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Chair Allan Lazo
Land Conservation and Development Commission
635 Capitol St.
Ste. 150
Salem, OR 97301

Via e-mail: housing.dlcd@dlcd.oregon.gov

RE: Clackamas County STAFF Technical Comments on Draft Rules for Middle Housing Oregon Homes (MHOR) Phase One

Dear Chair Lazo and Members of the Land Conservation and Development Commission,

Thank you for the opportunity to provide comments on the draft rules for Middle Housing Oregon Homes (MHOR) Phase One.

Clackamas County staff have reviewed the proposed rules in detail and wanted to highlight some specific technical issues we have identified related to both OAR Chapter 660, Division 46 (Middle Housing in Medium and Large Cities) and OAR Chapter 660, Division 47 (Oregon Homes).

Division 46: Rules are Not Ready for Adoption

The draft Rules in **OAR Chapter 660, Division 46 (Middle Housing in Medium and Large Cities)** are not ready for adoption. By changing the definition of cottage cluster to include arbitrary standards, the drafters have created conflicts with other standards found later in the Rule. For example,

- per -0220(4)(B)(e) a Large City "must apply a maximum building footprint of less than 900 square feet per dwelling unit," so the new definition which includes a "small footprint" or average dwelling size, is essentially meaningless.
- -0020 (2)(c)(i) exempts garages from the 1,400 sq. f.t average size, which directly contradicts the Model Code provisions that jurisdictions are allowed to use and which include garages in that calculation.

Per HB 2138 [2025], the cottage cluster changes do not need to be implemented by local jurisdictions until Jan 1, 2028. More time needs to be taken to review the entirety of Division 46

and the Model Code and amend both to ensure the new cottage cluster definition and regulations can be implemented consistently.

The amendments to Division 46 are also not complete with respect to HB 2138 requirements that must be implemented by January 1, 2027. HB 2138 requires that middle housing now be allowed on “each lot or parcel zoned for residential use.” The proposed Rules do not reflect this change. For example, they continue to allow for minimum lot sizes for middle housing that are larger than those for detached single-unit dwellings, and there is no consideration for how to address middle housing standards in zones that do not allow for detached single unit housing.

Division 47: Rules Add Complexity to Permit Review

Through the Rulemaking process it has become clear that the draft Rules in **OAR Chapter 660, Division 47 (Oregon Homes)** increase, rather than decrease, the complexity of permit review, while also circumventing local zoning and siting standards. Unfortunately, despite substantial feedback from RAC members recommending changes and raising concerns, very little has changed from the original drafts of the proposed rules. It is particularly disheartening that technical feedback from local government practitioners has been disregarded; these are the people most familiar with our local communities and the practical reality of implementation of state rules at the local level.

Some of the technical feedback that has been shared at the RAC meetings and remain issues in the draft Division 47 Rules include the following:

660-047-0010 (Definitions)

- The Rules proposed a definition of building height that is different than the one in the Oregon Residential Building Code, the standard currently used by all jurisdictions in the state. The result is that same building on the same lot could have two different “heights” depending on which process the developer chooses.
- -0010(7)(b) refers to residential “types with a buildable area of...”. This term is unclear in the context of a building, which may have a floor area, or total square footage, or other similar measurements.
- -0010(7)(a) would allow for an accessory dwelling unit (ADU) to be up to 2,200 square feet in size, which is much larger than most jurisdictions, and certain state laws, allow.
- -0010(8) identifies an Oregon Homes Lot as one “within an urban growth boundary” and includes no requirement for connection to urban services (i.e. public sewer, water). Land within a UGB that has not yet annexed to a city often does not have access to urban services. Without a limitation, this would mean that the county would have to allow an 11-unit multiunit housing development on a septic system and private well.

660-047-0020 (Local Review Process)

- Many of the housing types allowed under these Rules would not currently require a land use decision and could be approved simply through the approval of a building permit. Adding the requirement for a “land use decision” adds time, process, and expense to the developer. Additionally, this requirement adds a new procedure for local jurisdictions to implement, with no clear timelines for review, meaning a local jurisdiction could sit on the decision for an undetermined amount of time.

660-047-0030 (Design Standards)

- This section and -0040 include standards that are much more restrictive than many jurisdictions’ standards for single unit housing and middle housing, including screening for storage buildings, entry orientation requirements, garage width limits, and prescribed “outdoor areas”. These additional standards, in conjunction with the added cost and time for the additional land use process, will render these Rules impractical for most single unit dwellings and middle housing developments. Quite simply put, in most cases, it is easier and less costly to develop those types of housing under the current permitting process.
- -0030((1)(5) provides for a variance of “not more than 10%” from the identified design standards. It is not clear how the 10% variance would work for a requirement with no numerical standard. For example, how would one calculate a 10% variance from the standard that an entry must “face the street”?

660-047-0040 (Siting Standards)

- The proposed 5-foot setbacks do not provide for adequate front yard areas to allow cars to safely access garages and to ensure sidewalks remain accessible to all users and unobstructed by parked vehicles.
- This section is inappropriately being used to circumvent local zoning. While we appreciate that the housing permitted under these Rules must meet minimum density standards within the applicable zoning district, there is no mention of maximum allowed density. As written, these Rules would allow multiunit buildings in neighborhoods currently planned for single unit and middle housing, without regard for local planning efforts or community input.

660-047-0050 (Tree Standards)

- Nothing in these Rules prevents a property owner from removing trees prior to the site development. It simply states that an Oregon Home Development “may not result in...”

- -0050(3) requires the tree(s) that are removed to be replanted. This is not practical, as trees that are removed are often no longer viable or even intact once removed.

Summary

We recommend that LCDC direct DLCD to continue to work with the RAC to ensure the amendments to Division 46 are thoroughly vetted and accurately reflect the legislation. We also recommend that the amendments related to cottage clusters be removed from this draft and DLCD take more time to work on the cottage cluster amendments separately with the RAC to ensure complete and consistent Rules are created.

It is important to recognize that substantial technical problems remain with the draft Rules for Division 47, the most egregious of which is the attempt to circumvent local zoning code maximum density allowances. As drafted, the Rules create more complexity and expense for housing developers and do not support the desired outcomes of more housing and more affordable housing. We recommend that LCDC direct DLCD to limit these Rules to only the provisions of HB 2258 that are required and let existing jurisdictional zoning codes be the guiding provisions for residential development.

Respectfully submitted,

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Clackamas County
Department of Transportation and Development