

September 29, 2026

Land Conservation and Development Commission
Attn: Ingrid Caudel, Rulemaking Coordinator
635 Capitol St., Ste. 150
Salem, OR 97301
Submitted via email: housing.dlcd@dlcd.oregon.gov

Re: Comments on Revised Proposed Rules – OAR Chapter 660, Division 47 (Oregon Homes Program), Interim Version 5 dated September 22, 2026

Dear Chair Lazo and Members of the Commission:

The City of Oregon City appreciates the opportunity to comment on Version 5 of the proposed Division 47 rules implementing House Bill 2258 (Oregon Laws 2025, chapter 479), codified at ORS 197A.408. These comments supplement our letter of July 22, 2026. Oregon City supports the Oregon Homes program and wants it to succeed. Our position is straightforward: we support the effort to open opportunities for more housing, and we offer specific technical fixes to make it work (Section II).

I. Revisions Oregon City Supports

Version 5 responds to several concerns raised by local governments, including ours. We support, as drafted:

- Removal of the partial-lot eligibility carve-out, so that OAR 660-047-0010(8)(g) now tracks Section 2(3)(g) of HB 2258.
- Recognition in subsection (8)(g) of inventories in locally adopted ordinances and resolutions, and of objective mapping sources (DOGAMI IMS and Open-File Reports, SLIDO, and FEMA Flood Insurance Rate Maps). For a city built on the bluffs above Willamette Falls, with significant mapped landslide areas, this matters.
- The definition of “environmentally sensitive area” in OAR 660-047-0010(5).
- The new definition of “buildable area” (0010(1)), which resolves the size-cap ambiguity we identified in July.
- The applicant’s option to use otherwise applicable processes (0020(3)) and local setbacks (0040(4)); parity for public facilities requirements (0020(9)); preservation

of fire code, air navigation, and aerial-firefighting height authority (0020(10)–(11), 0040(5)–(6)); and the tree standards in 0050.

II. Technical Issues

A. The “no discretion” standard (0020(2))

Version 5 still states that review shall not require “discretion, interpretation, or the exercise of policy or legal judgment,” yet several standards cannot be applied without some interpretation: average slope in 0010(8)(f) has no calculation method; “not suitable for any lawful use” in 0010(8)(h)(B) has no test; and 0030(1)(c) requires deciding whether open space is “adjacent to the street.”

Recommendation: Replace the final sentence of 0020(2) with: “Review under this division shall be administered through the same completeness and compliance review the local government uses for other ministerial permits, applying only the objective standards in this division.” In 0010(8)(f), require average slope to be calculated using the local government’s adopted method or, if none, a method specified by the department. In 0010(8)(h)(B), define a structure as not suitable for any lawful use if the building official has declared it unsafe or dangerous under the state building code or a local dangerous building ordinance.

B. Public facilities sequencing (0020(8)) and “final engineering plans” (0010(6))

The last sentence of 0020(8) is garbled and does not say whether building permits may await approval of final engineering plans. The definition in 0010(6) refers to review “following tentative plat approval,” though most Oregon Homes Developments will not involve a plat.

Recommendation: Revise the last sentence of 0020(8) to: “The local government may determine the order in which it applies these requirements and may require approval of final engineering plans before issuance of building permits, subject to section (9).” In 0010(6), replace “following tentative plat approval” with “following approval of a land use application, including an application under this division or a tentative plat.”

C. Building plan approval pathway (0010(7)(e))

We refine our July comment. Section 5 of HB 2258 authorizes the Department of Consumer and Business Services (DCBS) to designate a process for plan approval “from the municipality,” including through typical drawings (ORS 455.062) or DCBS-approved plans (ORS 455.685). A local pathway can therefore be consistent with the statute, but its authority runs through DCBS designation. As drafted, 0010(7)(e) instead ties local review to land use criteria in subsections (a) to (d), and 0020(4)(b)(B) is circular.

Recommendation: Revise 0010(7)(e) to read: “Housing types whose building construction plans have been approved through a process designated by the Department of Consumer and Business Services under section 5, chapter 479, Oregon Laws 2025, including typical drawings and specifications under ORS 455.062 or plans and specifications approved under ORS 455.685.” Conform 0010(8)(h)(D) and 0020(4)(b) to reference subsection (7)(e).

D. Utility easement definition (0010(15))

The definition relies on a public utility “as defined in ORS 757.005,” then lists telecommunication, fiber optic, water, stormwater, and sewer lines. ORS 757.005 excludes plants owned or operated by a municipality; telecommunications utilities are defined in ORS 759.005; and sewer and stormwater are not covered at all. Easements for municipal water, sewer, and stormwater facilities, including Oregon City’s, would fall outside the definition, as would the franchise utility easements noted in July. Because 0040(1) keys setbacks to easement width, a building could be sited over a public sewer or water easement.

Recommendation: Revise to: “‘Utility easement’ means an existing or proposed easement that grants a public utility as defined in ORS 757.005, a telecommunications utility or provider, a cable operator, or a public body as defined in ORS 174.109 the right to use and access specific areas of another’s property for constructing or maintaining gas, electric, telecommunication, fiber optic, water, stormwater, or sanitary sewer facilities.”

E. The 10 percent variance (0040(10))

Oregon City supports a tolerance for dimensional standards, which Section 2(5)(c) authorizes. As written, however, 0040(10) reaches every numerical standard in 0040, including the 20-foot garage setback that keeps parked vehicles out of the sidewalk, the aerial-firefighting height limit, minimum density, and easement and defensible-space distances set by other authorities.

Recommendation: Limit 0040(10) to the setbacks in sections (1) and (2) and the outdoor area requirement in section (8), and state that it does not apply to local setbacks elected under section (4).

F. Other clarifications

- **Drafting errors.** Subsection 0010(7) skips (c), so the reference in (7)(e) to “subsections (a) to (d)” includes a subsection that does not exist. Subsection (8)(h)(D) refers to “the criteria in section (5),” which carried over the statute’s reference to Section 5 of HB 2258 but now points to the environmentally sensitive area definition; it should reference subsection (7)(e). The text also alternates between the defined terms and “Oregon Home Lot” or “Oregon Home

Development.” Please circulate a clean, proofread text, and confirm that the final Division 46 text corrects the defects noted in July, including the “Medium City” population threshold.

- **Outdoor area (0040(8)).** “15 percent of the gross site area, excluding the setback area” can mean setbacks are excluded from the base or cannot count toward the requirement. The rule should say which.
- **Hazard buffers (0010(8)(g)(C)).** Oregon City’s geologic hazards code (OCMC 17.44) applies a buffer measured from mapped landslide areas. The rule should state a buffer adopted in the same ordinance is part of the identified natural hazard area.
- **Election between Divisions 46 and 47 (0020(3)).** Add: “An applicant proceeding under this division shall do so for the entire application, except that the applicant may elect local setbacks under OAR 660-047-0040(4).”

III. Requested Actions

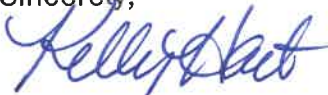
Oregon City respectfully requests that the Commission:

1. Revise the discretion standard in 0020(2) and add objective tests for average slope and “not suitable for any lawful use.”
2. Clarify public facilities sequencing in 0020(8) and the definition of final engineering plans in 0010(6).
3. Tie the building plan pathway in 0010(7)(e) to DCBS designation under Section 5 of HB 2258.
4. Revise the utility easement definition, limit the 10 percent variance, and make the clarifications in Section II.F.

Oregon City wants the Oregon Homes program to succeed. The way to get there is to make the technical fixes above.

Thank you for your consideration and for the substantial work reflected in Version 5. Please contact our office with any questions.

Sincerely,



Kelly Hart
Community Development Director
City of Oregon City

cc: Kelly Reid, AICP, Portland Metro Area Regional Representative, DLCD