



Petition to amend OAR 660-039

Petitioner on behalf of the City of Redmond:

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Agency:

Oregon Department of Land Conservation and Development

Petition in Brief:

This petition seeks to amend Affordable Housing Pilot Project development phasing rules found in OAR 660-039-0070 (3), replacing the current text with phasing language found in Senate Bill 1537 Section 55(3)(f). Proposed changes are shown in the attached Exhibit A.

Background:

The 2016 Oregon Legislature passed House Bill 4079, and in 2019 passed House Bill 2336, aimed to boost affordable housing by allowing two Oregon cities to develop affordable and market rate housing on lands currently outside Urban Growth Boundaries (UGBs) through an expedited UGB expansion process. Both Redmond ("City") and Bend were awarded these pilot projects.

According to OAR 660-039, the affordable housing pilot program is intended to:

1. Encourage local governments to provide an adequate supply of land within urban growth boundaries that is dedicated to affordable housing;
2. Encourage the development of affordable housing on land dedicated to affordable housing;
3. Protect land dedicated to affordable housing from conversion to other uses before or after the development of affordable housing;
4. Enhance public understanding of the relationship of land supply to the development of affordable and needed housing; and
5. Enhance public understanding of how cities can increase the amount of affordable and needed housing.

Redmond's project site, Northpoint Vista, consists of 40-acres of previously undeveloped land donated to the City by Deschutes County. Additionally, the City has been awarded \$8.45 million in infrastructure grants to support the proposed 447 unit residential development. Consistent with OAR 660, at least 30% of the housing units will be affordable housing offered at or below 80% Area Median Income (AMI).

Currently phase 1 infrastructure construction, funded by the grants, is underway, addressing utilities and transportation needs for approximately the first 50% of the overall development. All planned affordable housing units will be sited within the area served by this first phase of infrastructure, and will directly benefit from utilization of the grant funds.

The first affordable homeownership development is fully funded and has applied for permits with construction slated to start in spring 2026. Later phases of infrastructure will be privately funded through the development of market rate and workforce housing.

Discussion:

Current Affordable Housing Pilot Project rules found in OAR 660-039-0070 (3) stipulate that housing development phasing shall:

- a. Ensure all affordable housing units have been issued permanent certificates of occupancy prior to issuance of permanent certificates of occupancy to the last 50 percent of any market rate housing units included as part of the pilot project; or
- b. Phase development so that affordable housing units and market-rate housing units are issued permanent certificates of occupancy over time in a ratio similar to the ratio of affordable and market-rate housing units within the pilot project as a whole.

The City has recently learned that Oregon Housing and Community Services (OHCS) has fully allocated all current biennium Local Innovation and Fast Track (LIFT) funding to other projects. The next LIFT rental application cycle will not occur until at least 2027. With no near-term opportunity to acquire LIFT rental funding, development of multifamily affordable housing units at Northpoint Vista will be delayed by several years. Subsequently, under the current project phasing rule, this will also delay a majority of the market rate and workforce housing units, as the rule requires a substantial number of the affordable housing units receive permanent certificates of occupancy first.

The City proposes an amendment to OAR 660-039 to replace current development phasing language with text from Senate Bill 1537 Section 55(3)(f)(B), governing the adoption of urban growth boundary amendments under section 50 of the 2024 act, stating:

The construction of all affordable units has commenced before the city issues certificates of occupancy to the last 15 percent of market rate units.

This proposed amendment in no way challenges the purpose of the pilot housing program as outlined in OAR 660-039. Rather, the proposed amendment aligns the previous pilot projects to the same phasing rule as newer projects allowed under SB 1537, ensuring that construction of housing at Northpoint Vista can continue over the next several years without substantial delay.

Response to OAR 137-001-0070:

OAR 137-001-0070 was adopted by the Attorney General and applies to rulemaking petitions to every state agency. The following italicized text responds to these requirements outlined in OAR 137-001-0070:

- a. When an amendment of an existing rule is proposed, the rule shall be set forth in the petition in full with matter proposed to be deleted and proposed additions shown by a method that clearly indicates proposed deletions and additions.

See attached Exhibit A.

- b. Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule.

OHCS will not accept new LIFT affordable rental applications until the next biennium. As a result, nearly all affordable housing construction at the Northpoint Vista pilot project site will be delayed.

Under the current pilot project phasing rule, a delay in construction of affordable housing will also delay a majority of the market rate and workforce housing units, as the rule requires a substantial number of the affordable housing units receive permanent certificates of occupancy first.

By amending OAR 660 to align with housing construction pacing found in SB 1537, the City can continue to advance construction of all housing units in the near-term while still adhering to the goals of the pilot program. However, without a rule amendment, construction of all housing at the pilot site will be greatly reduced during the next several years

- c. All propositions of law to be asserted by petitioner.

The City seeks an amendment to address the phasing of affordable housing vs market rate housing, as found in attached Exhibit A.

- d. Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses.

It is the City's position that replacing the Affordable Housing Pilot Project rules (OAR 660-039) regarding phasing of affordable unit construction with SB 1537 language governing the adoption of urban growth boundary amendments will have no effect on the pilot project's substantive goals, including but not limited to:

- 1. Encourage local governments to provide an adequate supply of land within urban growth boundaries that is dedicated to affordable housing;*
- 2. Encourage the development of affordable housing on land dedicated to affordable housing;*
- 3. Protect land dedicated to affordable housing from conversion to other uses before or after the development of affordable housing;*
- 4. Enhance public understanding of the relationship of land supply to the development of affordable and needed housing; and*
- 5. Enhance public understanding of how cities can increase the amount of affordable and needed housing.*

The City is currently working with several developers for the sale of market rate lots within Northpoint Vista. Without a fix to the pacing of affordable housing vs market rate housing, these sales will be delayed or not realized at all. Infrastructure development that these developers will provide will be put on hold. Funds from the sales of market rate lots will not be available for early development of neighborhood amenities such as the central park.

- e. The continued need for the existing rule.

It is understandable that the pilot project has stipulations that prevent the construction of affordable housing from being an afterthought. However, the current provisions in OAR 660-039 put unnecessarily tight restrictions on the pacing of affordable housing development that do not account for current economic factors. The proposed amendment found in Exhibit A still addresses this need to ensure affordable housing is incorporated in the pilot project's planning and execution.

- f. The complexity of the existing rule.

The existing rule provides two options for development phasing. The first requires all affordable housing to receive certificates of occupancy before the last 50% of the market rate units can

receive certificates of occupancy. The second option requires affordable and market rate units to be phased at a similar ratio to each other.

The suggested amendment, replacing current provisions with SB 1537 language, simply stating “The construction of all affordable units has commenced before the city issues certificates of occupancy to the last 15 percent of market rate units.”

- g. The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations.

The existing rule does not overlap, duplicate, or conflict with other state or federal rules or local regulations. However, it does create limitations on the City’s response to the Governor’s call for expeditious housing production to address the current State housing crisis.

- h. The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

As the rules in OAR 660-039 were written for first-time pilot projects, it is understandable that there are lessons learned along the way. What seemed like reasonable development phasing requirements in the pilot project are now proving to cause delays in the City’s advancement of the project’s housing construction. Phasing provisions have since been updated in SB 1537 for similar new UGB expansion project. The City seeks an amendment to align our project with the newer rule on development phasing.

In addition, OHCS made changes to the way LIFT rental funding was allocated during the current biennium, creating a situation in which multifamily affordable projects, like those proposed at Northpoint Vista, will not be able to apply for the funding until the next biennium.

EXHIBIT A

660-039-0070

Housing Requirements

- (1) The following types of affordable housing are allowed on pilot project sites:
 - (a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
 - (b) Government assisted housing;
 - (c) Manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
 - (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions.
- (2) At least 30 percent of the total housing units proposed and developed on a pilot project site must be affordable housing units. In addition:
 - (a) At least 10 affordable housing units must be proposed and developed on a pilot project site from a qualifying city with a population of 25,000 or less; and
 - (b) At least 20 affordable housing units must be proposed and developed on a pilot project site from a qualifying city with a population greater than 25,000.
- (3) Pilot project development phasing shall:
 - ~~(a) Ensure all affordable housing units have been issued permanent certificates of occupancy prior to issuance of permanent certificates of occupancy to the last 50 percent of any market rate housing units included as part of the pilot project; or~~
 - ~~(b) Phase development so that affordable housing units and market rate housing units are issued permanent certificates of occupancy over time in a ratio similar to the ratio of affordable and market rate housing units within the pilot project as a whole.~~
 - (a) Ensure the construction of all affordable units has commenced before the city issues certificates of occupancy to the last 15 percent of market rate units.**
- (4) All common areas and amenities accessible to residents of market-rate housing units within the pilot project site shall be equally accessible to residents of affordable housing units;
- (5) The qualifying city must ensure all affordable housing units within the pilot project site are rented or sold exclusively to households described in OAR 660-039-0010(1) or, if the pilot project includes dedicated affordable housing units proposed under subsection (7)(b), to those households described, at the time of sale or rental during a period of at least 50 years after the selection of the pilot project site;
- (6) The qualifying city must ensure that all housing units within the pilot project site are not used as vacation or short term rentals for any significant period during any calendar year.
- (7) The commission shall consider the following when reviewing a final application pursuant to OAR 660-039-0080(2)(b) (A):
 - (a) Percentages or numbers of affordable housing units greater than the minimum percentages and numbers required in section (2);
 - (b) Dedication of affordable housing units for households with lower maximum incomes than described in the definition of affordable housing in OAR 660-039-0010(1); and
 - (c) In the case of a mixed income project, the total number and overall percentage of market rate housing units dedicated for households making 80 to 120 percent of the area median income.
 - (d) Other considerations that, in the determination of the commission, will advance affordable housing and knowledge about affordable housing in Oregon.

Statutory/Other Authority: ORS 197.040, OL 2016 & Ch. 52

Statutes/Other Implemented: OL 2016 & Ch. 52

History: LCDD 2-2017, f. 2-24-17, cert. ef. 2-27-17

Key:

~~Red strikethrough~~ indicates proposed removal of text

Red Bold indicates proposed addition of text