



Community Development – Planning

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Via email and Regular mail

July 31, 2026

Chair Allen Lazo
Land Conservation and Development Commission
Attn: Ingrid Caudel, Rulemaking Coordinator
635 Capitol St., Ste. 150
Salem, OR 97301

housing.dlcd@dlcd.oregon.gov

Re: Comments on Proposed Rulemaking – OAR Chapter 660, Divisions 46 and 47 (Middle Housing Amendments and Oregon Homes Program), Notice Filed 06/30/2026

Dear Chair Lazo and Members of the Commission:

The City of Oregon City appreciates the opportunity to comment on the proposed amendments to OAR chapter 660, division 46, and the proposed adoption of division 47, establishing the Oregon Homes program. Oregon City supports the Legislature's goal of expanding housing production and housing choice, and we are actively implementing related state housing mandates through our own Middle Housing program and our current Housing Capacity Analysis. We submit these comments as a jurisdiction working to implement this framework in good faith, and we offer them in that spirit.

Oregon City has also reviewed the comments submitted by the League of Oregon Cities (LOC) and shares a number of the League's concerns, particularly regarding the eligibility carve-out at proposed OAR 660-047-0010(8)(g)(D) and the additional building-plan qualification pathway at OAR 660-047-0010(7)(e). We address both below, along with several additional technical and structural concerns specific to how this new program interacts with the existing Middle Housing rules in division 46, and to the readiness of the current rule text for adoption.

I. The Proposed Rules Are Not Yet Ready for Adoption

Oregon City recommends the Commission delay final action on this rulemaking until the issues below are resolved and the rule text is reposted for an additional comment period. These are not disagreements about policy direction; they are unresolved structural and technical problems that will directly affect whether local planning and building staff can apply these rules consistently and predictably.

A. The relationship between division 46 (Middle Housing) and division 47 (Oregon Homes) is undefined

Many building types eligible under the new Oregon Homes program in division 47 — duplexes, triplexes, quadplexes, cottage clusters, and townhouses — are the same building types already regulated under the Middle Housing rules in division 46. Nothing in either division states which set

of standards governs when a lot and a proposed development qualify under both programs. This is not a hypothetical overlap; it will be the typical case in most cities.

This gap has immediate, practical consequences. As one example, division 46 ties Middle Housing setbacks to whatever a jurisdiction already applies to detached single-family homes in the same zone (OAR 660-046-0120(3), 660-046-0220(3)(d)), while division 47 imposes a flat 5-foot or 10-foot setback regardless of the underlying zone (OAR 660-047-0040(1)). The same duplex, on the same lot, could be subject to two different and non-reconcilable setback standards depending solely on which program the applicant elects to invoke, with no adopted hierarchy or election-of-remedies provision to guide either the applicant or reviewing staff.

Relatedly, division 47 requires local governments to issue a land use decision for an Oregon Homes Development (OAR 660-047-0020(1)), while many jurisdictions, including our own, do not require a discretionary land use decision for comparable Middle Housing types at all. As the League's comments note, this creates a real risk that the two programs will impose different procedural postures on the same building type on the same lot, depending only on which pathway an applicant selects.

Recommendation: Before adoption, the Commission should clarify which set of standards and procedures governs when a lot qualifies under both division 46 and division 47, whether through an explicit election-of-pathway provision or a stated priority between the two divisions, with objective criteria for determining which applies.

B. The current rule text contains unresolved drafting defects that go beyond typographical error

The proposed text of division 46 in the current notice contains what appear to be unresolved tracked-change artifacts in operative, substantive text. Most significantly, the definition of “Medium City” at OAR 660-046-0020(11) currently reads a population threshold of “more than 10,02,500,” rather than a single clear number. Because whether a city is a Medium City or a Large City determines which set of obligations and timelines apply to it under both divisions, this is not a cosmetic problem. Similar unresolved artifacts appear in several other definitions in the same section, including the definitions of Duplex, Large City, Quadplex, and Triplex.

Recommendation: The Commission should direct DLCD to file a clean, proofread version of the complete rule text and reopen the comment period on that corrected version. Commenters and local governments alike cannot responsibly evaluate, or plan to implement, definitional language that is not itself clear on its face.

II. Specific Provisions Exceed the Scope of the Enabling Legislation

The following provisions in the current draft go beyond what House Bill 2258 (2025) authorizes on its face. We raise these as questions of statutory fit, not policy disagreement.

A. The partial-lot eligibility carve-out at OAR 660-047-0010(8)(g)(D)

HB 2258 excludes a lot or parcel from Oregon Homes Lot eligibility if it lies within an inventoried environmentally sensitive, open space, or natural hazard area (Section 2(3)(g)). The proposed rule instead allows a lot to qualify even when part of it falls within such an inventoried area, so long as the “developable area” is “wholly outside” the inventoried portion. This shifts the statutory exclusion from the parcel level to a sub-parcel level not reflected in the statutory text, and does so using an undefined administrative standard. As the League's comments also note, this creates a further practical problem in areas with uninventoried or imprecisely delineated resources,

particularly wetlands, where the “wholly outside” determination cannot reliably be made without the very level of review the ministerial process is designed to avoid.

Recommendation: Remove this subsection and apply the statutory exclusion at the parcel level as written. If the Commission wishes to preserve some flexibility here, that flexibility should be adopted through its own rulemaking record, paired with an objective, surveyable standard rather than an undefined “wholly outside” test.

B. The “third path” building-plan qualification at OAR 660-047-0010(7)(e)

HB 2258 describes two paths for building-plan approval through the Department of Consumer and Business Services: use of a state-approved typical plan, or DCBS review of a developer's own plan (Section 5). The proposed rule adds a third, undefined path allowing qualification through unspecified “local building code review.” Like the League, Oregon City does not read the legislative record as having authorized this third pathway, and as drafted it provides no definition of what that local review must entail, who conducts it, or what standard it applies. Without that definition, the pathway is unusable for staff and unpredictable for applicants.

Recommendation: Remove this pathway, or, at minimum, have DLCD define it with the same specificity as the DCBS-anchored pathways in the statute.

C. The rule's “zero discretion” standard is in tension with its own public facilities and traffic impact analysis carve-out

HB 2258 Section 2(5)(a) reserves public facilities and traffic impact analysis processes to local governments, which “may establish and implement” them, implying that some local judgment will continue to operate within this program. The proposed rule instead directs that the completeness check for an Oregon Homes application “shall not require the use of discretion, interpretation, or the exercise of policy or legal judgment” (OAR 660-047-0020(2)), while a later subsection of the same rule (660-047-0020(7)) allows local governments to apply their own public facilities standards, final engineering review, and traffic impact analysis at their own discretion as to sequencing. Ordinary application of even the objective standards in this division, such as measuring DBH at the correct point on a tree or determining whether a proposed feature meets the definition of usable outdoor space, involves some degree of judgment. As written, staff have no clear rule-based basis for making these ordinary determinations.

Recommendation: Replace the current standard with language consistent with other ministerial Type I review processes, for example: “administered through the same completeness and compliance review used for other ministerial applications, applying only the objective standards in this division.” This preserves the intent of a non-discretionary approval standard without introducing an unworkable and internally inconsistent standard.

D. Sequencing between the mandatory land use approval and locally administered public facilities or traffic impact review is undefined

OAR 660-047-0020(1) requires local governments to issue an approving land use decision “notwithstanding” local comprehensive plans or regulations once the applicable division 47 standards are met, while OAR 660-047-0020(7) separately preserves local authority over public facilities and traffic impact analysis requirements. The rule does not address whether a local government may condition or delay issuance of associated permits on resolution of a legitimate public facilities or safety concern identified through that process, or whether the mandatory approval language overrides that ability.

Recommendation: Clarify that a local government may sequence issuance of building permits, as distinct from the underlying land use decision, on resolution of public facilities or traffic impact requirements identified under section (7), consistent with the authority the statute reserves to local governments in Section 2(5)(a).

III. Additional Technical Corrections

The following are narrower, largely non-controversial clarifications that would improve administrability without altering the Commission's underlying policy choices:

- “Buildable area” ambiguity in the size caps. OAR 660-047-0010(7)(b) is unclear as to whether the 2,200 square foot and 1,400 square foot size limitations refer to lot area or building floor area. This should be clarified in the rule text.
- Franchise utility easements. The setback exception in OAR 660-047-0040(1) for utility easements should be revised to expressly include franchise utility easements, which are not always captured under the term “public utility easement.”
- Provision-to-statute crosswalk. The current notice cites authority from multiple distinct enabling acts (HB 2138, HB 2258, and Oregon Laws 2025, chapter 330, sections 8 and 9) across a single rulemaking package. A provision-by-provision crosswalk identifying which statute authorizes each new or amended section would materially assist both public review and future implementation.

IV. Provisions Oregon City Supports

Oregon City wants to be clear that our concerns above are not a wholesale objection to this rulemaking, and we want to highlight several provisions we support as drafted:

- The lot eligibility criteria at OAR 660-047-0010(8)(a)-(c), (e), and (f) track the statute closely and provide an objective, mappable set of criteria that reduces review time for both applicants and staff.
- The tree preservation and mitigation standards at OAR 660-047-0050 are reasonable, consistent with the statute, and do not materially change existing local tree protection practices.
- The prohibition on additional public notice or hearing requirements at OAR 660-047-0020(6) is consistent with a genuinely ministerial review model, and we support it once the discretion standard discussed in Section II.C is corrected.
- The design standards at OAR 660-047-0030(1) through (3) governing entry orientation, parking area width, and trash enclosure screening are objective, measurable, and administrable as drafted, and represent a good model for the “clear and objective” standard the enabling legislation calls for.

V. Requested Actions

Oregon City respectfully requests that the Commission:

- Repost a corrected and proofread version of the complete rule text, with a new public comment period, before taking final action;

- Direct DLCD to clarify the relationship between division 46 and division 47 where a lot or development qualifies under both;
- Address the specific provisions identified in Section II above, each of which we believe exceeds the plain text of the enabling legislation;
- Provide a provision-by-provision statutory crosswalk identifying the specific enabling authority for each new or amended rule section; and
- Convene a working session with local government planning and building staff, not limited to Rulemaking Advisory Committee members, before finalizing this rulemaking, given that many of the issues raised here are the kind of interpretive questions that surface in day-to-day application review rather than in policy-level discussion.

We also want to flag for the Commission's consideration the broader concern raised in the League of Oregon Cities' comments regarding the "may" versus "shall" framing of the Commission's authority under Section 2(5) of HB 2258. We do not join the League's request that OAR 660-047-0020, -0030, and -0040 not be adopted in their entirety; Oregon City would prefer a workable, statewide ministerial pathway to the alternative of no pathway at all. We do, however, encourage the Commission to weigh that argument carefully, particularly with respect to whether any of the numeric siting and design standards in those sections should retain more local flexibility than the current draft provides.

Thank you for your consideration of these comments. We look forward to continuing to work with the Commission and DLCD staff toward a workable Oregon Homes program that expands housing production while remaining administrable for the local governments responsible for implementing it. Please feel free to contact our office with any questions.

Sincerely,

P.P. Kelly Hart (cos)

Kelly Hart
Community Development Director
City of Oregon City