



**CITY OF MOLALLA
WORK SESSION REGULAR MEETING
AGENDA**

Civic Center | 315 Kennel Avenue Molalla, OR 97038
Wednesday, July 23, 2025 | 6:30 PM

NOTICE: Work Session will hold this meeting in-person and through video Live-Streaming on the City's Facebook Page and YouTube Channel. Written comments may be delivered to City Hall or emailed to recorder@cityofmolalla.com. Submissions must be received by 12:00 p.m. the day of the meeting.

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- 1. CALL TO ORDER AND FLAG SALUTE**
- 2. ROLL CALL**
- 3. GENERAL BUSINESS**
 - A. [Urban Growth Boundary Discussion](#)
- 4. ADJOURN**



CITY OF MOLALLA

Staff Report

Agenda Category: GENERAL BUSINESS

Agenda Date: Wednesday, July 23, 2025

Submitted by: Dan Zinder, Senior Planner

Approved by: Dan Huff, City Manager

SUBJECT: Urban Growth Boundary Discussion

BACKGROUND:

Acronym Dictionary:

UGB - Urban Growth Boundary

DLCD - Oregon Department of Land Conservation and Development

HNA - Housing Needs Analysis

ATTACHMENTS:

[20250723 - Work Session Staff Report.pdf](#)

[Attachment A - Attorney Correspondence](#)

[Attachment B - DLCD Comment](#)



CITY OF MOLALLA

117 N. Molalla Avenue
PO Box 248
Molalla, OR 97038

Staff Report

Agenda Category: City Council Work Session

Agenda Date: July 23, 2025

From: Dan Zinder, Planning Manager

Approved by: Mac Corthell, Assistant City Manager

SUBJECT: Urban Growth Boundary Discussion Items

FISCAL IMPACT: None

RECOMMENDATION/RECOMMEND MOTION: Direction from Council on how to proceed on items 1 and 3. Items 2 and 4 are primarily informational as we move forward with the UGB amendment workplan.

BACKGROUND:

Recent discussions regarding the Urban Growth Boundary and the Associated Efficiency Measures ordinance have raised questions some questions that Staff have since researched further to circle back on.

1. Industrial/Residential Conflict Discussion:

One of the comments submitted during the Efficiency Measures ordinance discussion raised concerns that changing zoning of parcels abutting industrial parcels to residential could potentially cause conflicts that could threaten the livelihood of some of Molalla's longstanding businesses. Staff researched some of the options including a correspondence with the City Attorney office, included in this staff report as Attachment A, to discuss what is possible. To summarize this inquiry:

- Applying any regulation to a specific industrial user would almost certainly not pass clear and objective standards for residential uses as set out in Oregon House Bill 3197.
- Instruments such as waiver of remonstrance and deed restrictions that would prohibit an entity from raising concerns about actions from their neighbors are

likely both unconstitutional and also would not pass the clear and objective threshold.

- Ordinances to the development code that address situations where new residential uses abut industrial uses are likely to beat the clear and objective bar. Such measures could include setbacks, requiring noise canceling features for abutting walls, access location, and requiring parkland dedications to buffer zones between the two uses, as applicable.

For this last option, notably, SB 974 has recently put a prohibition on requiring most design standards for an 8-year period following its enactment for residential developments over 20-units.

It is worth noting that the City's existing ordinance carves out an exception for *"Commercial/industrial operations located within commercial/industrial zones."* Noise would have to be particularly egregious to bypass that standard into a violation.

2. What occurs if the City does not pass an Urban Growth Boundary Amendment?

Attachment A from the City Attorney's office Staff includes correspondence from the City Attorney regarding this question. Effectively, we are required by statute to evaluate our land need for residential and employment lands, as we have done, and expand accordingly based on the results of those studies. Potential enforcement actions include loss of funding from DLCD and their taking over of the City's Planning Department. While these enforcement actions are unlikely, at least initially, and mitigating steps are likely to be taken in the interim, they remain an option.

3. Modifying our numbers in the Housing Needs Analysis

The City has received several comments on its UGB and Efficiency Measures process advising that the City update its HNA to utilize more recent population estimate numbers. PSU has generally adjusted population estimates downward across the board since the City's HNA study incorporated their estimates in 2022. Incorporating the new numbers would thereby reduce the land needs identified in the HNA and Economic Opportunities Analysis.

DLCD has advised that simply updating the population forecast numbers through an amendment would be remanded because all of the work that followed in our workplan is based on the number's projections. Effectively, adjusting the numbers would start the process over with the City completing a new Housing Needs Analysis. Compounding the issue, since this work would likely push our Urban Growth Boundary work into 2027, any new work would need to be completed under new OHNA guidelines that likely impact

subsequent phases of our workplan. DLCD has not yet provided conclusive comment on this matter as indicated in Attachment B. If DLCD has such guidance, it is updated by the time of the work session it will be added to the record.

Under the assumption that we would need to restart the HNA the City would need to:

- Apply for a grant of approximately \$75,000 for a new HNA with DLCD that we are not guaranteed to receive
- Once the HNA is finished, it is likely to face a requirement to update or redo our HPS to address new needed housing findings from the HNA
- Expend hundreds of hours of staff time on coordination, meetings, and data provision.

While the sentiment of not overextending our UGB beyond what is absolutely needed is commendable, the risks associated with expanding too far are minimal. The biggest consequence would be that lands in the expanded territories simply would not be annexed, nor developed similar to how existing industrial lands within the City's urban growth boundary did not annex/develop within the 40-year period from when they were designated. That slowed rate could then be factored into our next study period.

In contrast, there are substantial time and monetary expenditures that would go into revising the numbers and restarting the process. Further, if the UGB does not expand enough to accommodate growth, it could substantially throttle housing supply and put costs even further beyond the means of our residents.

4. Contact with the Governor's Office on the northern expansion of our UGB

Staff have been in contact with the Governor's Office about scheduling a second meeting to discuss our recently submitted memo regarding the option of expanding north. To the extent that there are updates, they will be provided.

Attachment A: Email Correspondence with Beery Elsner on Residential/Industrial Conflicts

Attachment B: Email Correspondence with DLCD on Modifying Numbers in the Housing Needs Analysis

From: [Jodi Gollehon](#)
To: [Dan Zinder](#); [Mac Corthell](#)
Subject: RE: Deed Restrictions
Date: Friday, July 11, 2025 12:17:02 PM

Hi Dan. That might work, but you'd need to apply it throughout the city, and not just in relation to these particular lots. It would probably need to be mandatory for all residential zones abutting industrial, and I'd recommend referring back to Chapter [17-3.4](#) to keep the design standards as consistent as possible. (But even then, I could see DLCDD saying that it still isn't "clear and objective".)

What about setbacks? Have you ruled those out as an option?

Thanks,

Jodi Gollehon

Attorney
(503) 226-7191 x 103
BEERY, ELSNER & HAMMOND, LLP

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From: Dan Zinder <dzinder@cityofmolalla.com>
Sent: Thursday, July 10, 2025 5:00 PM
To: Jodi Gollehon <jodi.gollehon@behlaw.com>; Mac Corthell <mcorthell@cityofmolalla.com>
Subject: RE: Deed Restrictions

Thank you Jodi,

Would your thinking be different regarding whether a noise barrier (or soundproof walls) would be "clear and objective" if we were to make the requirement for when residential project abuts an industrial zone? Potentially items like facing access away from the industrial zone as applicable, requiring any parkland dedication to buffer impact areas, and things of that nature could be included as well.

Best,
Dan Zinder
503.759.0226

From: Jodi Gollehon <jodi.gollehon@behlaw.com>
Sent: Tuesday, July 8, 2025 4:40 PM
To: Mac Corthell <mcorthell@cityofmolalla.com>
Cc: Dan Zinder <dzinder@cityofmolalla.com>
Subject: RE: Deed Restrictions

Hi Mac. Thanks for your patience while I research your two questions (re UGB expansion stuff). Here's a summary of what I found so far:

1. What are the consequences if City Council chooses not to adopt a UGB amendment?

There are various statutes and rules that obligate the City to adopt a UGB amendment. [ORS 197A.280](#) obligates a city to “take any necessary actions described in ORS 197A.100(3)... to accommodate needed housing.” (ORS 197A.100 is the HPS statute.) Additionally, OAR [660-024-0040](#) requires cities to have a UGB that, “provides for needed housing, employment and other urban uses...over the 20-year planning period consistent with...Goal 14.” OAR [660-024-0050](#)(4) is even more clear: “If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs...the local government must amend the plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both...” Both Goal [10](#) and [14](#) also come into play when determining the city's obligations for UGB expansions.

From what I understand, the City has already determined that it has a deficit of residential land in its current UGB (right?), so that necessitates the need for the expansion under ORS 197A.280. If they refuse to adopt the proposed expansion, they would (technically) be in violation of state law. LCDC has the authority under [ORS 197.320](#) to issue orders to a city requiring them to “take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions or actions into compliance with the goals, acknowledged comprehensive plan provisions, land use regulations or housing production strategy.” They also have the authority to, “requir[e] a report and explanation if a city does not implement an action within the approximate time frame scheduled within a housing production strategy.” If LCDC ultimately finds that the City is in violation of state law, they're likely to order them to adopt the UGB amendment as proposed. Failing to follow that order could (theoretically, at least) result in LCDC cutting off funding and/or taking over the Molalla's Planning Department (unlikely, but possible).

That being said, I don't think LCDC is looking to start initiating enforcement proceedings against every city that hasn't expanded their UGB to their liking – that'd be an insanely heavy resource lift (and would likely get them tied up in litigation if enough cities revolted). I think DLCD will be (relatively) patient as the City continues to work through its options – especially since Molalla was one of the first to go through the sequential process. But eventually, their patience will dry up and an enforcement order will probably soon follow.

2. What options are available to the City to help ease the concerns of the industrial property owner located next to the proposed UGB expansion area?

Various ideas have been proposed regarding how to best mitigate the noise

concern that will likely arise when residential houses are situated next to a large industrial property. The following summarizes the suggestions mentioned in our prior conversation:

- *Non-remonstrance agreements*: generally used to waive a property owners' right to object to LIDs or other public improvements. It would be a stretch to call a private housing development a "public improvement," but regardless of that, I have concerns about allowing a developer to restrict a future buyer's right to object to its neighbors use of their own property (especially since the agreement will likely need to be pretty broad in order to encompass all the various uses that may cause noise disturbances). I also don't know how you'd enact this requirement unless it was added to your design code, and for all the same reasons described below, I doubt that DLCD would agree to call such a requirement "clear and objective".
- *Requiring noise barriers by future housing developers*: housing design standards need to be "clear and objective" per ORS [197A.400](#). Clear and objective standards are generally considered to be those code requirements with definitions or measurements that are easy to interpret. It would be hard to argue as "clear and objective" any newly adopted housing standards (like a requirement to build a sound barrier) that were applicable only in a selective area (i.e., the new UGB area). That's especially true given that it will likely require a noise study to determine what type of sound barrier will suffice. The closest thing I could find examples wise was Lake Oswego, who have a [housing design standard](#): "The building, site, and landscape elements will... maintain compatibility between land uses including visual, sound, and other considerations..." I have doubts that DLCD will go for it, but it's probably still worth asking. (Note that any such standard will be citywide, and not just applicable to the new UGB area.)
- *Deed restrictions*: similar to a non-remonstrative agreement, requiring developers to incorporate a deed restriction restricting all future homeowners' rights to complain about their neighbor is most likely unconstitutional. I also am unsure how you would enact such a requirement – I don't believe that DLCD would go for it (certainly not clear and objective).

An alternative option is for the city to offer to construct a sound barrier wall between the industrial property and the new UGB area (presuming there is a ROW that runs between). This would be a process similar to ODOT's noise abatement procedure (likely done via the [Federal Highway Administration](#) program) for installing sound walls when a majority of affected property owners request it. The (obvious) downside of this proposal is that the City will have to pay for the construction and installation of the wall. It could also (potentially) set precedence throughout the city on any future developments where there are noise concerns.

A final option that I considered was zoning the property located immediately next to the industrial property as commercial, effectively creating a “barrier” of commercial buildings. That would also (theoretically, at least) allow you some flexibility in implementing design standards in relation to the neighboring industrial property, while keeping those standards from becoming a burden on the current industrial property owner. This downside of this option would be the loss of land for housing development (which I think is the main goal of the HPS, right?) But if there’s also a need for more commercial property, this might be a good alternative option.

That’s about all I was able to find, but I’m sure there are additional ideas out there if we brainstorm long enough. If you’d like to talk through my analysis over a Teams meeting, happy to do so – just let me know and I’ll set one up.

Thanks,

Jodi Gollehon

Attorney
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From: Mac Corthell <mcorthell@cityofmolalla.com>
Sent: Tuesday, July 1, 2025 2:50 PM
To: Jodi Gollehon <jodi.gollehon@behlaw.com>
Cc: Dan Zinder <dzinder@cityofmolalla.com>
Subject: Deed Restrictions

Hi Jodi,

I think this is the conversation that I was thinking of... not on point, but maybe some advisory value. Anyhow, here it is, and thank you again!

-Mac

Macahan “Mac” Corthell, J.D.

Assistant City Manager

City of Molalla

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From: T. Beau Ellis <Beau.Ellis@vf-law.com>
Sent: Tuesday, August 10, 2021 11:58 AM
To: Mac Corthell <mcorthell@cityofmolalla.com>
Subject: RE: call

Per our discussion, to avoid the objective criteria issue I'd consider something in the vein of OAR 660-006-0029(5)(e), which provides:

The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993), 215.383 or 215.284 (Dwelling not in conjunction with farm use) or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 (Immunity from private action based on farming or forest practice on certain lands) or 30.937 (Immunity from private action based on farming or forest practice allowed as preexisting nonconforming use).

I attached the Yamhill County deed restriction form (each county has their own and some are stylistically better than others, this one in my opinion leaves much to be desired).

Obviously the above-cited administrative rule is directed at farm/forest practices, but the concept to avoid the "coming to the nuisance" problem is equally applicable here. Given that the code already provides many tools for controlling industrial uses, I believe looking at it from this approach would better insulate the city and employment property from attack, and would avoid the objective criteria problem in the earlier approach.

Let me know, thanks.

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From: T. Beau Ellis

Sent: Tuesday, August 10, 2021 10:52 AM

To: 'mcorthell@cityofmolalla.com' <mcorthell@cityofmolalla.com>

Subject: call

Mac-

When you have a few minutes available this morning, please give me a call. Thanks,

T. Beau Ellis | Attorney at Law

Vial Fotheringham LLP | www.vf-law.com

17355 SW Boones Ferry Rd, Suite A | Lake Oswego, OR 97035

Telephone: 503-684-4111 ext. 400042 | Direct: 503-594-8116 | Facsimile: 503-598-7758

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From: [REID Kelly * DLCD](#)
To: [Dan Zinder](#)
Cc: [Mac Corthell](#); [Violet Brown](#)
Subject: RE: Population Estimates - Changes
Date: Tuesday, July 15, 2025 9:10:40 AM

Hi Dan,

Not yet, but we are working on it.

This is complicated by the legislation for the Oregon Housing Needs Analysis, which gave our Commission the authority to allow cities to move forward under the old rules with work they already started until January 1, 2027. See the statute language below. We have been advising cities not to start any new Goal 10 or Goal 14 work that wouldn't be finished up by this date due to the potential legal risks, and instead wait until the new rules are adopted at the end of this year. Since your sequential UGB work program timeline plans for adoption of all the tasks, including the UGB amendment, before 2027, there has not been a concern, but if you were to revise or start a new HNA, you are likely to have to go beyond 2026 for the UGB amendment, and be in uncharted legal territory.

(4) To avoid interference with current planning activities or to avoid unjust or surprising results, the Land Conservation and Development Commission may postpone, for cities specified by the commission, the applicability of section 13 [197A.210], 21 [197A.280], 22 [197A.270] or 23 [197A.018], chapter 13, Oregon Laws 2023, and the amendments to ORS 197.286, 197.290, 197.296 [renumbered 197A.350], 197.297 [renumbered 197A.335] and 197.303 [renumbered 197A.348] by sections 12 and 25 to 28, chapter 13, Oregon Laws 2023, until a date that is not later than January 1, 2027. [Found in ORS 197A - Section 9 after 197A.025](#)

I am trying to see if we can provide any more clarity for you and will try my best to do so by Wednesday.

Thanks,

Kelly

From: Dan Zinder <dzinder@cityofmolalla.com>
Sent: Monday, July 14, 2025 8:34 AM
To: REID Kelly * DLCD <Kelly.Reid@dlcd.oregon.gov>
Cc: Mac Corthell <mcorthell@cityofmolalla.com>; Violet Brown <violet.brown@3j-consulting.com>
Subject: Population Estimates - Changes

Good morning Kelly,

Checking in on whether you received any feedback from Kevin/Gordon for what would be required if we were to go with an updated population forecast. Would we be able to process

that as an amendment to our current HNA or would we have to:

- Effectively restart the HNA, and;
- Would the new one have to be done under the new OHNA rules.

We're hoping to brief the Council on this at a work session next week, for which my staff report is due Wednesday.

Thanks,

Dan Zinder

Senior Planner, City of Molalla

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