

OFFICE OF THE SECRETARY OF STATE

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

CHAPTER 660  
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

**FILED**

12/14/2022 9:35 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Update Housing Capacity Analysis Schedule

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/26/2023 8:45 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: 01/26/2023

TIME: 8:30 AM

OFFICER: LCDC

HEARING LOCATION

ADDRESS: Department of Land Conservation and Development, 635 Capitol St. , Basement Hearing Room, Salem, OR 97301

REMOTE MEETING DETAILS

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

PHONE NUMBER: 719-359-4580

CONFERENCE ID: 831273

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.

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 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 schedule upon which cities must adopt Housing Capacity Analyses and does not impact the manner in which local governments or the public operate within the state's regulatory framework. The schedule is required to comply with HB 2003 [2019] and implementing Oregon Revised Statute 197.296(2)(a)(B). 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 required cities over 10,000 population, as determined by the Portland State University Population Research Center, to complete a Housing Capacity Analysis (HCA) on a 6- or 8-year fixed schedule. The proposed rule amendment updates the schedule by which several jurisdictions must update their HNA.

The intent of the rule amendment is to scaffold increased targeted housing production by requiring and supporting cities to update their Housing Capacity Analysis on a fixed schedule. The change will promote racial equity by better tracking data regarding housing needs and availability. The data gathered through a regular process has direct implications for protected classes and Black, Indigenous, and other persons of color (BIPOC) Oregonians 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.

The department is currently undergoing a separate process, directed by the Oregon Legislature under House Bill 2003, to modernize how local cities and counties plan for housing in a manner that results in more affordable, fair, and equitable housing outcomes. DLCD staff, with the support of two working groups and a robust engagement process, will craft and deliver policy recommendations to address housing planning that promotes racial equity and equitable outcomes in cities and counties in Oregon.

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#### FISCAL AND ECONOMIC IMPACT:

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

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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).*

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 delay an anticipated workload but does not exempt or change that anticipated workload.

The proposed amendment will not have any impact on small businesses as it is 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.

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.

\*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

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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 implementing Oregon Revised Statute 197.296(w)(a)(B).

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

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

**Housing Capacity Analysis Update Schedule for Oregon Cities with a population above 10,000**  
(Required by ORS 197.296)

OAR 660, Division 8 – Exhibit A

To be adopted by the Land Conservation and Development Commission in January 2023.

Updated January 12, 2022

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)*

	2023	2024	2025	2026	2027	2028	2029	2030
1	Independence	Astoria	Lincoln City	Eugene	Canby	Albany	Ashland	Grants Pass
2	McMinnville	Bend	Sandy		Central Point	Baker City	Hermiston	Lebanon
3	Medford	Keizer	Springfield		Corvallis	Coos Bay	Newberg	Pendleton
4	Molalla		The Dalles		Cottage Grove	Dallas	Ontario	Newport
5	Lebanon*				Prineville	Klamath Falls	Salem	
6	Pendleton				Redmond	La Grande		
7	Newport**				Roseburg	Monmouth		
8					St. Helens	Silverton		
9					Woodburn			

**Cities within a Metropolitan Service District**

*(must update HCA every six years)*

	2023	2024	2025	2026	2027	2028	2029	2030
1	Beaverton	- None -	Forest Grove	Sherwood	Gladstone	- None -	- None -	- None -
2	Fairview			Tualatin	Cornelius			
3	Hillsboro				Tigard			
4	Lake Oswego				Oregon City			
5	Milwaukie				Gresham			
6	Portland				Happy Valley			
7	West Linn				Troutdale			
8	Wilsonville							
9								
10								

Red = Behind schedule

Green = Ahead of schedule

\*Expected Summer 2023 \*\*Expected January 2023

Cities must adopt updated Housing Production Strategy (HPS) by December 31<sup>st</sup> of the year following the submission of the HCA, as listed below.

**Cities not within a Metropolitan Service District**

*(must update HPS every eight years)*

	2023	2024	2025	2026	2027	2028	2029	2030	2031
1	Grants Pass	Independence	Astoria	Lincoln City	Eugene	Canby	Albany	Ashland	-None-
2	Lebanon	McMinnville	Bend	Sandy		Central Point	Baker City	Hermiston	
3	Pendleton	Medford	Keizer	Springfield		Corvallis	Coos Bay	Newberg	
4	Newport	Molalla	Salem*	The Dalles		Cottage Grove	Dallas	Ontario	
5						Prineville	Klamath Falls		
6						Redmond	La Grande		
7						Roseburg	Monmouth		
8						St. Helens	Silverton		
9						Woodburn			

**Cities within a Metropolitan Service District**

*(must update HPS every six years)*

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

\*HPS/HCA adopted early or off-cycle

## **Important Revisions in the 2023 HCA Schedule Update**

Pursuant to OAR 660-008-0045 (4)(a) and (4)(b), cities with a population of 10,000 or greater, as determined by a Portland State University Population Research Center certified population estimate, must adopt a Housing Capacity Analysis (HCA) on a regular schedule. Cities that are delinquent in their adoption of the HCA will remain on the original schedule. Lebanon, Newport, and Pendleton are scheduled to adopt HCAs by December 31<sup>st</sup>, 2022 but will instead be brought up-to-date in the 2023 calendar year. Those cities will remain on the 8-year schedule, with their next HCA adoption due in 2030.

Cities may choose to adopt an HCA at any point in advance of the year listed on the schedule. Per note #4 on the adopted HCA Schedule from November 2020, “Those cities that adopt an HCA prior to their listed deadline will reset the schedule,” so that cities within a metropolitan service district will renew 6 years after the actual date of adoption rather than 6 years after the date initially scheduled. Likewise, cities outside of a metropolitan service district will renew 8 years after the actual date of adoption.

Pursuant to ORS 197.290, a city's Housing Production Strategy (HPS) is due to be completed by December 31<sup>st</sup> one year after the city's deadline to adopt an HCA. Cities may choose to adopt an HCA ahead of schedule. While early adoption of an HCA will reset the timing of the next Analysis to six or eight years from the most recent adoption year, it does not alter the deadline for completing the associated HPS. The associated HPS is still due to be completed one year after the initial HCA deadline. For the city's subsequent adoption cycle, the city's new HCA deadline will determine the city's deadline for completing the city's next HPS.

### **HCA Update Notes on Administration:**

1. The deadline for adoption in any given year will be December 31<sup>st</sup>.
2. A city will be considered to have met its obligation to adopt the HCA update upon adoption by ordinance at the local level. Any subsequent appeal will not be considered a failure to comply with the update requirement.
3. The date of final adoption of the HCA at the local level will establish the next HCA update deadline. The next update deadline will be six or eight years in the future, depending on whether or not the subject city is in the boundary of a metropolitan service district.
4. Those cities that adopt an HCA prior to their listed deadline will effectively “reset the clock,” such that their next applicable HCA deadline will be six or eight years after the early adoption, depending upon whether or not they are within the boundary of a metropolitan service district.
5. House Bill 2003 stipulates that the first scheduled HCA update may be no less than two years following adoption of administrative rules for another element of the bill, known as “housing production strategies.” The Land Conservation and Development Commission completed rulemaking on housing production strategies (HPSs) in the fall of 2020 and adopted HPS rules as amendments to OAR Chapter 660, Division 8 on November 12, 2020.
6. Please note that for the city's HCA update deadline to have been met, a city must adopt the HCA by ordinance, typically as a supporting document to the city's comprehensive plan. Adoption of the HCA by ordinance also allows city decision makers to utilize the HCA as a legally defensible basis for decision-making.
7. Also, please note that, consistent with OAR Section 660-024-0050(4) a city must address a land deficit identified in the HCA prior to, or concurrent with, adoption of the HCA. The local government must amend the plan to satisfy the need deficiency, either by increasing the

development capacity of land already inside the city, by expanding the UGB, or both.

8. A city that adopts an HCA after December 31, 2021 but in a year that is prior to the deadline established in this schedule is still required to complete a Housing Production Strategy one year after the city's established HCA deadline. A city may complete a Housing Production Strategy prior to the established deadline.