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## Measure 37 might kill Bend's code revision

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By Eric Flowers

The Bulletin

Bend's newly revamped development code could be among the first casualties of Oregon's latest property-rights initiative.

The Bend City Council will discuss Monday night whether to stop work on its code update, which was designed to help the city deal with its ongoing population growth.

"The reality is by adopting a new code, we are, at least in theory, putting a new land-use regulation on every single property owner in town. Whether that restricts their ability to develop is a totally different question," said Jim Forbes, city attorney.

Forbes said he won't have a recommendation for the council. But he will likely lay out some of the risks associated with moving forward.

Those risks include lawsuits from property owners who are negatively impacted by the code.

Relatively little known outside the building community, the code determines what can be built in Bend, where it can be located and to a certain extent, how it must look.

If the city's comprehensive plan is a model of Bend, the code is the instruction book on how to build it.

For example, the new code preserves the minimum lot size for residential homes at 4,000 square feet. But it also allows for certain types of neighborhood developments to go down to a minimum lot size of 3,000 square feet.

In a memo to councilors, planning staff highlighted some sections of the code that could prompt Measure 37 claims:

- Restricting offices in some residential and industrial areas;

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- Setback requirements for in-fill development;
- Limitations on drive-up facilities;
- And institution of design standards for some residential and mixed-use projects.

Among other things, the code is designed to create more flexibility for builders by encouraging more mixed-use and in-fill development. In doing so, it also allows the city to make more efficient use of its existing land supplies as required under state land-use goals, said Wendy Robinson, long-range planner. "The existing code is over 25 years old. It's very antiquated in terms of handling growth," Robinson said.

"Our community is growing so rapidly and looking at ways to handle growth. The old code just doesn't do that. The new code would get us much closer," she said.

After roughly three years of work, the development code is nearly ready for the council to review. But the passage of Measure 37 is causing some to question whether a code update even makes sense. The measure allows property owners to seek monetary compensation or a waiver of land-use regulations that devalue their land. The law applies to any land-use regulations enacted after the property owner or a member of that person's family acquired the property.

In Bend's case, that means that every property owner in the city would have a potential claim against the city under Measure 37 if it were to adopt a new code.

If Bend moves forward with the code update, it could be the first city to test how Measure 37 impacts future planning efforts. The League of Oregon cities has been tracking Measure 37 issues around the state, but doesn't know of any other cities that faced with the prospect of halting work on their development code, said Ken Strobeck, executive director.

The organization's staff has been talking with state Department of Land Conservation and Development in an effort to relax rules that mandate regular zoning and code updates.

At this time, said Strobeck, there is too much uncertainty about the fallout from Measure 37.

But that doesn't mean cities should stop all planning and zoning work.

"I think the general consensus is we can't stop doing everything, but we need to be very cautious about the impact of our actions," he said.

In Bend, city staff has laid out a range of alternatives, including stopping work, adopting the code and delaying action.



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Under the last option, the city would only apply the new code to properties that change hands after its adoption. It could also seek the cooperation of landowners, applying the new code to those who agree to its provisions.

Councilor Chris Telfer said she hadn't reviewed the staff's recommendation as of Wednesday morning.

Based on her existing knowledge of the issue, Telfer said she wasn't ready to throw out the development code or rush to implement a new set of guidelines.

"I'm still in favor of the code; we have to have rules and regulations. ... I would hate to see a broad brush stroke against the code because of Measure 37," Telfer said.

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