

# HUD statement

**The work that provided the basis for this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development (HUD). The substance and findings of this work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the federal government.**



# **Affirmatively Furthering Fair Housing, McMinnville Oregon September 14, 2021**

**Sam Goldberg, Education and Outreach Specialist,  
sgoldberg@fhco.org**

**Education and Outreach Coordinator, Jamie Gatewood  
jgatewood@fhco.org**

# Fair Housing Council of Oregon

- **Statewide Civil Rights organization**
- **Proactively promote housing justice equity and inclusion**
- **Education and enforcement of Fair Housing Law**





# **This session will address:**

- **Fair Housing Basics**
- **Brief History of Discriminatory Zoning & Land Use**
- **Current Housing Needs In Our Region**
- **Jurisdictions & Affirmatively Furthering Fair Housing**
- **Goal 10 & Fair Housing**
- **Housing Crisis In Oregon**
- **Local Land Use Approval Process & Oregon Revised Statutes**
- **Strategies for Developing Needed Housing**

# Fair Housing Laws

- Civil rights laws promoting “equal access” to housing
- Makes it illegal for housing providers to **discriminate** against certain groups
- Different than landlord-tenant law



# Fair Housing Discrimination

Treating a person differently in any housing transaction because that person is a member of a **“protected class”**



# Federal Protected Classes

- Race
- Color
- National Origin
- Religion
- Sex
  - Includes DV survivors
- Familial Status (families with children)
- Disability



# Oregon Protected Classes

- **Marital Status**
- **Source of Income**
  - Section 8
  - Agency rent payments
  - TANF, SSI, SSDI\*
- **Sexual Orientation/Gender Identity**
- **Local protected classes**







# Why Fair Housing for Jurisdictions?

- **Nexus of affordable housing and protected classes**
- **Nexus of kinds of housing and protected classes**
- **Location of housing = Opportunities**
- **Clear and objective standards**

# Brief History

## How We Got Here



# 1930's to 1980's Institutional Policies Solidify Practices leading to Segregation

- FHA appraisal standards
- VA loan policies
- Transportation “improvements”
- White flight
- Urban Renewal/Removal



# Redlining

Process of rating neighborhood for stability using the presence of people of color or new immigrants as major factors for deeming a neighborhood unstable



# FHA Loans

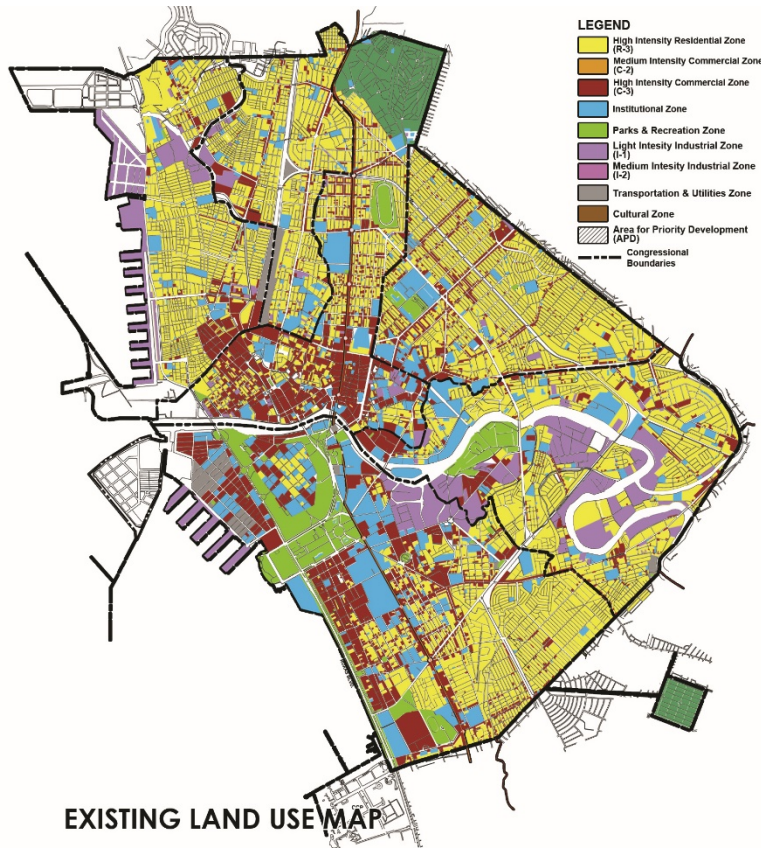


- Redlining led to extreme racial inequities in FHA loans
- Between 1934 and 1962, of \$120 billion in loans made by the FHA, less than two percent went to non-whites

# Restrictive Covenants

- **Prevented owner of real estate to sell or transfer property to blacks or other racial minorities and various religions**
- **Supreme Court declared such restrictive covenants unenforceable (*Shelley v Kraemer*, 334 USA 1948)**

# Continuing Impacts Today



**Exclusionary zoning policies continue to:**

- **Restrict lower cost or higher density housing**
- **Limit racial and economic diversity**
- **Raise housing costs excluding people from equal access to opportunities**

# Fair Housing Act

- **1968 Fair Housing Act enacted**
- **HUD named to enforce Fair Housing laws**
- **Penalties instituted for violations**
- **Affirmatively Furthering Fair Housing required**





# Current Housing Need



# Data Oregon Housing Alliance

## Serious lack of affordable housing in our region

- **Polk County:** For every 100 families with extremely low incomes, only 28 affordable housing units exist. 1,678 units are needed.
- **\*Yamhill County:** For every 100 families with extremely low incomes, only 17 affordable housing units exist. 2,210 units are needed.
- **Marion County:** For every 100 families with extremely low incomes, only 21 affordable housing units exist. 6,280 units are needed.



# McMinnville Housing Needs

## WHAT TYPE OF HOUSING WILL MCMINNVILLE NEED?

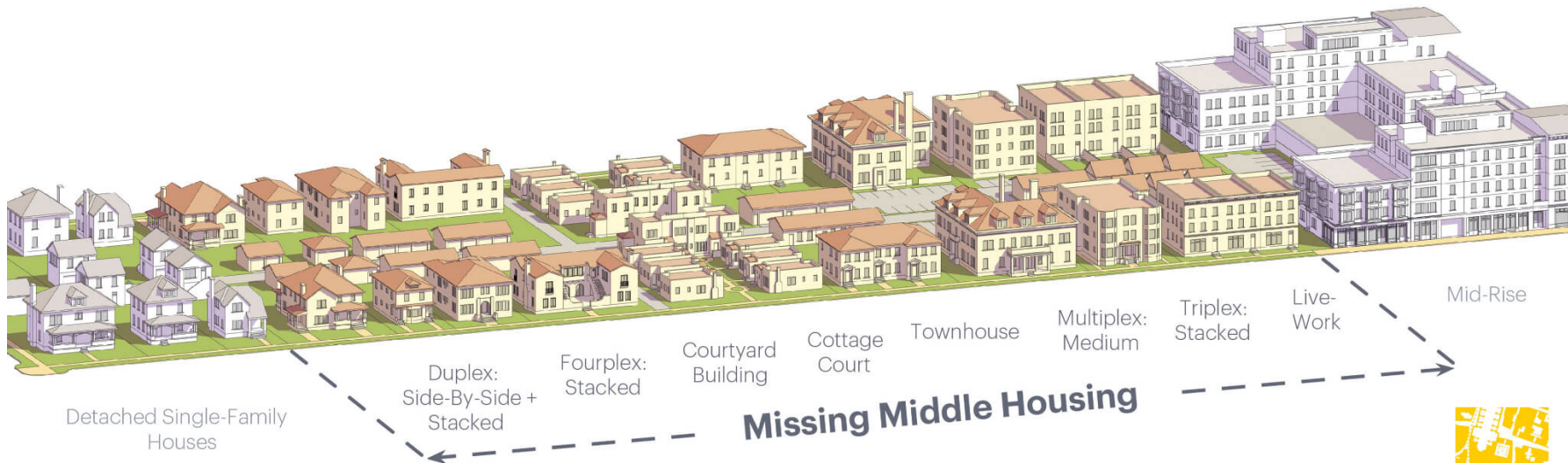
McMinnville will need 4,424 new dwelling units to accommodate this new growth between 2021 and 2041. Housing mix determines the share of housing units by housing type. The table below illustrates this point using McMinnville's historical housing mix.

Historical Housing Mix:



	Total Housing Units	Single-Family Detached Housing	Single-Family Attached Housing	Multifamily Housing
5-Years (2021-2026)	1,078 new units	667 new units	81 new units	330 new units
10-Years (2021-2031)	2,190 new units	1,353 new units	164 new units	673 new units
20-Years (2021-2041)	4,424 new units	2,733 new units	332 new units	1,359 new units
46-Years (2021-2067)	10,435 new units	6,447 new units	783 new units	3,205 new units

# Missing Middle Housing

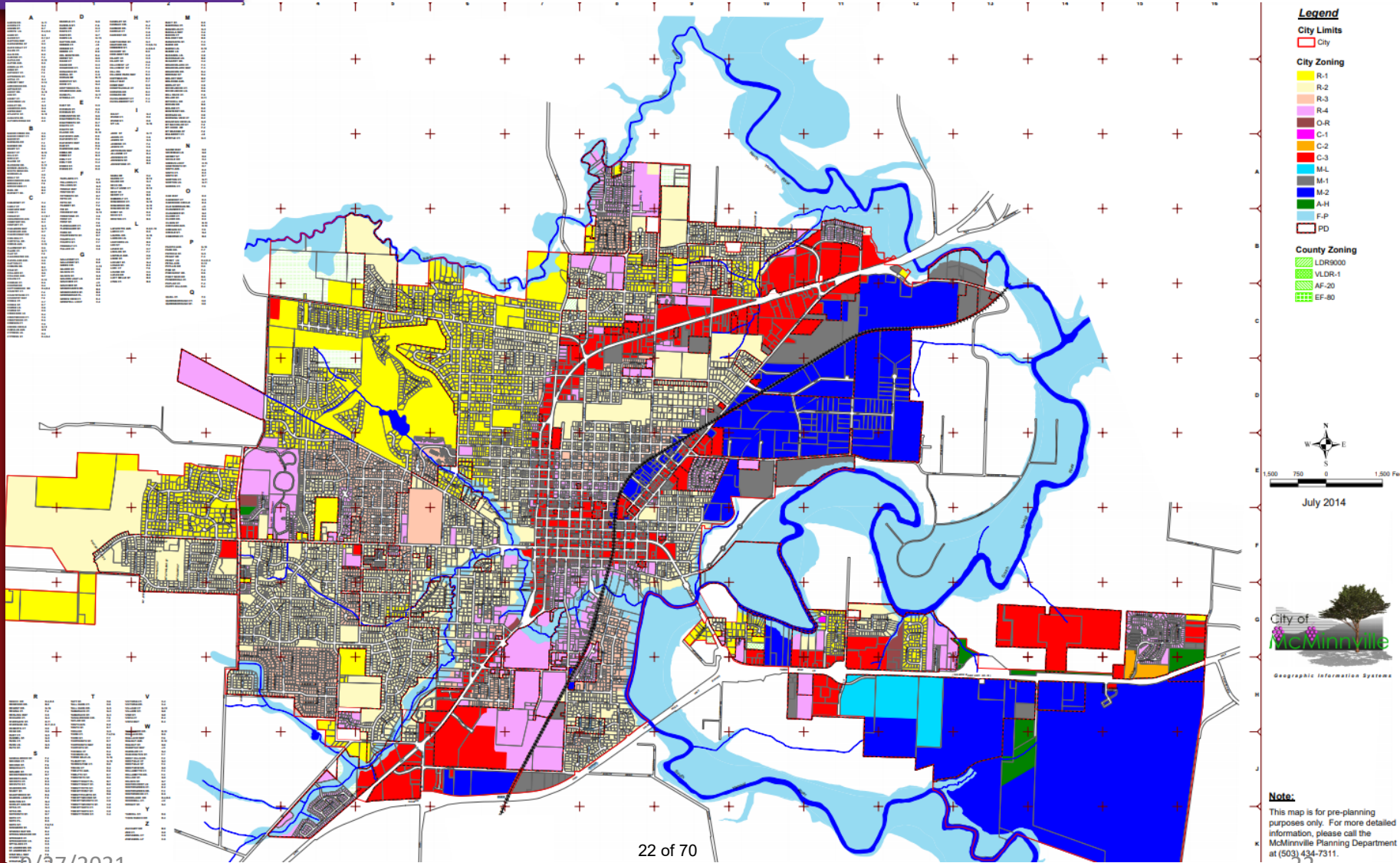


# When Considering Needed Housing

- **Location is very important**
  - **Economic opportunity**
  - **Don't continue to segregate**

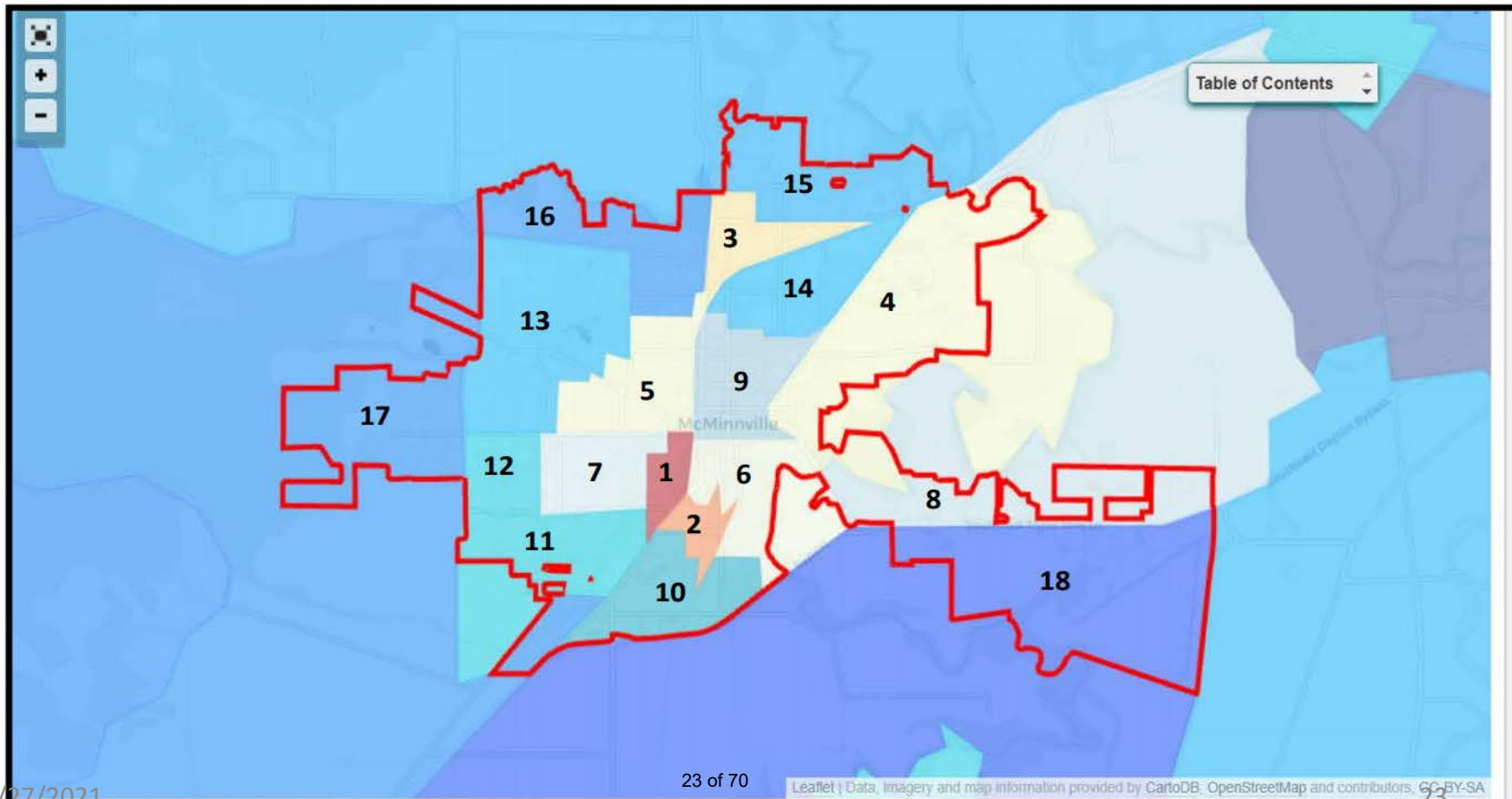


# McMinnville Zoning Map

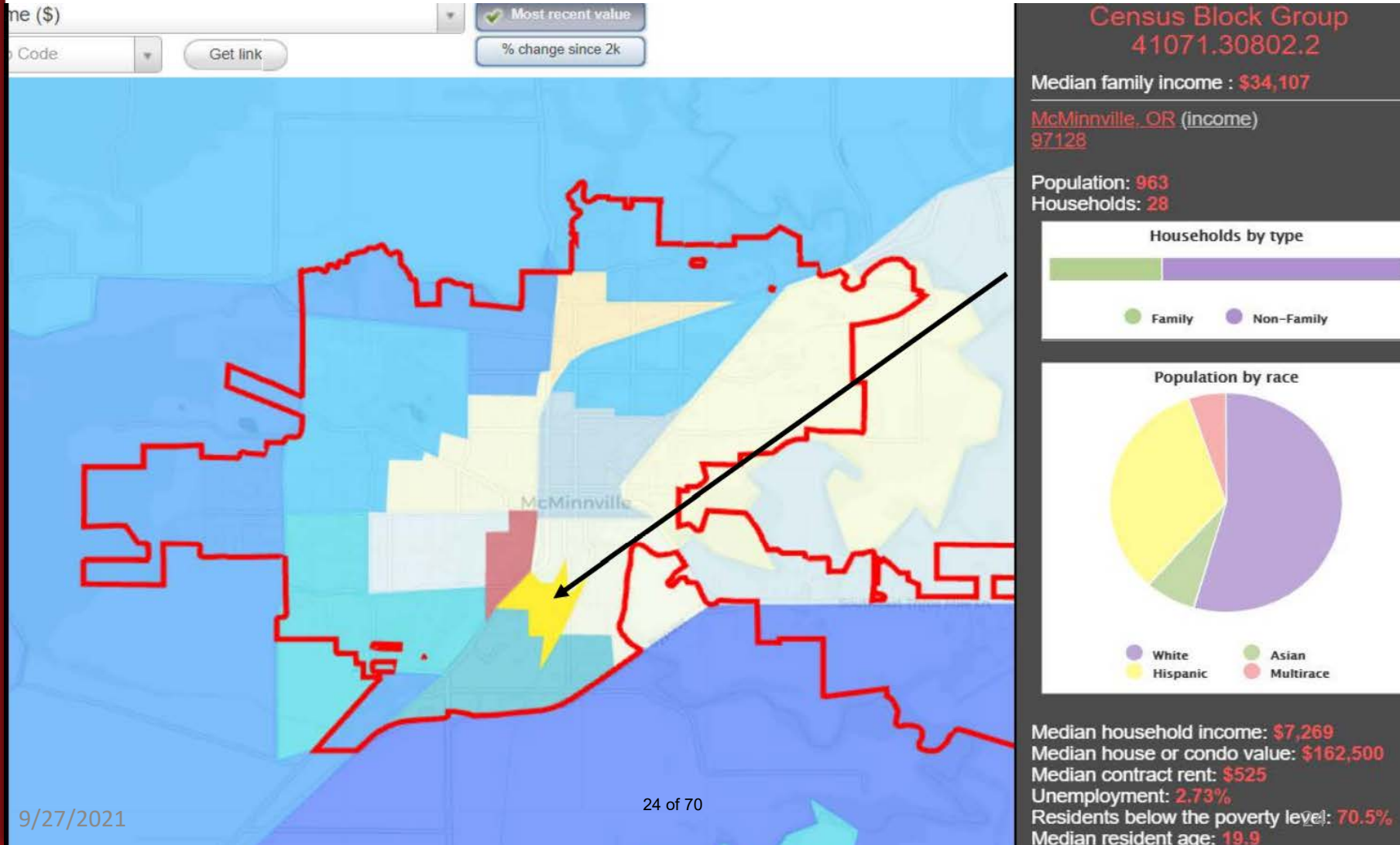


# McMinnville Income by Block Group

APPENDIX 3 – MEDIAN FAMILY INCOME BY BLOCK GROUP, CITY DATA  
(Ranked by lowest family median income to highest family median income)

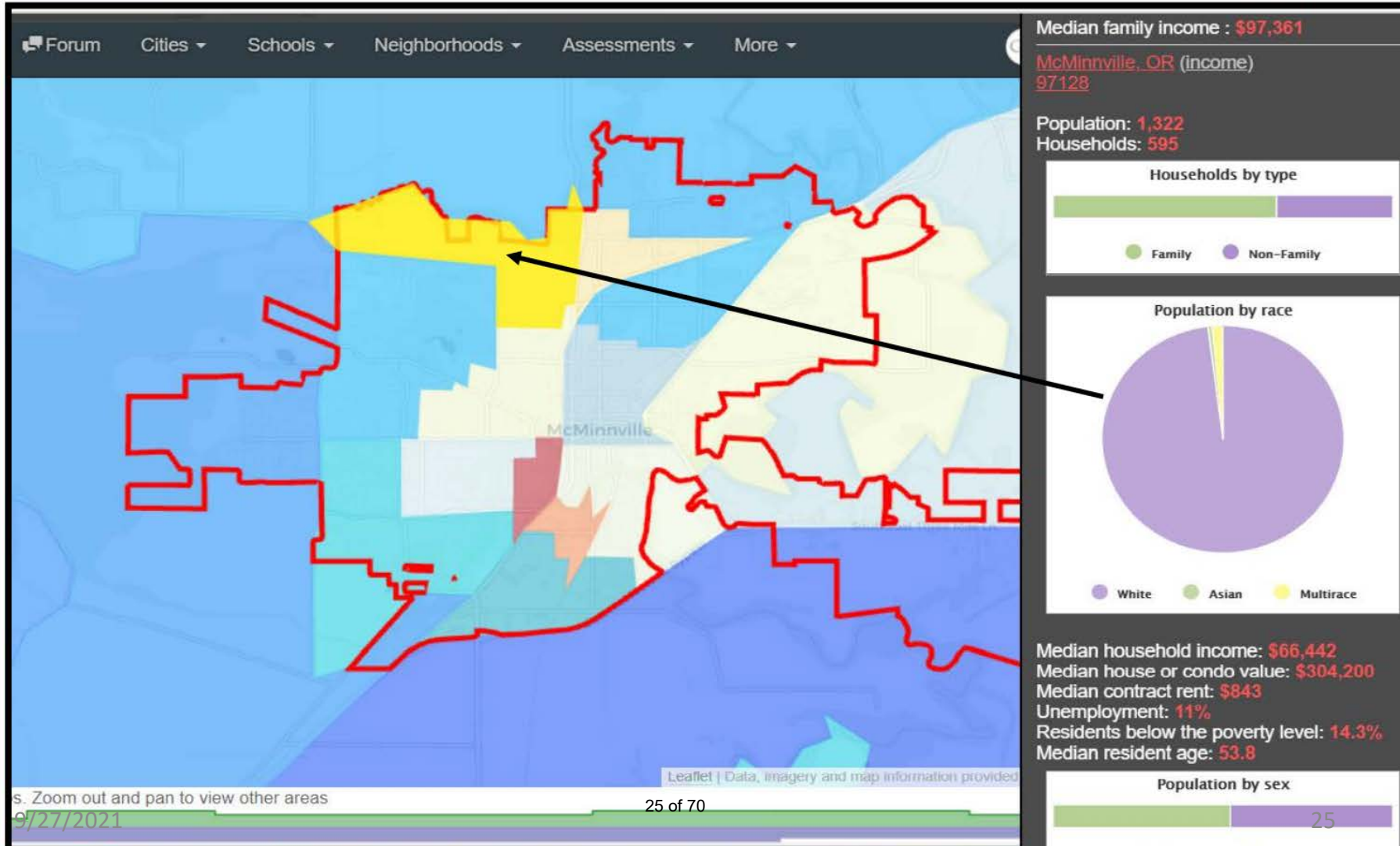


# Patterns of Segregation

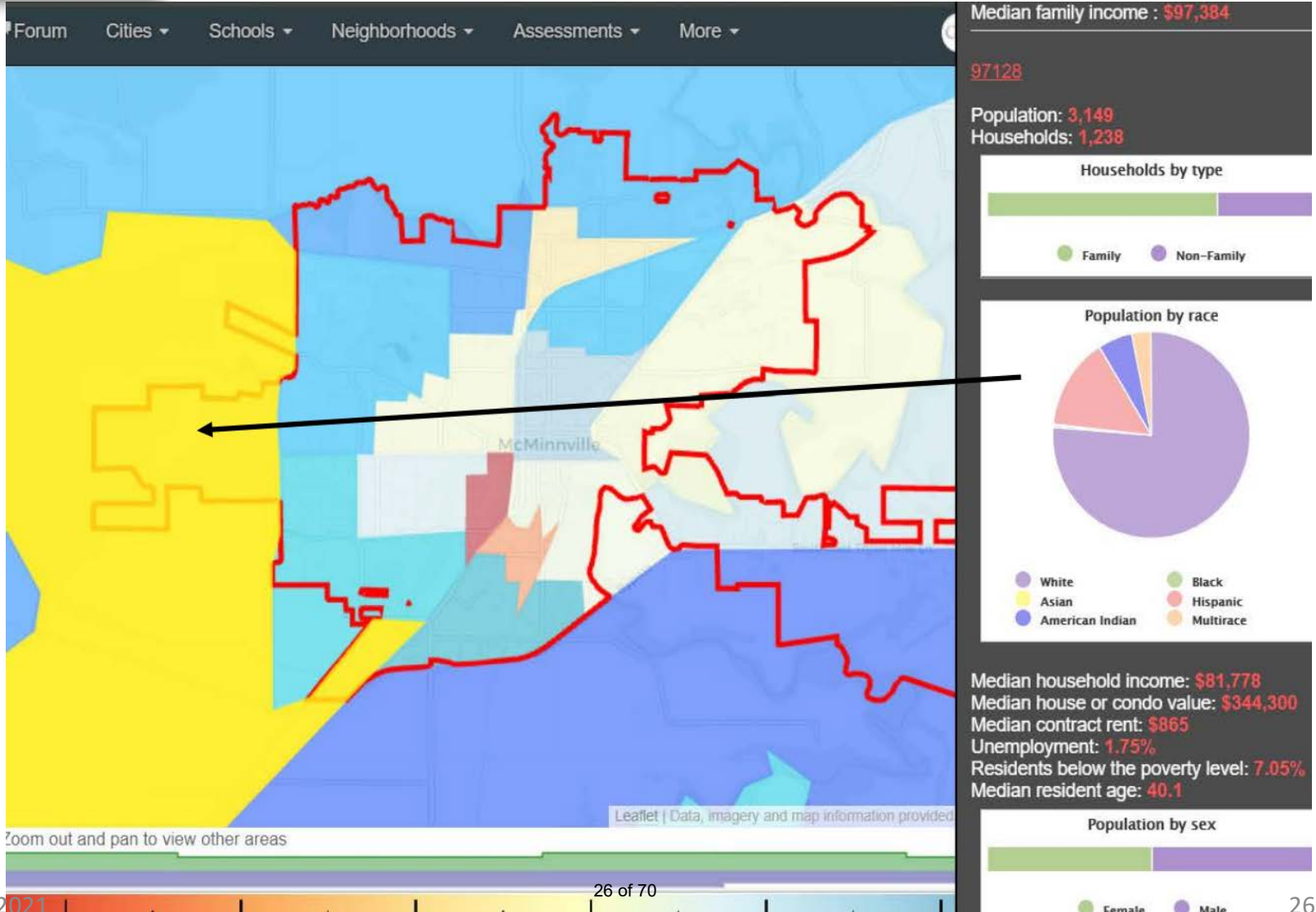




# Patterns of Segregation



# Patterns of Segregation



# Jurisdictions and Affirmatively Furthering Fair Housing



# **AFFH = Preventing & Undoing Discrimination & Segregation**

- **HUD's obligation to AFFH since 1968**
- **Removes barriers to fair housing choice**
- **Creates access to housing choice & access to opportunity**
- **Jurisdictions receiving federal housing and community development funding**

# Where do zoning/planning and fair housing intersect?

- Zoning and planning decisions affect protected class citizens
- Planning and zoning decisions last the lifetime of the building or freeway



# Cities and Counties Make Decisions Like...

- Where housing can be built
- How many people can live there
- What kinds of materials must be used
- What kinds of tax credits are available
- What kinds of allowances they'll make for protected class citizens
- How codes and ordinances are enforced



# Indicators of Barriers to Equal Opportunity in Housing

- **Education: School performance, test scores, graduation rates, teacher ratios**
- **Economic Development: land use policies, zoning decisions, incentives for mixed use and affordable housing, affirmative marketing, new business**
- **Economic Health: Job opportunities, grocery stores, publicly funded economic development & infrastructure investments**



# Good AFFH Analysis

From Bend's 2019 Analysis of Impediments:

FIGURE 2: MAP OF AFFORDABLE HOUSING INVESTMENT IN BEND

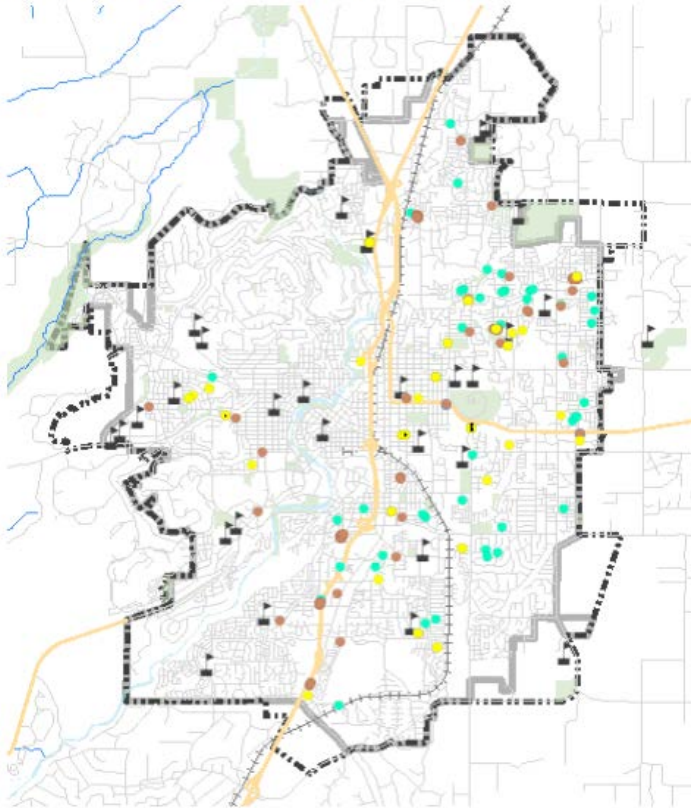
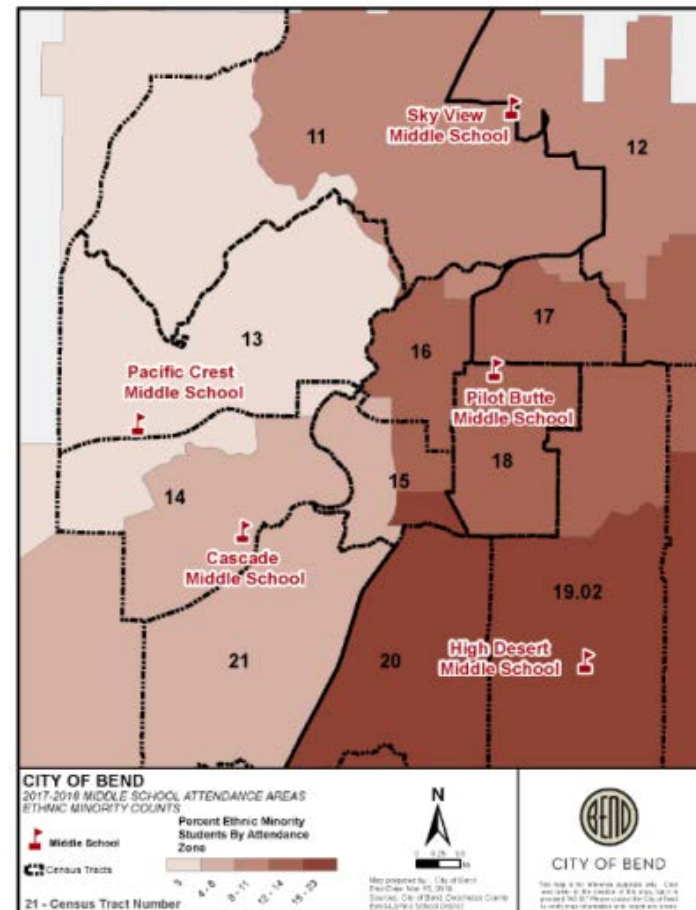


FIGURE 3: MIDDLE SCHOOL ETHNIC COUNTS<sup>62</sup>







# Fair Housing and Land Use Laws

**Fair housing law prohibits land use regulations, restrictive covenants and conditional or special use permits that may limit housing choice based on protected class**



# HUD/DOJ Joint Statement on Land Use



- **HUD/DOJ Joint Statement on group homes, local land use, and the Fair Housing Act, issued on August 18, 1999 and updated November 14, 2016**



# Common Fair Housing Land Use Violations

**VIOLATION**

- **Requiring projects to undergo additional approval steps, hearings, or meetings with neighbors not required of other housing projects**
- **Requiring projects to have extra screening, setbacks or other design modifications not required of other housing projects**
- **Requiring burdensome public safety requirements**

# Land Use Violations Continued

**Prohibiting or restricting the development of housing based on the belief that the residents have a particular protected characteristic, such as race, disability, or family status**



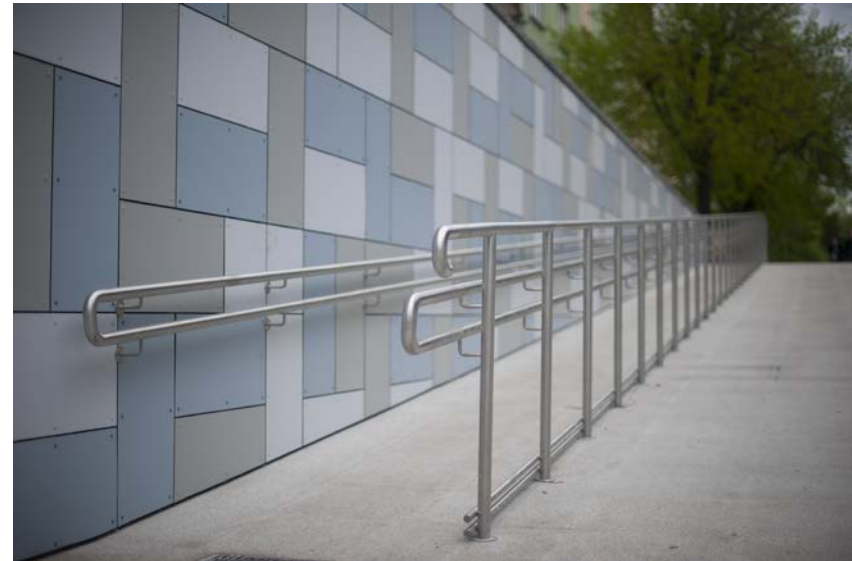
# Land Use Violations Continued

**Imposing restrictions on housing because of alleged public safety concerns based on stereotypes about the residents or anticipated residents who have protected characteristics**



# Land Use Violations Continued

**Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing**



# DISPARATE IMPACT

**Definition (HUD Rule): A practice that results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, disability, familial status, or national origin**

# Policies That May Have a Disparate Impact

- Urban renewal
- Code enforcement
- Exclusionary zoning
- Residency preferences

A Local zoning ordinance restricts housing with more than 3 bedrooms

*Result: disparate impact on people with larger families (discrimination based on familial status)*







# Fair Housing Land Use Cases



**What happens when jurisdictions violate the Fair Housing Act?**

- **United States v. Tinley Park**
- **United States v. City of Jacksonville**
- **United States v. City of Beaumont**

# Goal 10 and Fair Housing

# Planning Goal 10

**To provide for the housing needs of citizens of the state:  
Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density**



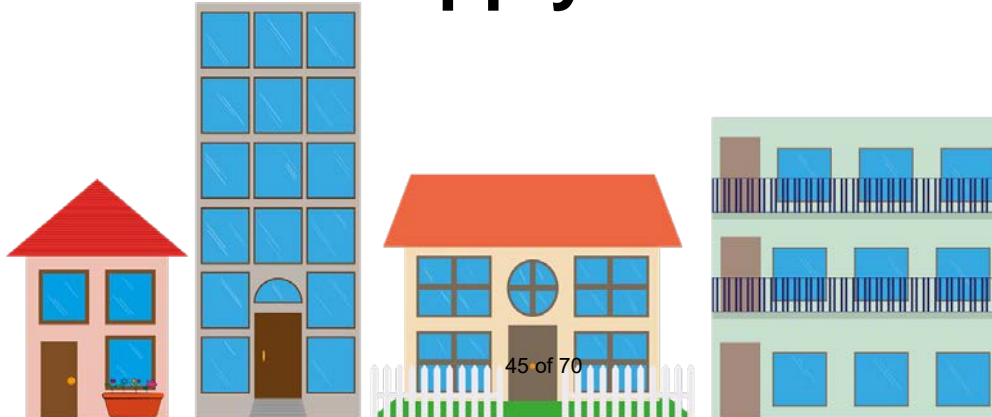


# Goal 10 and Fair Housing

- **Affordable housing and fair housing**
- **Residential segregation by income = segregation by protected class**
- **Housing needs analysis encourages more housing types**

# Housing Needs Analysis (HNA)

**A housing needs analysis (HNA) is one of the components a city needs to consider to satisfy the housing needs of its residents over a 20-year period. A HNA is both a product and a process that the city goes through to determine areas of need in their current inventory of housing and their buildable land supply.**





# Big Take Away Goal 10

- 1) Plans for affordable housing for the people within the urban growth boundary.**
- 2) Must allow “needed housing types”.**

**If cities and counties must  
plan for needed housing,  
why is there an affordable  
housing crisis?**

# Barriers to Development of Affordable Housing

- **Procuring funding**
- **Available land**
- **NIMBYism**





# Discrimination & Needed Housing

- **Fear based – who will live there**
- **Misconceptions Like**
  - What will it look like?
  - Will it be properly maintained?



# Discrimination & Needed Housing Continued

- **Fear of the affect on home values**
- **Fear of increased crime**
- **Magnetism Myth**



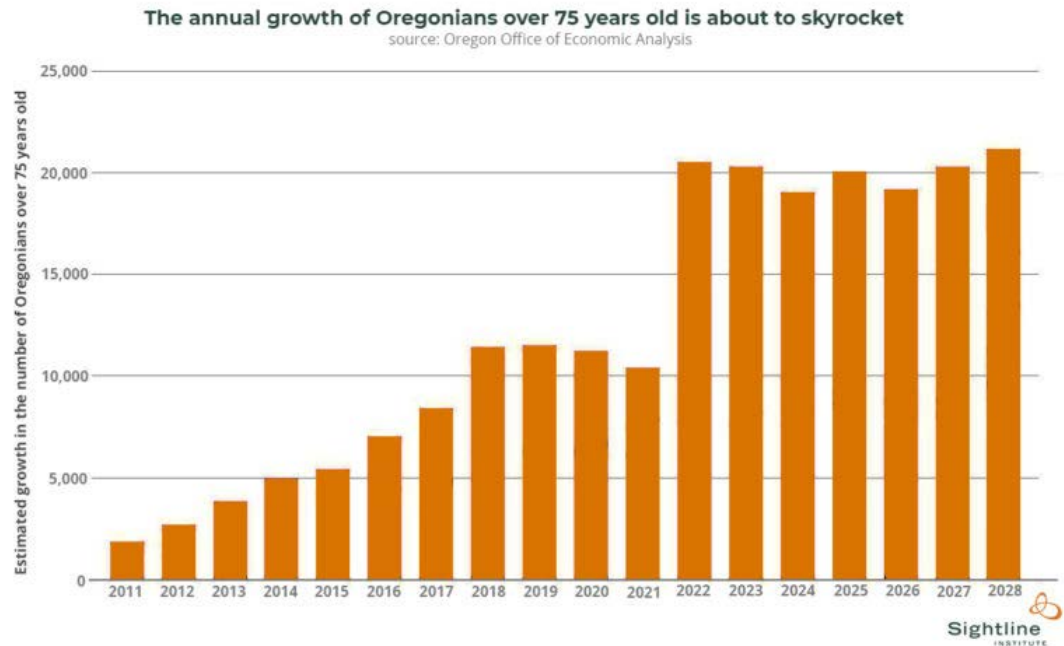
# Free Speech & Public Decisions



- **Public decisions about housing**
  - **Community members have the right to express opposition to projects (not illegal intimidation)**
  - **Can't be based on protected class**
  - **Can't cause disparate impact on protected classes**

# Housing Challenges Faced by People Living with A Disability

- The percentage of people with mobility-related disabilities increases as the population ages
- Oregon already has a significant gap between supply and demand in accessible units – we need to be producing 6,781 wheelchair-ready units a year, every year just to meet new growth
- Much more affordable to make units accessible from the beginning than to retrofit



# Strategies for Developing Accessible Housing

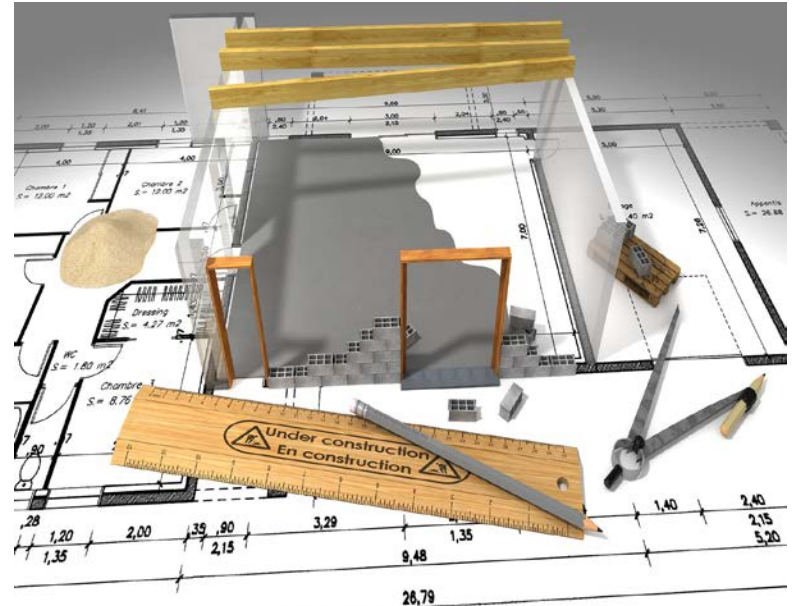
- **Most accessible units are in multi-family developments, where they have been required since 1991**
- **HB2001 could change that, as at least one fully accessible unit must be built in quadplexes and cottage clusters**
- **Cities can offer incentives to developers for building accessible units**
- **Accessible units can also be prioritized for people with disabilities as a preference policy (Portland ADU Code)**



# Local Land Use Approval Process & Oregon Revised Statutes

# Oregon Land Use Laws

- **ORS 197.307: Clear and objective standards**
- **May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay**



## Exceptions:

- **Historic districts, downtown PDX**
- **Cities may offer an alternative track to approval**

# Clear and Objective?

- Are standards both “clear” and “objective”?
- Does it contain subjective or “value-laden” analysis?
- Should lead to certainty of application
  - Standards and objectives are capable of being imposed only in clear and objective manner
  - Easy to tell what the outcome will be because the standard is so clear





# Exceptions to ORS 197.307

- **Clear and objective standards are mandatory to avoid delays**
- **Cities can offer additional discretionary tracks**
- **Historic districts and city centers**



# Clear and Objective?



Evergreen plants shall be used where a sight obscuring landscape screen is required

- ~~Proposed use shall be compatible with neighborhood character~~



No two directly adjacent or opposite buildings in a multi-family development may possess the same front or street facing elevation.

- ~~Pedestrian circulation paths shall be safe, convenient and reasonably free from hazards~~

# Oregon Land Use Laws

## ORS 197.307: Unreasonable cost or Delay

**Clear and objective standards, conditions and procedures regulating the development of housing *may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay***



# Special Rules for

- **Licensed residential care homes**
- **Mobile homes and parks**
- **Farmworker housing**



# Special Rules for Mobile Homes/Parks



- **Multi-sectional manufactured housing meeting state standards pertaining to foundation, roof pitch, siding, thermal qualities, and carport/garage must be permitted in single family zoned lots. ORS 197.307 (8)**
- **Mobile home parks must be an allowed use in areas planned and zoned for residential density of 6 to 12 units per acre. Clear and objective standards for design and placement okay. ORS 197.408**

**\*May be subject to other standards applicable to conventional single-family dwellings**

**\*There are more details to this law**

# Special Rules for Farmworker Housing

- **Outside the UGB, farmworker housing must be allowed in one or more zones in rural centers and areas committed to non-resource uses.**
- **Clear and objective standards ORS 197.685**



# Special Rules for Residential Homes & Facilities



## Residential Home

- Five or fewer residents
- Permit from a state regulatory agency
- Must be a permitted use in
  - Residential zones
  - Any commercial zone that allows single family dwelling

## Residential Facility

- 6 to 11 residents
- Permit from state regulatory agency
- Permitted use in any zone where multifamily housing is permitted
- Conditional use where multifamily housing is a conditional use

# Questions to Ask

- **Are the requirements and processes imposed like those imposed on similar projects in that zone?**
- **Are the standards applied clear and objective?**
- **Are there requirements that are slowing down the project? Ex: Extra community meetings?**
- **Are decisions caving to NIMBYism?**





# Strategies to Promote Inclusive Communities

# HB 2003

- **Requires cities with a population of 10,000 or greater to create a Housing Production Strategy**
- **The strategy must include a list of actions a city will take to promote the development of all identified housing needs**



# What Are Your Ideas?



- **What demographics are concentrated in your city? What strategies might be used to desegregate?**
- **What kinds of housing is missing? How can you promote the development of that kind of housing in your city?**
- **What kind of zone changes might you make to promote the development of needed housing in your city?**

# Examples of Strategies to Promote Inclusive Communities

## Housing Production Strategies Guidance for Cities



- **Inclusionary Zoning**
- **Short-Term Rentals Regulations**
- **Remove or Reduce Minimum Parking Requirements**
- **Reduce the Power of NIMBYism**



# We'll Send Resources

- **HB 2003 & Housing Production Strategies Guide**
- **Goal 10**
- **Dept of Justice & HUD's Statement on Land Use**
- **Oregon Department of Land Conservation and Development Housing Resources**
- **Oregon tax credit programs**
- **Tool to understand how affordable housing is financed**
- **Addressing Possible NIMBY-Related Impediments**
- **Land Use Through Fair Housing Lens**

