

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 660  
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

**FILED**

12/21/2023 10:16 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Update Housing Capacity Analysis Schedule

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/25/2024 8:00 AM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Filed By:  
Casaria Taylor  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 01/25/2024

TIME: 7:30 AM

OFFICER: LCDC

HEARING LOCATION

ADDRESS: The Mill Casino, 3201 Tremont Ave., Willow Room, North Bend, OR 97459

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-900-6833

CONFERENCE ID: 87355040972

SPECIAL INSTRUCTIONS:

Password: 541716

NEED FOR THE RULE(S)

The attachment in OAR 660-008 is required to be amended to reflect recent housing capacity analysis adoptions by local governments and to include the latest available data and best practices in housing production strategies. The proposed amendment does not result in changes to any Oregon Administrative Rule language. The proposed amendment is only to update the attachment, which does not impact the manner in which local governments or the public operate within the state's regulatory framework. The proposed amendment also satisfies direction in HB 2001 [2023] to adopt a housing production target schedule before the statutory deadline of March 1, 2024.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Revised Statute 197.290 and 197.296. Oregon Administrative Rules Chapter 660, Division 8. These regulations can be found on the State of Oregon Secretary of State website.

## STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The State of Oregon requires that a rulemaking notice include “a statement identifying how adoption of the rule will affect racial equity in this state” (ORS 183.335(2)(b)(F)). Racial equity is a process of eliminating racial disparities and improving outcomes for Black, Indigenous, and other persons of color (BIPOC). It is the intentional and continual practice of changing policies, practices, systems, and structures by prioritizing measurable improvements in the lives of members of BIPOC populations. The agency is required to attempt to determine the racial groups that will be affected by the rule and how the rule will increase or decrease disparities currently experienced by those groups. In this context, a disparate treatment of racial groups may be supportable if it addresses current disparities.

The Oregon Land Conservation and Development Commission adopted Oregon Administrative Rules implementing the Housing Production Strategy Program portion of House Bill 2003 in November 2020. These rules require cities with a population over 10,000, as determined by the Portland State University Population Research Center, to complete a Housing Capacity Analysis (HCA) on a six- or eight-year fixed schedule.

The attachment in OAR 660-008-0045 contains the schedule by which certain local governments are required to adopt updated housing capacity analyses. The schedule is required to comply with HB 2003 [2019] and implement Oregon Revised Statute 197.296(2)(a)(B). The attachment in OAR 660-008 is required to be amended to reflect recent housing capacity analysis adoptions by local governments and to include the latest available data and best practices in housing production strategies. The proposed amendment does not result in changes to any Oregon Administrative Rule language. The proposed amendment is only to update the attachment which does not impact the manner in which local governments or the public operate within the state's regulatory framework. The proposed amendment also satisfies direction in HB 2001 [2023] to adopt a housing production target schedule before the statutory deadline of March 1, 2024.

The proposed amendment includes an updated schedule that changes the deadline for some cities to complete their HCA to a later year. This proposed change is intended to avoid situations where the applicable Oregon Administrative Rules change part way through their update process, causing cities to have an HCA that conflicts with state statute. The rules impacting HCAs will change through the Oregon Housing Needs Analysis (OHNA) rulemaking process that will be completed by January 1, 2025.

### Anticipated Racial Equity Impacts

The intent of the rule amendment is to support increased targeted housing production by requiring and supporting cities to update their HCAs on a fixed schedule. The amendment will promote racial equity by better tracking data regarding housing needs and availability, especially for households of color. The data gathered through an HCA process has direct implications for protected classes including Oregonians who identify as Black, Indigenous, and people of color (BIPOC), who are disproportionately harmed by insufficient housing production and the increasing housing costs that result from underproduction.

Goal 10 requires that cities provide a variety of housing options to Oregonians at all income levels. However, the current framework bases needed housing estimates on potentially faulty or incomplete assumptions. The effects of those miscalculations are experienced most critically by low-income communities of color. This amendment brings eligible cities into compliance with Goal 10 by prescribing a framework that allows work toward housing goals to be measured accurately. By updating the analysis regularly, cities will have the data to more effectively and accurately plan for affordable, fair, and equitable housing.

While the overall intent of the rule is to promote housing production and equitable outcomes, the proposed amendment may have potentially negative consequences. By moving the deadline for some cities to complete an HCA to a later date, this may also delay the equity outcomes the rules are intended to achieve. A delay in timeline can result in prolonged or

increased housing disparities if these are not documented and addressed in a timely manner.

#### Future Efforts and Mitigating Impacts

The Department of Land Conservation and Development (DLCD) is currently undergoing a separate rulemaking process, directed by the Oregon Legislature under House Bill 2001 [2023], to update rules related to Goal 10 (Housing) and Goal 14 (Urbanization) to create a more comprehensive framework that promotes housing production, affordability, and choice across the state. DLCD staff, with the support of a Rulemaking Advisory Committee, three technical advisory committees, and a robust engagement process, will draft rules that aim to create fair and equitable outcomes in cities and counties across Oregon. The rulemaking process is using a Racial Equity Framework to help ensure the rules maximize benefits and limit burdens for communities of color. By setting a later HCA deadline for cities until after the new rules can be applied, this will allow more opportunity to advance equity in the long term for communities of color and other marginalized communities.

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#### FISCAL AND ECONOMIC IMPACT:

The proposed rule amendment will likely result in minimal or no fiscal or economic impact to state agencies, local governments, or small and large businesses. The proposed rule amendment only supplements existing programs and does not create or materially alter existing processes.

For cities above 10,000 people with an HCA deadline of 2026 or earlier who have not begun the Goal 10 process, the proposed amendments extend these deadlines to provide cities enough time to complete requirements associated with the implementation of new legislation HB 2001 [2023]. These new dates also roughly align with biennial funding cycles (2025-27, 2027-29, etc.). In some cases, local governments are given more time to complete an updated housing capacity analysis, which could result in a positive fiscal or economic impact for local governments with limited staff and financial resources by giving them more flexibility and time to apply for grants if needed to complete the work.

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#### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The Department of Land Conservation and Development is responsible for implementing and enforcing the housing capacity analysis program per ORS 197.290 and ORS 197.296. The department is not economically affected by the proposed amendment because the amendment does not result in any material change to the otherwise anticipated workload of the department. Local governments and members of the public would also not be economically affected by the proposed rules as the proposed amendment to OAR 660-008-0045 only delays an anticipated workload but does not exempt or change that anticipated workload.

The proposed amendment will not have any impact on small businesses as they are not subject to the underlying housing capacity analysis requirements in Division 8. Further, the proposed amendment only updates the existing Oregon Administrative Rule attachment and does not change the anticipated workload or regulatory framework for

small businesses.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Department of Land Conservation and Development did not convene a rulemaking advisory committee or conduct stakeholder engagement for this specific rule amendment. However, the initial amendments to Division 8 completed in 2020 to incorporate HB 2003 [2019] and ORS 197.290 and 197.296 requirements were the result of a yearlong intensive advisory committee and stakeholder engagement process. Small businesses, though they are not directly impacted by the standards of OAR 660-008, participated on the rulemaking advisory committee and engagement process.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

No, the Department of Land Conservation and Development did not convene a rulemaking advisory committee or conduct stakeholder engagement for this specific rule amendment. The proposed amendment is only necessary to update the attachment to reflect recent local government housing capacity analysis adoptions. This amendment does not materially alter the regulatory framework or requirements in OAR 660-008 and only provides additional guidance and resources for local governments participating in the housing capacity analysis program.

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HOUSING IMPACT STATEMENT:

Description of proposed change: (Please attach any draft or permanent rule or ordinance) The Attachment in OAR 660-008-0045 contains the schedule by which certain local governments are required to adopt updated housing capacity analyses. The schedule is required to comply with HB 2003 [2019] and implementing Oregon Revised Statute 197.296(2)(a)(B).

Description of the need for, and objectives of the rule: The attachment in OAR 660-008 is required to be amended to reflect recent housing capacity analysis adoptions by local governments and to include the latest available data and best practices in housing production strategies. The proposed amendment does not result in changes to any Oregon Administrative Rule language. The proposed amendment is only to update the attachment which does not impact the manner in which local governments or the public operate within the state's regulatory framework. The proposed amendment also satisfies direction in HB 2001 [2023] to adopt a housing production target schedule before the statutory deadline of March 1, 2024.

List of rules adopted or amended: OAR 660-008-0045

Materials and labor costs increase or savings: The proposed amendment does not materially alter the regulatory framework, intent, or implementation of OAR 660-008-0045. The proposed amendment only updates the attachment in the rule section to reflect recent local housing capacity analysis adoptions by local governments. The proposed amendment does not result in any change in housing materials and labor costs, positive or negative.

Estimated administrative construction or other costs increase or savings: The proposed amendment does not result in any change to estimated administrative construction or other costs, positive or negative.

Land costs increase or savings: The proposed amendment does not result in any change to land costs, positive or negative.

Other costs increase or savings: The proposed amendment does not result in any change to the cost incurred by local governments or the development of housing, positive or negative.

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AMEND: 660-008-0045

RULE SUMMARY: The Attachment in OAR 660-008-0045 contains the schedule by which certain local governments are required to adopt updated housing capacity analyses. The schedule is required to comply with HB 2003 [2019] and implement Oregon Revised Statute 197.296(2)(a)(B). The proposed amendment also satisfies direction in HB 2001 [2023] to adopt a housing production target schedule before the statutory deadline of March 1, 2024.

CHANGES TO RULE:

660-008-0045

#### Housing Capacity Analysis Deadline

Cities described in ORS 197.296(2)(a)(B) and (10)(c)(B) shall demonstrate sufficient Buildable Lands as scheduled by the Commission.¶¶

(1) The Department shall publish the calendar of Housing Capacity Analyses deadlines for cities identified under ORS 197.296(2)(a)(B) or (10)(c)(B) in Exhibit A.¶¶

(2) The deadline for adoption of a Housing Capacity Analysis in a given year is December 31st.¶¶

(3) A city will be considered to have met its obligation to adopt a Housing Capacity Analysis upon adoption of the Housing Capacity Analysis by ordinance. A subsequent appeal of the Housing Capacity Analysis will not be considered a failure to comply with the deadline provided in Exhibit A provided in section (1).¶¶

(4) Upon adoption of a Housing Capacity Analysis, the deadline for a subsequent Housing Capacity Analysis is as follows:¶¶

(a) Eight years subsequent for cities that are not within a metropolitan service district; or¶¶

(b) Six years subsequent for cities that are within a metropolitan service district.¶¶

(5) If a population estimate developed under ORS 195.033 and OAR 660-032-0020 and OAR 660-032-0030 results in a city qualifying under ORS 197.296(2)(a)(B) or (10)(c)(B), the city must adopt a Housing Capacity Analysis within two years of its qualification or the interval provided in section (4), whichever is the longer period.

Statutory/Other Authority: ORS 197.040

Statutes/Other Implemented: ORS 197.290, ORS 197.291, ORS 197.293, ORS 197.296, ORS 197.303

**Housing Capacity Analysis Update Schedule for Oregon jurisdictions subject to the requirements of ORS 197.296**

OAR 660, Division 8 – Exhibit A

*Last Updated December 15, 2023. Deadlines below are subject to change after further consultation with each jurisdiction. Recommendations to extend deadlines will be made by DLCD prior to final adoption by the Land Conservation and Development Commission in January 2024.*

**Cities must adopt updated Housing Capacity Analyses (HCA) by December 31<sup>st</sup> of the listed year.**

**Cities not within a Metropolitan Service District**

*(must update HCA every eight years)*

	2024	2025	2026	2027	2028	2029	2030	2031
1	McMinnville	Bend	Lincoln City	Astoria	Canby	Hermiston	Lebanon	Grants Pass
2	Sweet Home	Sandy		Central Point	Albany	Newberg		Molalla
3	Pendleton	The Dalles		Corvallis	Coos Bay	Ontario		Newport
4				Keizer	Dallas			Salem
5				Springfield	Klamath Falls			Ashland
6				Cottage Grove	La Grande			Baker City
7				Prineville	Silverton			Medford
8				Redmond				Monmouth
9				Eugene				North Bend
10				Roseburg				Independence
11				St. Helens				
12				Woodburn				
13				Keizer				
14				Tillamook County Jurisdictions				

**Cities within a Metropolitan Service District**

*(must update HCA every six years)*

	2024	2025	2026	2027	2028	2029	2030	2031
1	Wilsonville	- None -	- None -	Sherwood	Happy Valley	Beaverton	Wilsonville	- None -
2				Tualatin		Milwaukie		
3				Forest Grove		Hillsboro		
4				Fairview		Lake Oswego		
5				Cornelius		Portland		
6				Gladstone		West Linn		
7				Oregon City		Gresham		
8				Tigard				
9				Troutdale				