

You *Can* Fight City Hall

Land Use Laws, Zoning Rules,
and Housing for People with
Disabilities

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Why Do We Care About Land Use

- Land Use Laws Are a [Major Barrier](#) to Supportive Housing and Treatment
- Land Use Battles Are Expensive
- Bad Zoning Laws Can Create a Segregated Environment Within a Community
- Land Use Battles Can Lose Good Will in Your Community

Why Do We Care About Community Housing and Treatment

- Maintaining Services in the Community Is the Gold Standard for Success
- Continuing Gap Between Need for and Availability of Supportive Housing
- Continuing Need from Deinstitutionalization
- Homelessness Crisis
- Community-Based Treatment Is Cheaper than Jail, Psychiatric Hospitals, Prisons, Etc.

Average Reductions in Healthcare Service Usage Across Studies

	Number of studies	Baseline to year 1	Impact range
ER visits	17	-44%	-78%, -2%
Inpatient stays	13	-39%	-79%, +5%
Hospital bed days	9	-45%	-84%, +3%
Outpatient stays	6	36%	-25%, +132%
Detox visits	4	-47%	-82%, 0%
Ambulance trips	6	-34%	-60%, +50%

*In some cases data has been transformed to obtain comparable information between studies, e.g. calculating service usage from the total reported costs and the cost per service. Average reductions have not been independently verified.

Source: [Corporation for Supportive Housing, *Supportive Housing & Healthcare Utilization Outcomes: State of the Literature*, at 7 \(Aug. 2018\).](#)

Oregon Has Extraordinary Needs

- Oregon has extremely high mental health and substance abuse treatment needs.
- Oregon ranks 49th out of 51 on overall mental health outcomes, while also ranking among the worst in suicides and alcohol-related deaths.
- The Corporation for Supportive Housing recently assessed Oregon as needing 12,388 units of supportive housing.

Cost of Supports in Different Settings

- Public cost of Affordable Housing in OR: About \$665/mo per unit, or \$7980/yr
- Cost of Supportive Housing: About \$613/mo or \$7200/yr more than affordable housing
- Cost of a year at Oregon State Hospital: About \$440,000/yr
- Cost of Oregon DOC Custody: About \$108/day or \$39,420/yr

Why do we have zoning laws?

- Legitimate purposes
 - Health and safety
 - Noise and pollution management
 - Focusing areas of intensive development
- Illegitimate purposes
 - Racial segregation
 - Protecting property interests and class division
 - Disability discrimination

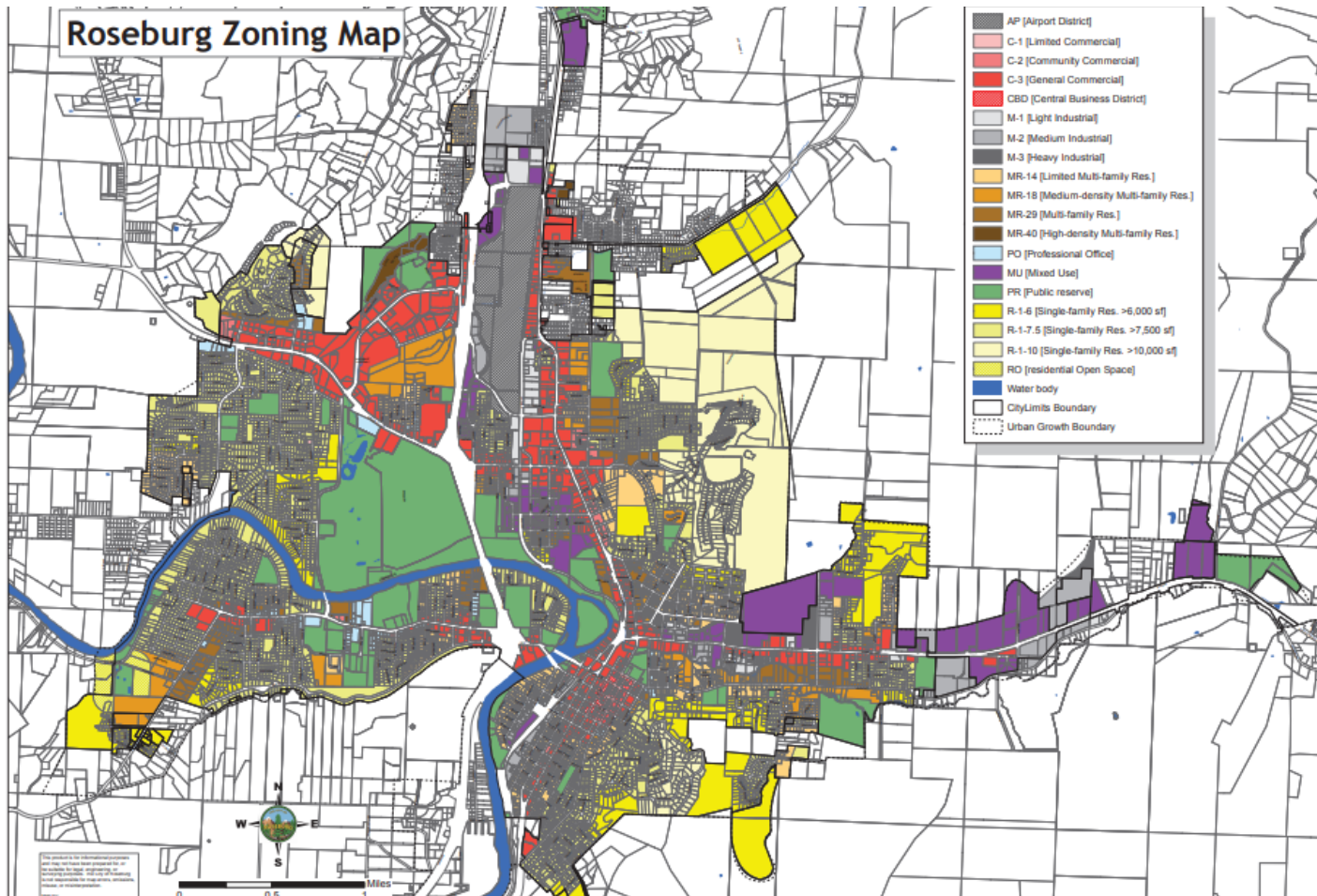
Relevant Laws

- Municipal and County Land Use Laws
- State Licensing Laws
- State Nondiscrimination Laws (ORS 197.660)
- Federal Nondiscrimination Laws
 - Americans with Disabilities Act (42 USC 12131)
 - Fair Housing Act (42 USC 3601)
 - Rehabilitation Act (29 USC 794)

How Does a Zoning Code Work?

- 4 basic parts of a zoning code
 - A zoning map
 - Description of zones
 - Categories of uses
 - A chart describing each use for each zone

A Zoning Map



Different Zones

- The zoning map shows you the different zones for your community.
- Typical zones in most communities:
 - Residential
 - Mixed Use
 - Commercial
 - Industrial
 - Special (Historic, Park, Waterfront, Hospital, etc.)

Common Land Uses

- Single family home
- Restaurant
- Apartment building
- Factory
- Hospital
- Group home
- Nursing home
- Day care
- Store
- Fraternity/Sorority
- School
- Duplex
- Residential Treatment Facility
- Bar
- Theater

Chart Describing Land Uses

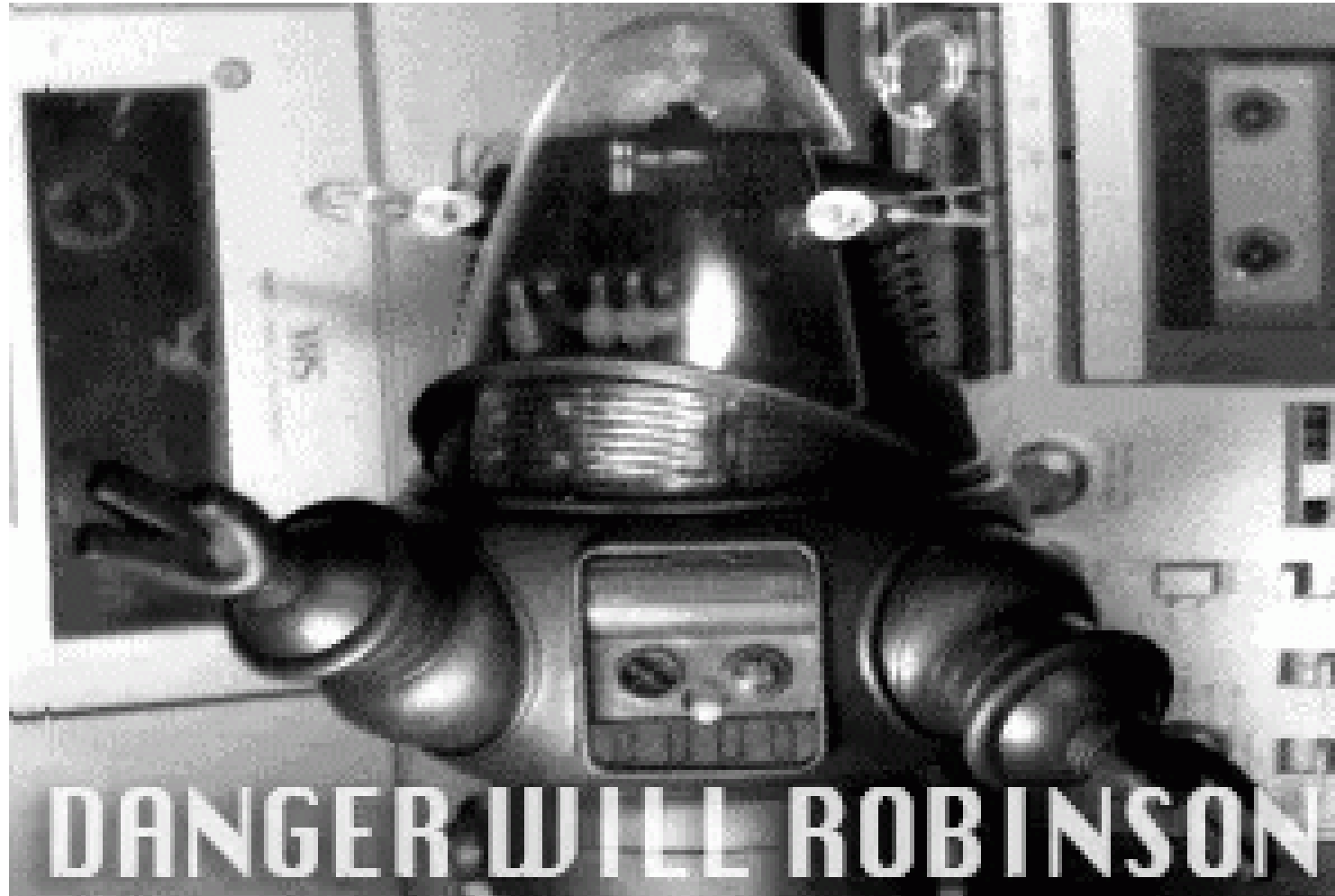
TABLE 2-4: RESIDENTIAL – ALLOWED USES

USE CATEGORY	R10	R7.5	R6	MR14	MR18	MR29	MR40	STANDARDS
Specific Use								
RESIDENTIAL								
1) Single-Family Dwelling	P	P	P	P	P	P	-	-
2) Two-Family Dwelling [1]	P, C	P, C	P, C	P	P	P	-	2.3.060(2)
3) Townhouses	C	C	C	P	P	P	P	2.3.050
4) Multifamily Dwelling	-	-	-	P	P	P	P	2.3.060
5) Mobile Home Parks	-	-	-	P	P	-	-	5.12
6) Accessory Residential Unit [2]	C	C	C	P	P	P	P	2.3.030
7) Boarding and Rooming Houses	-	-	-	P	P	P	-	-
8) Family Day Care Home	P	P	P	P	P	P	P	-
9) Residential Home	P	P	P	P	P	P	P	-
10) Residential Facility	C	C	C	P	P	P	P	-
PUBLIC/CIVIC								
11) Religious Institutions	P	P	P	C	C	C	C	-
12) Parks and Playgrounds	C	C	C	C	C	C	-	-
13) Public/Semi-public Buildings and Uses	C	C	C	C	C	C	-	-
14) Schools	-	-	-	C	C	C	-	-

Permissive Use

- When a land use is permitted, getting a permit usually means you only have to please the local, professional staff—not political bodies.
- May require surveys, technical drawings, environmental studies, etc.
- Treated essentially similarly to other developments, little room for discretion.

Conditional Use



Conditional Use

- Requires appearance before an intermediate board, or in some cases the local city/county council
- Often involves public comment and information sessions
- Usually results in a discretionary vote by the panel
- Can usually appeal to full city/county council

Court Action

- In almost any case, you can appeal any negative decision from the local city/county council to a state court
- In special circumstances, a direct suit in federal court may be appropriate
- Most expensive option

How Local Governments Get It Wrong

- The government can't impose conditions on people with disabilities they don't impose on others.
- The government can't rely on stereotypes and generalizations of people with disabilities.
- The government must offer reasonable accommodations and modifications to permit a land use by people with disabilities.

Discriminatory Laws

- Some zoning codes, especially older codes, are deliberately crafted to exclude people with disabilities and set higher standards for them.
- Discriminatory codes create special categories and requirements for housing and treatment facilities for people with disabilities.

Common Discriminatory Laws

- Different occupancy limits for group homes as compared to single family homes.
- Complete prohibitions on certain disability-related uses in some zones, even where comparable uses unrelated to disability are permitted.
- Conditional permits for disability-related uses where similar uses are permissive.

How State Law Gets It Wrong

- State law distinguishes between residential homes (up to 5 residents) and residential facilities (6-15 residents), requiring residential homes in residential areas, but saying local governments “may” (not “must”) allow larger facilities.
- OR Attorney General points out that this violates the Fair Housing Act, and the “may” should be a “must.” OR Att’y Gen’l Op. 6377 (1991).
- Many local codes still apply this law wrongly.

Indirect Discrimination in Land Use

Law

- Definitions of land uses with a “disparate impact,” even where the law doesn’t mention disability
- Common: many codes define “family” as people related by blood or marriage, then set a different occupancy rule for family as for unrelated people.
- Such rules are more likely to harm people with disabilities

Illegal Conditions of Use/Clustering

- Some local laws impose special collateral rules on disability-specific land use, such as specific parking rules.
- Some local zoning laws might be illegal because they tend to concentrate or cluster services or housing for people with disabilities in a specific section of the community.
- People with disabilities should be fully integrated in the community.

Discriminatory Practices

- Some local laws may have no obvious flaw as you read them, but local governments violate federal law when they use neutral laws to exclude land uses for people with disabilities.
- Most common: catch-all provisions prohibiting uses that negatively affect “public safety,” “property values,” or uses at odds with the “character of the neighborhood.”

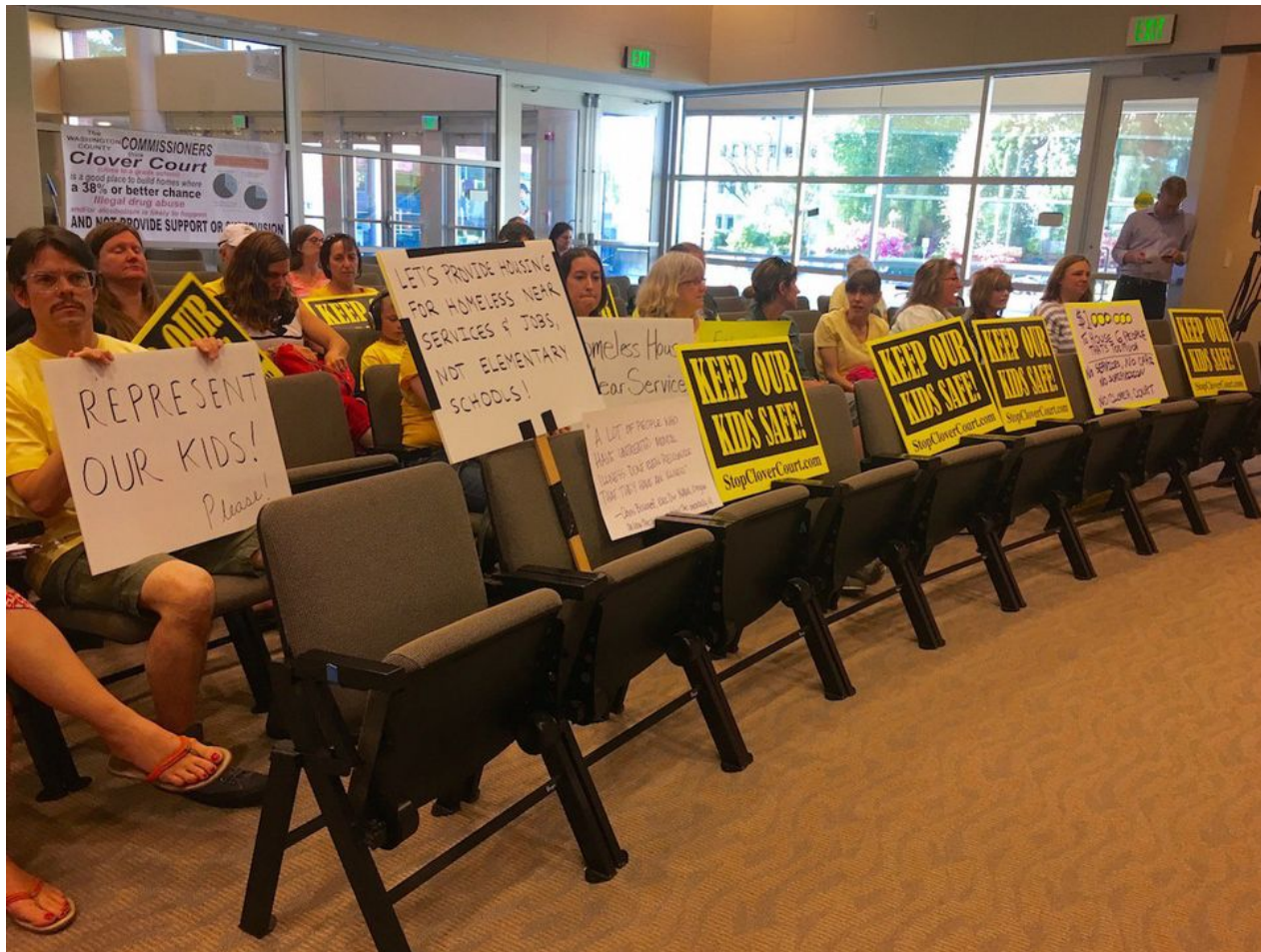
Prejudice in Land Use Decisions

- At a public hearing, some hostile neighbors will come forward to spout stereotypes about people with mental illness, people with substance abuse problems, etc.
- A planning committee or land use committee cannot incorporate or rely on discriminatory comments in its decision.
- Consider filming or audio recording any public hearing, if the local government does not.

Common Fears



A Hostile Reception



Credit: Samantha Swindler, The Oregonian/OregonLive

Common Misconceptions

- People with disabilities will bring crime
- People with disabilities will bring drug use
- People with disabilities will lower property values
- People with disabilities will drive business away
- People with disabilities are not safe around our children or our schools

Reasonable Accommodations

- The local government must make reasonable accommodations or modifications to its policies in order to allow housing and treatment for people with disabilities.
- General prohibitions may require an exception (for instance, to allow access for a wheelchair-accessible van; certain sizing or setback requirements; access for animals, etc.)

Other Discriminatory Practices

- Land use includes more than just zoning
 - Land purchase or land swap proceedings
- Selective prosecution of land use codes
 - Only pursues violations for neutral laws against homes for people with disabilities
- Prosecution of offenses disproportionately facing people with disabilities
 - Hot topic: 911 overuse ordinances

Benefits You Can't Win in Court

- Good will from neighbors
- Peace and quiet after initial development
- Freedom from scrutiny in enforcement of neutral laws

Start the Process with an Aim to Reassure Neighbors

- Most [persuasive option](#): bring in neighbors to similar uses in the larger area to explain how any fears were unfounded and how pleasant the reality is.

Bring the Data

- May be more effective in persuading government officials than neighbors
- Substantial [studies](#) show
 - Housing for PWD does not [cause crime](#)
 - Housing for PWD does not lower [property values](#)
 - Housing for PWD does not harm local businesses
- Consider hiring an expert or consultant to rebut misconceptions

Managing Neighbors

- Discuss problem [solving strategies](#) around any fears they have
- Provide points of contact for regular concerns (trash, noise, harassment, etc.)
- Conduct regular follow-up visits with neighbors

Find Allies in Your Community

- Who are your natural allies?
 - Disability, addiction, mental health groups
 - Churches
 - Political, ethnic, or fraternal organizations
- Develop a joint communication strategy around information sessions, presentation, hearings
- Stand up for their interests in return

Thank You!

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