

1. Introduction.

Senate Bill (“SB”) 1051 provides that cities shall allow ADUs in their residential zones that allow single-family detached dwellings. Section 6, (5)(a). ADUs meet the definition of needed housing in ORS 197.303(1). Land use regulations that apply to ADUs are subject only to clear and objective standards, conditions and procedures under ORS 197.307(4). SB 1051, Section 6, (5)(a) allows “reasonable local regulations relating to siting and design” for ADUs.

ORS 197.307(4) applies to quasi-judicial and legislative decisions.

2. What are “clear and objective” standards? What are “reasonable regulations”.

Clear and objective land use regulations are those that do not describe the exercise of discretion to apply the standard to an application. In other words, subjective terms are prohibited. Terms such as “adequate”, “compatible”, “minimize”, “characteristics” and “public service delivery shortages” have been held to be subjective. *Parkview Terrace Development, LLC v City of Grants Pass*, 70 Or LUBA 37(2014).

Numerical standards are examples of clear and objective standards.

Needed housing applications may not be subjected to discretionary conditional use standards.

Reasonable regulations are those that are consistent with the purpose of SB 1051, which is to increase the supply of affordable housing. The regulations are further restricted to those related to siting and design.

3. Answers to your original questions.

A. May ADUs be restricted in any way?

Yes, as long as regulations relating to siting and design are reasonable. Reasonable is a term of art that will be construed in the context of SB 1051’s legislative history. The general purpose of the bill is to increase the supply of affordable housing. Because ADUs are subject to ORS 197.307(4), regulations are unreasonable if they are not clear and objective.

B. Are the proposed regulations(the May 8, 2018 version)reasonable.

My answers are found in Section 4, below.

C. Can the City prohibit the construction of a garage or carport in front of an ADU?

Maybe because SB 1051 does not prohibit this regulation. The ordinance can simply say they are prohibited. You will need findings explaining why this is a reasonable regulation because it is related to design. However, if there is no similar prohibition for single-family detached dwellings, then it is likely unreasonable. Couldn’t you achieve your goal with a setback regulation that applies to all dwellings that provides garages and carports shall not be located in front of a dwelling.

D. Can modular dwellings be prohibited?

No. Additionally, this prohibition is unrelated to siting and design.

E. Can ADU's be prohibited on flag lots and limited to one story?

Probably not because it seems unlikely that these prohibitions would be considered reasonable given the legislative purpose of SB 1051 in terms of siting and are unrelated to design. I would recommend that you not include these restrictions but if you do, you'll need to adopt findings explaining what the regulations are reasonable.

4. Analysis of May 8 proposed regulations. In general, change "must" to "shall" throughout the text.

A. Section 3.b. The ordinance should define "workshop".

B. Section 3.c.i. "Matching" is not clear and objective. "All exterior materials" is not clear and objective. I recommend that you delete this section.

C. Section 3.c.ii. "In compliance with all building codes" is not clear and objective because compliance is discretionary and "and" building codes cannot objectively be determined. A different and permissible way to do this is to list the applicable building codes.

D. Section 3.c.vi. I recommend that you change "offset" to "setback". However, this standard might be unreasonable if you cannot relate it to a fire or safety provision.

E. Section 3.c.viii. You'll need to adopt findings explaining why a one-story height limit is reasonable and is related to design.

F. Section 3.d.ii. Same comment as above regarding "in compliance with all building codes".

G. Section 3.g. Are three or more bedroom ADUs possible? If so, you should provide requirements for off-street parking requirements for those number of bedrooms. Do these regulations also apply to single family detached dwellings? If not, these regulations are probably unreasonable and are unrelated to siting and design of an ADU.

H. Section 3.i. This regulation is probably unreasonable unless you can produce very strong evidence why ADUs should be prohibited in these circumstances and how they are related to siting.

I. Section 3.j. Same comment as above, especially if single-family detached dwellings are not similarly prohibited.

5. Conclusion.

At a minimum, you should remove the remaining subjective terms. For those provisions that might be deemed unreasonable or where there is not a clear link to siting and design, I'd be happy to work with you on findings to support the language if you elect to proceed with the language.