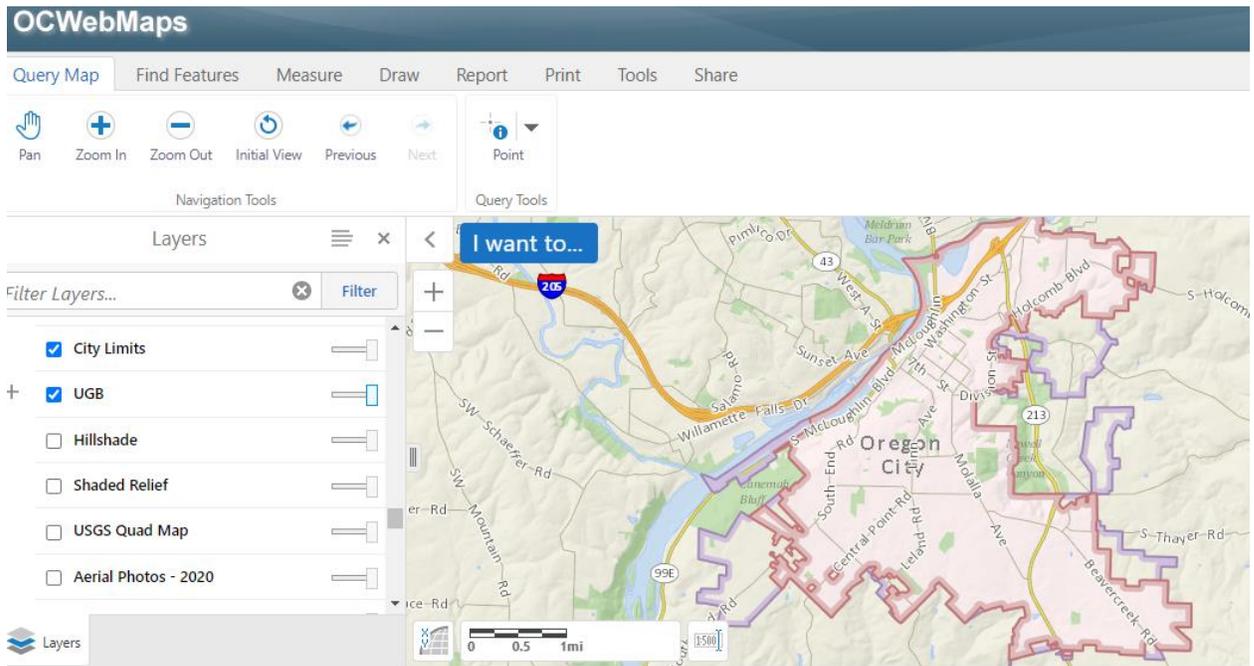
Moreover, the annexation code as a whole, including factors that apply to annexations generally, must offer a clear and objective path because the code as a whole will be applied to annexations for territory for future housing. The Amendments add further uncertainty to the annexation process in general. Because annexation is a critical step in having enough buildable land for all purposes, the annexation code is critical to having enough land for housing purposes, and therefore as written fails to provide a clear and objective way to meet the City’s housing needs.

The City’s legislative findings in response to HBA’s letter dated June 2nd, 2021, indicate that ‘As a general matter, annexation applications are rarely, if ever, coupled with an application to develop housing (i.e. a “permit”). For that reason alone, ORS 197.304 does not apply.’

However, it is not of consequence whether or not an annexation application is submitted with a development application for housing. ORS 197.307(4) states ‘...a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing...’ No other type of application is needed for the statute to apply to annexation, because annexation regulates the development of housing.

As seen in the images below, the vast majority of land within the UGB and adjacent to Oregon City, contains a residential comprehensive plan designation. Therefore, it is very clear that code that regulates annexations also regulates housing, because the annexation code is applied to land that is designated for housing.

The first image portrays City limits with red outline, and UGB boundary with purple outline. The second image shows the comp plan designations for the land within the UGB, and outside city limits.



Furthermore, as seen in OCMC Chapter 17.06, Classification of Zoning Districts, and Table 17.06.030 below, the City's code converts the City's residential land use classification to City zone(s). Therefore, an annexation application for territory within the majority of land within the UGB and outside Oregon City limits has a known and assigned future City residential zone even if that

annexation application was not accompanied by an associated application for the development of housing.

The screenshot shows the Oregon City Code website. The left sidebar lists various zoning chapters, with '17.06.015 - Classification of zoning districts' selected. The main content area displays the text for this section, including a reference to 'Table 17.06.030'. Below the text is a table titled 'CITY LAND USE CLASSIFICATIONS' with two columns: 'Residential Comprehensive Plan Classification' and 'City Zone'.

CITY LAND USE CLASSIFICATIONS	
Residential Comprehensive Plan Classification	City Zone
Low-density residential	R-10, R-8, R-6
Medium-density residential	R-5, R-3.5
High-density residential	R-2

The proposed Amendments’ legislative findings also state that ‘Further, annexation is fundamentally different from other land use reviews in that it is largely political...’ and is ‘a question solely of self-determination.’ HBA disagrees in that the degree of an annexation land use review’s political nature does not exempt that land use review (and potential decision) from clear and objective standards. The annexation ‘type’ of land use review still regulates the development of housing, and is therefore subject to clear and objective standards.

The proposed Amendments also violate the City’s concept planning assumptions associated with previous efforts to bring land into the UGB, including legislative findings adopted with Park Place, South End and Thimble Creek (formerly Beaver Creek) Concept Plans. Additionally, the proposed Amendments violate the intent of Senate Bill 1573 requiring qualifying annexations to be processed without voter-approval, Oregon Land Use Planning Goal 10 (Housing) and 14 (Urbanization), and Chapter 3.07 of Metro’s Urban Growth Management Functional Plan, including Title 7 Housing Choice and Title 11 Planning for New Urban Areas.

The City should adhere to state annexation law, and clearly and objectively regulate annexation through its code and land use review processes. Given annexation of future residential land is integral to buildable land supply and meeting future housing needs, the City should comply with state laws and Metro guidelines pertaining to annexation.