



THE BUREAU OF
**PLANNING &
SUSTAINABILITY**

July 29, 2026

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

Delivered via email: denise.johnson@dlcd.oregon.gov

RE: City of Portland Comments on Proposed Rules for Middle Housing Oregon Homes (MHOR) Phase One.

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

Portland is supportive of and appreciates the State and DLCD efforts to streamline production of needed housing. We have a vested and shared interest in ensuring the rules as drafted to implement the Oregon Homes program are effective at achieving positive and equitable housing outcomes for all Oregonians, and that they work as intended.

The role of our Bureau's Code Development Team is to translate policy aspirations and guidance into tangible, implementable, and defensible rules. One of those major undertakings was the Residential Infill Project (RIP) which introduced middle housing to the City of Portland's single-dwelling zones, prior to the State's passage of HB2001. RIP has proven quite successful, adding 1,400 middle housing units to our single dwelling zones in its first 3 years, with home prices about \$250,000 less than the large single houses that prior zoning allowed. The magic ingredient that makes RIP stand out as a national model for cities across the country is the floor area limit on unit sizes, that disincentivize large single-family homes, while encouraging smaller and less expensive middle housing options.



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These rules, as drafted, threaten to upend this successful strategy by creating virtually limitless entitlements and circumvention of basic zoning rules like height limits, building coverage, setbacks, and for Portland - floor area limits.

There are a number of other technical, legal and policy issues that negatively affect the ability for these rules to effectively carry out the legislative intentions for this program. We believe that these issues must be resolved before you act to adopt these rules. Should they be adopted as proposed, and then later found to include insufficient limitations, those changes would trigger a statewide Measure 56 property owner notification¹. The costs to the state to reimburse local jurisdictions for such notice (preparation, postage, materials, and staff time to field inquiries) are estimated to be \$2.5 to \$3 million, with a cumulative total of over 20,000 hours of planning staff time to conduct this notification process. Fixing those issues in the rules now may extend this process but well within the statutory deadline of January 1, 2027.

In addition to the high-level policy and legal issues described below, included is a 13-page point-by-point technical analysis of the draft rule language. A program that is intended to function as a seamless statewide system to be implemented consistently must be drafted with precision and clarity to lessen varying interpretation.

Policy Issues

We have identified several policy outcomes which we don't believe are aligned with the intent of these rules.

- **No effective unit size limits.** The rules preempt local government regulations but provide no limits on building height, very minimal setbacks, excessive lot coverage allowances, and no limit on the size of Oregon Homes. The rules describe a "buildable area" but essentially define this as the area of the lot left inside a 5 foot perimeter setback. On a 5,000 square foot lot, this "buildable area" amounts to 3,600 square feet. But that is only the building footprint size limit. A three story building could be as large as 10,800 square feet (more than 2.5 times larger than the size allowed for a fourplex under our current rules). We recognize that a "floor area ratio" (which is a proportionate amount of building size to the lot size) would be impractical to apply to preapproved home designs. However, we recommend the rules add specific unit size limits, for example based on already

¹ ORS 197.047(10) "The provisions of this section apply to all statutes and administrative rules of the Land Conservation and Development Commission that limit or prohibit otherwise permissible land uses..."



adopted rules related to Goal 10²: "Oregon Homes Development may not exceed the following average square footage per dwelling unit:

(A) For detached single-unit dwellings: 1,800 gross square feet;

(B) For townhouses and duplexes: 1,500 gross square feet; and

(C) For all other housing types: 1,200 gross square feet."

- **Bigger units equals more expensive housing.** The reason these size limits are critical is that from our RIP monitoring analysis³ we found that by comparison, smaller middle housing units were sold for \$250,000- \$300,000 less than sales prices for new houses. Using a simplified average sales price of \$300 per square foot, the difference between a 1,400 square foot unit (\$420,000) and a 3,600 square foot unit (\$1,080,000) is 157% more expensive.
- **Lack of local siting standards creates *greater* uncertainty for builders.** While the rules attempt to clear as big a landing pad for potential Oregon Homes Development by removing nearly all local siting standards, this introduces new challenges to the development review process. Setbacks, building coverage, access and driveway requirements have been crafted in close coordination with each jurisdiction's public works, emergency service and franchise utility providers. They create a predictable platform for builders and local service providers alike. Once those well-established sideboards are removed, each development must instead be closely reviewed on a case-by-case basis by public works reviewers and service providers to ensure that their requirements can be met and continue to work together with other public works and franchise utilities in more constrained space. We strongly recommend allowing local jurisdictions to continue applying their normal setbacks, building coverage, outdoor area, and access/driveway standards which have been contextualized to reflect the different systems employed by municipalities and ensure public infrastructure is sufficient, efficient, feasible, and responds to the demands of development.

Legal Issues

In addition to the policy issues, there are a few significant legal questions. As you are aware, a rule "interprets or prescribes law or policy" for a state agency (ORS 183.310). State boards and commissions have the authority to write rules that clarify details and implementation of statutes or programs. However, according to Steven Wolf, Chief Counsel for the Department of Justice, "An agency may adopt rules only pursuant to statutory authority...Agencies may not adopt rules that are beyond

² 660-008-0425 Comparison to Local Actions and Land Use Regulations (2)(a)

³ Middle Housing in the Single-Dwelling Zones, Progress Report 2018-2024, City of Portland
<https://efiles.portlandoregon.gov/record/17159748>



their rulemaking authority. An agency may not adopt a rule that is unconstitutional, conflicts with a valid statute, or is outside of the range of discretion allowed by the statute the agency has been authorized to implement.”⁴

Conflicts with valid statute – Proposed review process.

The rules propose that Oregon Homes be reviewed through a ministerial review process instead of a land use review; however, the Commission cannot adopt rules that directly conflict with existing statute.

The bill states: “(2) The Land Conservation and Development Commission may adopt rules requiring local governments *to issue a land use decision*, notwithstanding any comprehensive plan or land use regulations or statewide land use planning goals, approving the development of specified residential development types on certain lots or parcels under specified conditions.” (HB2258, SEC 2(2))

ORS 197.015(10) defines a land use decision as “(b) *Does not include a decision of a local government:*
(A) *That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;*
(B) *That approves or denies a building permit issued under clear and objective land use standards;*

And yet, the rules state: (2) Local governments shall review applications for Oregon Homes Development on an Oregon Homes Lot local government through completeness check, being no more rigorous than a ministerial review. Administration of this review shall only be to ensure compliance with standards provided in OAR 660-047-0020 through OAR 660-047-0050 *and shall not require the use of discretion, interpretation, or the exercise of policy or legal judgment.*” OAR660-047-0020 (2).

In OAR660-047-0020 (6) the rules go on to limit public notice and hearing, which also is in conflict with SEC17 (5) of HB4037 (should these be reviewed ministerially) and ORS 197.797 (should these be reviewed as a land use decision).

Outside the range of discretion allowed – Eligible Oregon Homes lots.

The bill states that “A rule issued under this section ***may only pertain to lots or parcels that are:*** (g) Not within an area identified in an inventory or map that is part of the local government’s comprehensive plan as: (A) Environmentally sensitive or containing significant natural resources; (B) Open space or scenic areas; or (C) Natural hazard areas, including floodplains, river greenways, landslide zones or wildfire risk areas;” (HB 2258, SEC 2(2)(g))

⁴ “Overview of APA Rulemaking” Steven Wolf, Chief Counsel and Amy Alpaugh, Opinions Counsel, Oregon Department of Justice <https://olis.oregonlegislature.gov/liz/2017R1/Downloads/CommitteeMeetingDocument/95644>



However, the rules state: (i) If a lot or parcel is otherwise eligible for an Oregon Home's Development, but within an area identified in paragraphs (A)-(C) [list of constraints], development of an Oregon Home is still allowed so long as the developable area is wholly outside of the inventoried area, and its subject protections." (660-046-0010(8)(i))

HB2258 does not specify that these lots may be reconsidered under rule. The rules may only pertain to lots that are outside of those areas. Furthermore, from an implementation perspective, identifying whether and to what extent a "developable area is wholly outside of the inventoried area" cannot be readily achieved through a non-discretionary, clear and objective manner.

Improper delegation - Eligible Oregon Home plans.

While there does not appear to be any reference to the state delegating master plan building permit review to local governments, the rules interpret the bill to mean just that.

HB2258 SEC5(1) states: The Department of Consumer and Business Services may designate a process by which an applicant for a building permit for a residential structure of a type described in section 2 (4)(a) to (c) of this 2025 Act may receive building construction plan approval from the municipality, including through the use of: (a) Typical drawings and specifications created by the department under ORS 455.062. (b) Review of plans and specifications approved by the department under ORS 455.685.

However, the rules (OAR 660-047-0010(7)9e)) add a definition to "Oregon Homes Development" to mean building plans that have been approved by Department of Consumer and Business Services pursuant to ORS 455.062, ORS 455.685, ***or housing types that meet the criteria as provided in subsections (a)-(d) and approved through local building code review.***

Technical Issues

The following 13 pages detail a point-by-point analysis of the draft Division 47 rule language, including proposed changes to Division 46 related to middle housing. For the program to function as a seamless statewide system and to be implemented consistently, the rules must be drafted with precision and clarity to lessen varying interpretation across 241 Oregon cities and 36 counties. We offer these recommendations in support of that aim.

Sincerely,



Patricia Diefenderfer
Chief Planner



660-046-0020 (2) Cottage cluster definition

- **Internally inconsistent.** The revisions to the definition are not carried through to the standards themselves (compare with 660-046-0220(4)) which creates internal inconsistency and conflict.
- **Not clear, leads to multiple interpretations.** The statement “Each have a small footprint or floor area such that units have an average of 1,400 square feet” is unclear as it points to separate types of measurements that must be averaged across multiple units. Is the standard an average of the floor area of all the units, or the footprint size of all the units? Is it both? Can they be mixed and matched? While the standard is arguably objective, it is not clear.
- **Doesn’t fulfill the legislative directive.** As a reminder, the commission’s rulemaking charge under HB2138 SEC 22(1) is to: “adopt rules that must include...(c) Regulating cottage clusters *for the purposes of incentivizing the provision of smaller, less expensive housing*, shared community amenities and other public benefits and including regulations that implement the term “small footprint or floor area” as used within the definition of cottage clusters in ORS 197A.420;”. There are several changes in these rules that lead to **bigger** and thus more expensive housing, including:
 - *Increasing the allowed footprint size from 900 to 1,400 square feet*
 - *Conflating footprint and floor area (see above)*
 - *Excluding porches (no size limit) and garages (no size limit) from the calculation of the footprint and/or floor area size.*

The current rules permit units with 900 square foot footprints, that are roughly 2 stories tall, and the middle housing model code describes an average maximum floor area of 1,400 square feet. This means that units can be as large as 1,800 square feet, provided other units are smaller to compensate which creates a variety of priced units. But on average, **under current rules these units run about \$420,000.**

The changes to the rules allow a footprint average of 1,400 square feet, plus a garage (assume 200-400 square feet), for a total unit size of 3,000-3,200 square feet. On average, **under the proposed changes, these units would run about \$960,000.**

- **Inadvertently vastly expands the size of clusters.** The definition incorporates HB2138 which allows configurations of cottage units “That are detached *or attached in subgroupings of up to four units* in any configuration.” The draft rules attempt to clarify that detached units were not limited to ‘subgroupings’ of four units. However, as drafted the rules state: “...dwelling units that are attached in subgroupings of up to four units or detached in any configuration with no limitation on total number of cottage cluster units,” This additional statement implies that there is no upper limit on



the total number of cottages allowed in a cottage cluster. This would be a severe policy pivot with no legislative directive to do so and may trigger the need for us to reevaluate our infrastructure sufficiency.

Other comments on Division 46 (middle housing) rule changes

- **Fails to incorporate other changes required by HB2138.** Unless changes are also proposed to the model codes referenced in OAR 660-046-010 (4), cities will be unable to simultaneously comply with the statute and rules.
 - HB2138, SEC 1 (2) Changes to eligible lots.
"each county, each city with a population of 25,000 or greater, and each city with a population of 1,000 or greater within Metro, shall allow the development of all middle housing types [in areas] on **each lot or parcel** zoned for residential use. [that allow for the development of detached single-family dwellings;]
This means that OAR 660-046-0205(3) which refers to alternate lot sizes and eligibility of middle housing "in areas" criteria and the different lot size standards described in 660-046-0220 are no longer valid.
 - HB2138, SEC 1 (6) Limitations on traffic impact analyses and off site exactions. While this may not necessarily need to be stated in rule, it may be helpful to reference.
 - HB2138, SEC 3 Affordability and accessibility bonuses. OAR 660-046-0205 does allow for cities to permit more units on lots with middle housing, but neither the rules nor the middle housing model codes reference bonuses, which could be construed as the bonuses are not compulsory for cities.
- **Addressing future changes and alterations to cottage units is welcome.** The changes that add 660-046-0020 (2)(c)(ii) clarify how cities may regulate cottage units after the initial development is complete. This enables cities to allow incremental home additions or other alterations and not hold these homes in amber.



660-047-0010 Definitions

1. **(1) “Building Height”** uses some hybrid of building code terminology that is neither the same as nor consistent with the ORSC:

OAR: “the vertical distance from grade plane (measured from the lowest ground surface a maximum of five feet from the building wall) to the average height of the highest roof surface (measured to the tallest point of the roof of the building).”

ORSC: “the vertical distance from grade plane (defined as a reference plane representing the average of the finished ground level adjoining the building at all exterior walls. Where the finished ground level slopes away from the exterior walls the reference plane shall be established by the lowest points within the area between the building and the lot line or where the lot line is more than 6 feet from the building, between the structure and a point 6 feet from the building) to the average height of the highest roof surface.”

ISSUES:

- “Grade plane” is not defined in the OAR.
- The building code uses 6 feet, the OAR specifies 5 feet.
- Introducing new methodology invites new interpretation, application, and challenge. Building height is one of the more common subjects of appeals to LUBA.

RECOMMENDATION:

Our recommendation for the Oregon Homes program is that review of the *building* be conducted independent from the *site* review. In this context, the building codes division would determine the building height. Since this review would occur absent a specific site, there would be no “grade plane” to reference. Consequently, the height should be measured from the top of the lowest foundation, or lowest finished floor.

2. **(4) “Developable area”** provides some clarity as to what is considered in the maximum allowable ‘developable area’ on a lot (essentially the area excluding setbacks). However, it is unclear whether other aspects of housing development (such as driveways, utilities, grading) are or are not included in developable area. This is an important consideration when applying to the staff’s expanded interpretation of an “Oregon Homes Lot” (8)(i), which states that constrained lots that were expressly excluded by state statute can be included if “the developable area is wholly outside of the inventoried area”. Additionally, while the definition refers to area not including required open space, there is no specific required open space.



ISSUES:

As written, developable area' means the entirety of a lot except for a 5 foot perimeter setback. We are not sure if this is the intent.

It is not clear if developable area includes associated development disturbance area like grading, access or utilities.

RECOMMENDATION:

- Clarify 'developable area' as necessary to reflect intent.
- We find that the "developable area" standard is insufficient to effectively limit large and expensive housing, and should be supplemented by a maximum building size limit (such as floor area, footprint, and/or building height)

3. **(6) "Final engineering plans"**. This appears to be copied and pasted from the wrong set of regulations as it refers to tentative plat approval. The Oregon Homes program is not associated with the land division process.

RECOMMENDATION:

Revise the definition to remove reference to the plat process:

"Final Engineering Plans" means the detailed engineering plans and reports for the design or construction of public and private infrastructure improvements that require review and approval following tentative plat approval by a local government before issuing site development permits, including plans and reports for the construction of public and private infrastructure improvements such as grading, water, sewer, stormwater, transportation systems, and utilities.

4. **(7) "Oregon Homes Development"** this definition largely repeats statutory language in HB2258, with three notable and significant exceptions:
- a. **The definition increases the allowed "buildable area" for duplexes, triplexes and quadplexes by 2-4 times what is described in the bill.** Additionally, as noted elsewhere, the size allotment for housing types when limited only by "buildable area" will result in large and expensive housing contrary to statements made in the DLCD Impact Statement which says "To the extent that the Oregon Homes are limited in size (2,200 sq.ft., or 1,400 sq.ft. for MFR) these units might have lower costs in a local housing market where the average unit is larger than these maximums." The buildable area alone does not limit Oregon Homes, which can be multiple stories tall. Even so, the rules propose an exponential increase in even that amount of allowed area:

Compare:

HB2258 (SEC 2(4)(b)): Buildable area of

(A) A size of not more than 2,200 square feet for a single-unit dwelling, accessory dwelling unit, duplex, triplex, quadplex or townhouse.



(B) An average per-unit size of not more than 1,400 square feet for cottage clusters or a multiunit dwelling.

OAR 660-047-0010(7)(b): Buildable area of

(A) A size of not more than 2,200 square feet **per dwelling unit** for a single-unit dwelling, accessory dwelling unit, or per dwelling unit for duplex, triplex, quadplex and townhouse.

(B) An average per-unit size of not more than 1,400 square feet for cottage clusters or a multiunit dwelling;

RECOMMENDATION:

Rulemaking cannot invent statutory language that is not there. Remove provisions in the rules that are inconsistent with the plain read of the bill by removing the phrase “per dwelling unit” from the buildable area descriptions in Oregon Homes Developments. Add limitations to address the overall maximum size of the units themselves. See proposed text below.

- b. Expands the avenues available for pre-approval beyond what is specified in the bill.** In addition to “pre-approved house plans” available through the building codes division per ORS455.062, and “pre-certified plans” submitted to the building codes division for regional/statewide approval per ORS 455.685, the rules invent a third process through a local code review. The first two avenues are described in HB2258 SEC 5 (1). There is nothing in HB2258 describing this third process, which amounts to improper delegation of authority.

RECOMMENDATION:

- Remove approval pathways that were not prescribed by statute, are inconsistent with the bill’s intent to provide a “pre-approval” process, and convey administrative burden from the state to local jurisdictions.
- Related - subsection (8)(h)(D) which describes when Oregon Homes development is allowed should be updated to remove reference to this third approval pathway.

- c. Inadvertently allows for housing types not envisioned in statute.** The sentence construction in (7)(e) implies that housing types reviewed under ORS 455.062 or 455.685 are not subject to the criteria in subsections (a)-(d) that specify the types of housing listed in the bill. This potentially opens up a loophole to allow much larger multi-unit buildings.

OAR: “(e) Housing types whose building plans have been approved by Department of Consumer and Business Services pursuant to ORS 455.062, ORS 455.685, **or housing types that meet the criteria** as provided in subsections (a)-(d) and approved through local building code review.



ORS 455.685 states "The Director of the Department of Consumer and Business Services may... review and approve the application for the construction or erection of **any building** or structure if such set of plans meets the requirements of the state building code."

- d. **The code structure is faulty, leading to multiple interpretations of what is allowed.** The rules should use this opportunity to provide clarity to the statutory language. The list of what qualifies as an Oregon Homes Development is neither additive nor mutually exclusive. As such, it is uncertain whether the parts are supposed to be read together or independently (neither is correct). The list should be restructured.

RECOMMENDATION:

Clarify that housing types approved by DCBS pursuant to ORS 455, 062 and 455.685 must also meet the criteria in subsections (a)-(d).

Restructure the definition to a set of requirements that can be read together. Alternatively, move the standards (minimum density, size limitations) into the appropriate siting or design standards section.

(7) "Oregon Homes Development" means residential development that meet the following:

- a) Modular, prefabricated, or site-built;
- b) Complies with minimum density requirements;
- c) Is one of the following residential structure types:
 - (A) attached or detached units, with a developable area not larger than 2,200 square feet and up to the following unit sizes:
 - (i) single unit dwelling not larger than 1,800 sf
 - (ii) ADU not larger than 800 sf
 - (iii) Duplex, Triplex or Quadplex not larger than 1,500 square feet per unit on average; or
 - (B) Cottage units with a developable area not larger than 1,400 square feet per unit and unit sizes limited as follows:
 - (i) up to four units attached, not larger than 1,200 square feet per unit on average
 - (ii) detached unit not larger than 1,200 square feet; or
 - (C) Multi unit building of 7 to 11 units, with a developable area not larger than 1,400 square feet per unit and the building is not larger than 1,200 square feet per unit on average; and
- d) The building plans have been approved by DCBS per ORS 455.062, or ORS 455.685

5. **(8) "Oregon Homes Lot"** this definition largely repeats statutory language in HB2258, with one extremely critical exception.



While the statute (HB2258 SEC 2 (3)) states that “A rule issued under this section **may only pertain to lots or parcels that are not within an area** identified in an inventory or map that is part of the local government’s comprehensive plan as [constrained]”

Somehow the rules (OAR 660-047-0010(8)(i)) have interpreted this to mean “if a lot or parcel is otherwise eligible for an Oregon Home’s Development, but [is] within [a constrained] area..., development of an Oregon Home is still allowed so long as the developable area is wholly outside of the inventoried area, and it’s subject protections.”

We are perplexed by DLCDs attempt to incorporate lots into its rulemaking that are expressly excluded by the statutory language in HB2258.

This expansion of Oregon Homes Lots exceeds statutory rulemaking authority (ORS 183.315-415) Agencies may not adopt rules that are outside of the range of discretion allowed by the statute the agency has been authorized to implement.

RECOMMENDATION:

Delete OAR 660-047-0010(8)(f).

6. **(8)(h) “Vacant”** The problem is that an ADU will always be ineligible for an Oregon Homes development unless it is built in conjunction with a new house. The definition for “vacant” pertains to qualifications for an eligible Oregon Homes Lot. It largely follows statutory language, and the root of the issue is in the legislation. A vacant lot cannot have only an ADU (it is always in conjunction with a primary dwelling unit), and if there is a house on the lot, then the lot is not considered vacant.

RECOMMENDATION: Acknowledge the problem and seek a legislative fix to enable preapproved ADU plans on lots with existing houses.

7. **(9) “Public Facilities Plan”** The intent appears to be to allow cities to continue to apply public works and infrastructure requirements, to ensure homes have necessary services and utilities, and that proportionate street dedications and improvements are achieved. However, the definition is a bit vague, pointing to “a support document or documents to a comprehensive plan. The facility plan describes the water, sewer and transportation facilities which are to support the land uses designated in the appropriate acknowledged comprehensive plans within an urban growth boundary containing a population greater than 2,500.”

The latter half of this definition seems unnecessary within the context of the applicability of this program (and potentially excludes cities smaller than 2,500 from applying their engineering standards). In Portland, our support document to the Comprehensive Plan is the Transportation System Plan and Citywide Systems Plans. These are assessments of the systemwide capacity and the major and minor projects necessary to meet project growth. Neither documents include



specific development standards that would apply to a particular development. Additionally, stormwater is not cited nor are private utility providers such as internet, gas, electric and cable.

RECOMMENDATION:

Revise the definition to reflect the infrastructure development rules, not the planning assessment. For example:

"Public Facilities Requirements" refers to the development requirements applicable to public and private infrastructure improvements such as grading, water, sewer, stormwater, transportation systems, and utilities.

8. **(10) "Site plan"** The site plan calls for information that would not be pertinent to the review since there are no associated standards or criteria (bicycle routes, floor area, usable open space, outdoor area coverage, pedestrian access and circulation and dimensions, bicycle parking area and design, loading spaces). We think these are valuable items to consider and regulate, however, if there is no associated requirement, then it is a waste of the applicant's time, and clutters the review. It may be that these are in part intended to address site plan information related to public works and infrastructure review. In that case, by themselves they are woefully inadequate. Cities have already created application requirements for their public works/infrastructure related reviews.

RECOMMENDATION:

Remove extemporaneous detail and defer instead to the local jurisdiction site plan requirements as follows:

"Site plan" means the site and/or development plans drawn accurately to scale and include the information required to assess compliance with the public facilities requirements and the applicable criteria of this division.

9. **(11) "Siting standard"** For reasons that are not explained, siting standards here are defined differently than in Division 46. This raises question as to the intentionality of the distinction. How should local jurisdictions make differentiated determinations about the meaning of what is/is not included in "siting standards" between these two divisions?

DIV 46 (Middle Housing): "Siting Standard" means a standard related to the position, bulk, scale, or form of a structure or a standard that makes land suitable for development. Siting standards include, but are not limited to, standards that regulate perimeter setbacks, dimensions, bulk, scale, coverage, minimum and maximum parking requirements, utilities, and public facilities
DIV 47 (Oregon Homes): "Siting standards" means standards regulating placement of structures on a lot or parcel including setbacks, height, bulk, scale, and lot coverage. Siting standards include, but are not limited to, standards that regulate perimeter setbacks, dimensions, bulk, scale, coverage, minimum and maximum parking requirements, utilities, and public facilities.



Additionally, we recommend that siting standards (specific to the placement and orientation of the Oregon Home Development) remain the purview of local jurisdictions.

RECOMMENDATION: Revise the definition of siting standard in division 47 to match division 46, vice versa, or other change specifically tailored to Oregon homes such as:

"Siting Standard" means a standard applied to the placement and orientation of an Oregon Home Development on a lot or parcel. Siting standards include setbacks, footprint or building coverage, size and location of outdoor area, entry orientation to the street, and parking location.

10. **(12) "Traffic impact analysis"** There is nothing wrong with this definition. Only that HB 2138 limits local jurisdictions from requiring a traffic impact analysis for middle housing up to 12 units. Some jurisdictions may still wish to require an analysis for the 7-11 multi unit buildings.

RECOMMENDATION: N/A.

11. **"Useable outdoor space"** This definition cannot seem to decide whether it is a definition or a standard, which is also evidenced by its repeat appearance in the siting standards, where it is called something different. See comparison in table below. Discrepancy leads to confusion/different interpretation. Is there an intention to somehow differentiate useable outdoor space from useable open space? Does one require a 10x10' dimension and the other does not? We don't believe a definition of this term is necessary and can instead rely on the siting standard, as modified (see comments under 660-047-0040).

RECOMMENDATION: Remove the definition. Rely on the language in the siting standards, but supplement that standard with minimum dimensions for each type of outdoor area including useable open space. More suggestions for revisions to this standard follow later under comments for OAR 660-047-0040.

Definitions -0010	Siting Standard -0030
(13) "Usable outdoor space" means one of the following: (a) Outdoor recreation area surfaced with lawn, groundcover, gravel, or hard surface.	(3) Provide outdoor area that is beyond lot area counted towards setbacks comprised of at least 15 percent of the gross site area and containing one or more of the following features: (a) Areas planted with vegetation (including natural areas and existing trees); (b) Private open space , including balconies attached to individual dwelling units; (c) Pedestrian hardscape; (d) Usable open space being one of the following: (A) Outdoor recreation area surfaced with lawn, groundcover, gravel, or hard surface.



The area must be a contiguous and able to fit a 10-foot by 10-foot square; (b) Balconies, terraces, and rooftop decks with seating areas that are available for use by all residents; (c) Tree groves of existing mature trees; (d) Turf or grass play fields; (e) Children’s play structure or play area; (f) Sports courts; (g) Swimming or wading pool or hot tub; (h) Walking fitness course; (i) Natural area with benches; or (j) Gardening area with at least 50 square feet of planting area.	(B) Balconies, terraces, and rooftop decks with seating areas that are available for use by all residents; (C) Tree groves of existing mature trees; (D) Turf or grass play fields; (E) Children’s play structure or play area; (F) Sports courts; (G) Swimming or wading pool or hot tub; (H) Walking fitness course; (I) Natural area with benches; or (J) Gardening area with at least 50 square feet of planting area.
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660-047-0020 Local Government Review Process

1. **(1) and (2) Land Use Decision.** This is a problem with the bill’s statutory language that call for “the Land Conservation and Development Commission [to] adopt rules requiring local governments to issue a land use decision [approving an Oregon Home]”. While we support using a ministerial, non discretionary process as the rules propose, this is not prescribed by HB2258 and **LCDC cannot adopt rules that directly conflict with existing statute.** The proposed rules specify that “this process...shall not require the use of discretion, interpretation, or the exercise of policy or legal judgment.” ORS 197.015 (10) defines a land use decision as one that “(b) Does not include a decision of a local government: (A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment; (B) That approves or denies a building permit issued under clear and objective land use standards”.

RECOMMENDATION: The remedy is to either include standards that allow for exercise of policy and judgement, or to seek a legislative fix to the bill. Consequently, the process section of these rules will need major reconstruction.

2. **(3) Submittal requirement internal inconsistency.** While the definitions refer to “housing types that meet the criteria as provided in subsections (a)-(d) and approved through local building code review” the review process in 660-047-0020 (3)(b) fails to require that those building plans receive local building code review.

RECOMMENDATION: Based on the lack of legislative direction to create this alternate process, we recommend that this third local building code review process be removed.

3. **(6) Notice and hearing.** As noted above, per HB2258, cities “must issue a land use decision”. ORS 197.797 establishes the required notice procedures for land use decisions. LCDC may not



suspend statute without the clear legislative direction to do so. There does not appear to be any such discretion afforded in HB2258.

RECOMMENDATION: Align the procedures in the rules to comply with ORS 197.797.

4. **(7) Public facilities plan review.** We would like this section to more clearly state that local governments can apply requirements for frontage improvements, dedication and that regulate access (e.g., to apply driveway regulations).
Additionally, there are elements of this review process that are not entirely clear. What happens when a development meets the Oregon Homes siting and design standards but not some aspect of infrastructure code and gets denied? Is the application incomplete or denied? What is the applicable standard that cities would cite in their review? The infrastructure review is referenced in 660-047-0020, but the criteria for approval/denial are in 660-047-0030-050. Are there available avenues for the applicant to appeal the determination/decision?

660-047-0030 Design Standards

1. **General comment:** We continue to advise that these standards be differentiated between elements that pertain to the *building* separately from how the building is *sited*, to facilitate a more streamlined review from the Building Codes Division and local government reviewers. For design standards, this would include maximum floor area (total, not a ratio), maximum height, maximum garage width (or some relationship of the garage to the dwelling unit width), and a "front door" or porch that can be oriented to a street. These can all be verified and measured independent of any specific lot, enabling that plan to be utilized on any qualifying Oregon Homes Lot, subject to the siting requirements that are described in section 0040.

As proposed, the rules will require that each building plan set be reassessed for each lot.

Granted, there are few applicable standards, but their application and outcome on building design may still vary based on the lot configuration, see comments under "parking" as an example.

RECOMMENDATIONS:

- Clearly separate standards that apply to the building from the standards that apply to placement of the building.
 - Defer to local jurisdictional siting standards (see comments under 660-047-0040)
 - Adopt maximum unit size standards (floor area, height, footprint/coverage)
2. **(deleted) Minimum window requirements.** In the latest evolution of the rules, the proposed requirement for 15% windows was deleted. There was no explanation or rationale provided for their removal. RAC members had advised greater clarity in the standards, but clarity is very different from absence. This standard is important to enhance public safety by allowing people



to view their neighborhood from their residences; and to provide a pleasant pedestrian environment by preventing large expanses of blank facades along streets. That is important for fostering active transportation options that improve social and health outcomes.

RECOMMENDATION: reinstitute a minimum street-facing window requirement. As a stand-alone building design standard, this could translate to "The façade with the main entrance must include at least 15% of the area as windows and main entrance door."

3. **(2) Parking.** The design standards specify limits on "garages, carports, on site parking or vehicle maneuvering areas" when they are proposed. We appreciate that there is a standard that limits the combined width of these attributes but note that its effect on a site or building is entirely dependent on the amount of street frontage present on a lot. For example, if a lot is pie shaped (e.g. on a cul de sac) it may have only 10 feet of street frontage, and would only allow a 5' wide garage. Some lots have no street frontage and are accessed via easements. In addition, we are concerned that the standards do not anticipate the need to egress in a forward motion on major streets. This is a safety issue. Local siting requirements are better tailored to address these site-specific issues.

RECOMMENDATIONS:

- For simplicity, limit width of the garage to 50% of the building façade length.
- Defer to local siting standards to address access and driveway requirements.

4. **(3) Trash and recycling.** We are also appreciative that the standards attempt to address trash and recycling. However, the standard does not *require* such areas (notably absent for 7-11 unit apartments) it just requires that *if there is a facility* that it be placed 5 feet back from the street (which may not always be optimal), and that it be screened from the street and abutting residential properties.

RECOMMENDATIONS:

- Add a requirement and minimum dimensional standards for trash and recycling areas for multi-unit buildings. Alternatively, include "solid waste collection" as a type of public facility that is subject to independent review outside of these rules.
- Change the term "facility" (refers to a place, building, or piece of equipment) to "area" (refers to a specific geographic region, a bounded two-dimensional space, or a section set aside for a particular function).

5. **(4) Variances.** There is simply too much ambiguity in applying a 10% variance to any standard in the section. For example, what does it mean for a pedestrian entry to face a common open space 10% less? Can the porch be 10% less "covered"? Additionally, some of these requirements



are not illustrated on the site plan.

RECOMMENDATION: Clarify by revising as follows:

"A local government shall approve an Oregon Homes Development application if the proposed site plan varies not more than 10 percent from the numerical design standards described in this section."

660-047-0040 Siting Standards

1. **General comment:** Throughout the discussion of rules at the RAC, DLCD staff were advised by jurisdictional partners that local siting requirements are necessary to respond to the plethora of unique conditions that exist in various cities and counties. These differences exist due to a multitude of reasons including lot shape, size, orientation, topography, as well as the different systems employed by municipalities to ensure public infrastructure is sufficient, efficient, feasible, and responds to the demands of development. Each jurisdiction maintains different siting standards based on a litany of prior regulatory decisions from what kinds of materials are used, what clearances are necessary, to what equipment each has in order to construct, access, and maintain their facilities. In addition, the capabilities of each jurisdiction's fire departments varies based on what sort of personnel, equipment and vehicles are available to service and respond to incidents.

We raise these points because:

- There has been little done in the proposed rules that respond to these concerns
- A local jurisdiction's siting standards (e.g. setbacks, building coverage, and access) have been tailored to the needs, resources and capabilities of each city and county, and the proposed siting rules are inadequate.

The following comments on the proposed siting standards draw from Portland's own requirements and may not reflect the specific challenges of the other 241 Oregon cities and 36 counties.

RECOMMENDATION: We have previously suggested that the rules could find an acceptable middle ground, by adhering to local siting requirements (setbacks, building coverage, access, etc) and then also stipulate that local governments must grant 10% reductions to those numerical requirements in their codes in order to site an Oregon Home. This reduces the potential risk to public works and emergency response services while continuing to provide both certainty and flexibility to applicants.

2. **(1) Inadequate setbacks.** Most of Portland's residential lots (R5 and R2.5) specify a 5 foot side and rear setback. But this is also used in combination with a 10-foot front yard, 250 square foot outdoor area, and building coverage limits to ensure stormwater can be managed onsite in



most cases. We also require an 18 foot garage entrance setback to ensure that there is adequate room to park a car outside the garage, as parking inside the garage is somewhat of a rarity. In the areas where we have allowed a 5 foot garage setback, we have seen repeated issues of cars parking in ways that obstruct the sidewalk, creating a danger to pedestrians and serious impediment to folks using mobility devices. In addition, cars backing into the street with such a limited field of view creates hazards for motorists, pedestrians, and bicyclists.

RECOMMENDATION:

We suggest that *if* local siting standards continue to not be applicable, that this standard be revised to read:

"(1) Provide a minimum setback of 5 feet on the side and rear of the lot; 10 feet along a street side, and 18 feet to the entrance of the garage as measured along the centerline of the driveway. all sides of the building or the distance required for a proposed or existing utility easement. For buildings greater than 35 feet in building height, the setbacks must be 10 feet on all sides. Building height is defined in OAR 660-047-0010."

3. **(3) Ineffective outdoor area dimensional standards.** This standard requires that 15% of the gross site area be provided as outdoor area, excluding area accounted for in the setbacks. While the amount of required area seems sufficient, the ways that it can be provided are not. There are no minimum dimensions, and some features would hardly qualify as meaningful outdoor area. Take for example a 5,000 square foot lot. This requires 750 square feet. (3)(c) allows "pedestrian hardscape". This could be met with a 5-foot-wide walkway around two sides of the building. (3)(d)(B) allows a rooftop deck, which does nothing to ameliorate stormwater disposal needs. Other options envision much larger open areas than what would reasonably be provided; tree groves, sports courts, swimming pools, natural areas. While we don't object to these features, we believe it conveys unrealistic expectations, and this level of specificity is unnecessary.

RECOMMENDATION:

We suggest that *if* local siting standards continue to not be applicable, that this standard be revised to read:

"(3) Provide outdoor area that is beyond lot area counted towards setbacks comprised of at least 15 percent of the gross site area, and containing one or more of the following features: The outdoor area must measure at least 15 feet in any direction and be located outside the required setbacks. Outdoor area must be surfaced with lawn, pavers, decking, or sport court paving which allows the area to be used for recreational purposes. User amenities, such as tables, benches, trees, planter boxes, garden plots, drinking fountains, spas, or pools may be placed in the outdoor area. It may be covered, such as a covered patio, but it may not be fully enclosed."



Required outdoor area may not be used as vehicle area. For multi-unit buildings, the required outdoor area may instead be provided as individual balconies that measure at least 4 feet by 6 feet."

4. **(4) variance.** Like the variance for design standards there is too much ambiguity in applying a 10% variance to "any standard" in the siting section. For example, what does it mean for an outdoor area to have 10% less of the listed features?

RECOMMENDATION

Revise this language to read:

"A local government shall approve an Oregon Homes Development application if the ~~proposed site plan~~ varies not more than 10 percent from the numerical setbacks or outdoor area characteristics requirements within standards described in this section.

660-047-0050 Tree Standards

1. **General comment.** We don't have substantive issues with this section, though some added clarity could improve implementation.

