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To: Oregon Housing Needs Analysis (OHNA) Rulemaking Advisory Committee (RAC)

From: Ethan Stuckmayer, AICP, Housing Services Division Manager

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Subject: Plain Language Description of Draft Rule Proposals and Approaches



The purpose of this document is to summarize the first iteration of draft rules prepared by Department staff for review and refinement by the Rules Advisory Committee (RAC) and three Technical Advisory Committees. This summary is intended to provide RAC members with a high-level understanding of how the draft rule functions without a deep technical knowledge of interpreting Oregon Administrative Rule (OAR) language. The corollary Draft Rule Matrix provides an in-depth review of the language, function, and policy intent for draft rules.

As mentioned at previous RAC meetings, this first draft is written with the expectation that rules may change substantially before the public hearing notice is published by the Secretary of State on October 1, 2024. Department staff encourage refinement to any of the concepts presented herein in the coming months.

Housing Needs and Production

The Needs and Production Technical Advisory Committee (NAPTAC) has been discussing and working through the following major policy changes:

- Ensuring the Housing Production Strategy (HPS) program incorporates the principles of Affirmatively Further Fair Housing, and;
- Determining cities' responsibilities to plan for a diversity of housing options including flexibility in housing types, characteristics, and locations across the state.

Ensuring the Housing Production Strategy Program Affirmatively Furthers Fair Housing

The Oregon Housing Needs Analysis (OHNA) policy included a major milestone for the Housing Production Strategy as articulated in ORS 197A.100. Specifically, it requires cities completing an HPS to ensure they are taking meaningful actions that affirmatively further fair housing. According to ORS 197A.100 (9), affirmatively furthering fair housing “means meaningful actions that, when taken together, address significant disparities in housing needs and access to opportunity and replace segregated living patterns with truly integrated and balanced living patterns to transform racially and ethnically concentrated areas of poverty into areas of opportunity and foster and maintain compliance with civil rights and fair housing laws.”

This definition and the AFFH framework emphasize the importance of addressing and eliminating discrimination in housing and promoting diverse, inclusive, and thriving communities for all community members, especially members of protected classes. While the existing administrative rules for the HPS program includes a framework enabling cities to work towards achieving fair and equitable housing outcomes, there is room for more explicit direction on how cities could conduct comprehensive analyses as part of the existing Contextualized Housing Needs element to better understand patterns of racial segregation, disparities in access to opportunity, and disproportionate housing needs among protected classes. The way that the AFFH framework at the federal level within the U.S. Department of Housing and Urban Development (HUD) operationalizes this explicit direction is through what is called a Fair Housing Issue Area Analysis. This analysis allows HUD grantees a process to identify fair housing issues that the AFFH mandate seeks to address. In response, the draft rules incorporate this analysis, with feedback from the RAC and NAPTAC, into the Contextualized Housing Need component of the HPS. Additionally, staff have amended the Engagement and Action Selection elements of the HPS framework to ensure that those sections are also affirmatively furthering fair housing.

Contextualized Housing Need

This analysis is drafted to serve as the foundation for completing both the Housing Capacity Analysis and the Housing Production Strategy. The draft rule directs cities to inventory and evaluate various qualitative and quantitative elements of their specific community's housing needs, including the Housing Production Dashboard, Equity Indicators, mapped discriminatory actions, and community engagement data in order to set the basis for proceeding housing planning activities. These elements collectively inform the Fair Housing Issue Area Analysis.

The draft rule for the Fair Housing Issue Area Analysis requires cities to examine both quantitative and qualitative data from the inventory of local conditions to identify and address barriers to housing choice and opportunity. This analysis integrates the principles of Affirmatively Furthering Fair Housing (AFFH) into the contextualization process.

The draft rule focuses on six key fair housing issue areas that comprise the Fair Housing Issue Area Analysis aimed to provide fair access to and equitable outcomes for:

1. Housing tenure and wealth building choice;
2. Housing choice for people experiencing homelessness;
3. Housing choice for people with disabilities;
4. Community assets and mitigation of exposure to harms;
5. Housing stability, anti-displacement and displacement mitigation;
6. Any additional issue areas the jurisdiction has reason to believe may be of concern in the community or are required to address, including cities subject to OAR 660-012-0310(2) and jurisdictions within Metro with Region 2040 centers.

This analysis is intended to ground the city's Allocated Housing Need or its Housing Production Target for the Housing Capacity Analysis or Housing Production Strategy, respectively, in the

context of the city’s specific housing needs and fair housing issues. From this analysis, the city can begin to identify the context-sensitive housing types, characteristics, and locations of housing that should be planned for to mitigate or remedy the fair housing issues identified and meet any other housing needs identified.

Equitable Engagement

As within the existing program, a Housing Production Strategy must include a summary detailing the city's engagement process with Residents (formerly “Consumers”) and Producers of Needed Housing including a focus on protected classes. The draft rule now clarifies that a city should work interdepartmentally to conduct this engagement as comprehensively as possible in order to gather feedback to meaningfully inform both their Contextualized Housing Need and their Housing Production Strategy action selection. This clarification aims to ensure that city departments collaborate in the development of an HPS. For example, in cities that receive a federal fund allocation from HUD, the department that manages these federal funds is separate and distinct from the planning department which typically manages the city’s HPS obligation. This also happens within the realm of public facility planning, which is crucial to housing planning work, but is often managed by a separate department with different goals. Collaborative work among various departments will enable better actions to reduce barriers to housing production, affordability, and choice.

To support this work, the Department is in the process of developing an Equitable Engagement Toolkit, in partnership with MultiCultural Collaborative and Knot Studio. This Toolkit can serve as a resource to cities in meeting their engagement requirements as part of an HPS and beyond. Accordingly, the draft rule encourages a city to use the Department's Equitable Engagement Toolkit.

Housing Production Strategy Action Selection

A Housing Production Strategy must outline commitments to specific actions - measures, policies, programs, and similar tools - to support Needed Housing, aiming to meet the City's Housing Production Target with net new units, including preserving existing Needed Housing where appropriate. The proposed actions must collectively meet the 6- or 8-year Housing Production Target by affordability bracket and produce the identified housing types, characteristics, and locations that are needed from the Contextualized Housing Need.

The draft rule outlines a list of elements cities must consider for each action in their Housing Production Strategy. This is intended to clarify the action-by-action analysis and explanations needed to satisfy the explicit statutory requirements of the Housing Production Strategy program, such as the Affirmatively Furthering Fair Housing mandate and overall direction that actions be responsive to a city’s specific housing need. The structure largely iterates from existing rule and aims to provide a clear and consolidated framework through which cities can assess the applicability of their actions and through which the Department can assess the actions for completeness and responsiveness to identified housing need. Please see draft rule for the list of consideration for each action in the Housing Production Strategy.

Translation of Allocated Housing Need and Housing Production Targets into housing types, characteristics, and locations

The amended definition of “needed housing” as outlined in ORS 197.018 (4), directs cities to translate their allocated Housing Production Targets into specific housing types, characteristics, and locations to be planned for within their 6- or 8-year Housing Production Strategy cycle. Through discussions with the Rulemaking Advisory Committee and the Needs and Production Technical Advisory Committee, department staff received requests for flexibility in the rules governing this translation requirement. There were simultaneous requests to establish a safe harbor in administrative rule to guide cities in this translation work.

However, despite extensive discussions with the RAC and NAPTAC and in consultation with land use planning consultants, staff find several challenges with identifying a reasonable and universally applicable safe harbor to guide cities in planning for the characteristics and locations of needed housing. Barriers include the highly varied needs for different housing characteristics and the data-poor environment regarding these characteristics, especially when considering the nexus between total need and existing inventory of housing with particular characteristics. The determination of needed housing characteristics seems best served by identifying fair housing issues and any other housing barriers in a city, then identifying the characteristics of housing needed to mitigate or resolve those issues. This potential approach is proposed to be similarly applicable to determining needed housing locations.

While department staff did not find a statewide approach on safe harbors for the translation of characteristics and location, the draft rule does include a safe harbor for the translation of housing *types*. The safe harbor option as drafted for a housing type mix defines a minimum percentage mix of housing types for multi-unit attached and middle housing types specific to the population size of city. The draft safe harbor language states:

- Cities with a population of 25,000 or greater or all those within a metropolitan service district must assume and plan for at least 50% of new residential units to be multi-unit attached housing and 25% of new residential units to be middle housing.
- Cities with a population between 10,000 and 24,999 must assume and plan for at least 25% of new residential units to be multi-unit attached housing and 25% of new residential units to be middle housing.
- Cities with a population below 10,000 must assume and plan for at least 20% of new residential units to be multi-unit attached housing and 20% of new residential units to be middle housing.

Housing Acceleration Program

The ‘Housing Acceleration Program’, established by ORS 197A.130, is a new requirement related to Goal 10 implementation intended to track housing production, identify barriers, formalize collaboration, and take proportionate action to address barriers. The program is integrated with, and designed to ensure follow-through on, the Housing Production Strategy Program. Draft rules emphasize partnership, equity, local context, and support as well as

escalating enforcement to address persistent, repeated, or deliberate noncompliance, consistent with the legislative principles articulated in [ORS 197A.130 \(1\)](#).

The draft rules operationalize ORS 197A.130 and provide a clear and consistent framework by which local governments comply with Goal 10 and take proportionate action to respond to identified barriers to housing production, affordability, and choice.

Referral

Under ORS 197A.130, DLCD is required to annually refer a proportion of cities of 10,000 population or greater into the acceleration program. There are four referral pathways: 1) failure to adopt a Housing Production Strategy by the statutory deadline; 2) failure to undertake an action in the HPS by the statutory deadline; 3) referral via an LCDC-issued enforcement order; or 4) a performance-based referral.

The draft rule includes referral parameters for cities that fail to adopt or undertake actions in an HPS. These draft rules iterate on existing rules ([OAR 660-008-0065](#) and [0070](#)) and provide clarity on the referral process and scope as it relates to HPS implementation. The draft does not propose a rule for LCDC referrals, which will be determined by LCDC in the order itself.

For performance-based referrals, the draft rule outlines a process by which DLCD determines its capacity to conduct both standard and comprehensive audits, determines the eligibility of cities for referral based on their progress towards Housing Production Targets on the housing production dashboard produced by OHCS, then prioritizes referral of cities up to DLCD's capacity.

First, DLCD determines the number of standard and comprehensive audits it can conduct based on staff capacity, funding availability, and competing housing-related obligations that affect capacity (e.g. new legislation). Then, DLCD determines initial eligibility utilizing an objective metric of cities that are both missing their production targets and performing at or below the 50th percentile on the housing production dashboard in comparison to the region or market peers for:

1. Total housing production
2. Affordable housing production (at or below 80% Median Family Income)

This initial eligibility determination casts a 'wide net' using an objective metric, but not every city herein will be referred. Next, DLCD removes eligible cities from consideration for referral if the city meets any of the following criteria:

1. The city is accelerating the rate of production for both total and affordable housing (at/below 80% MFI),
2. The city had been previously referred based on performance in the last HPS cycle, or
3. The city has adopted a set of best practice policies that demonstrably increase housing production, affordability, and choice. (*note: these would need to be developed/adopted by DLCD*)

Finally, DLCDC prioritizes remaining cities for referral up to the maximum number of audits determined at the beginning, based on three considerations:

1. The severity of the total underproduction,
2. The severity of the affordable underproduction (at/below 80% MFI), and
3. Housing equity indicators as they relate to fair housing issues (as described in the Needs and Production section)

While most referred cities will be referred into the ‘standard’ audit pathway, DLCDC will prioritize ‘comprehensive’ audits where these considerations indicate substantial affordability or equity-related issues warranting context and inter-agency coordination, including requesting concurrent review by Oregon Housing and Community Services (OHCS) related to affordable housing.

Audit

Within six months of being referred, DLCDC must produce an audit of factors affecting barriers to local housing production and outcomes. The process begins with a notice of referral that is published annually on July 1, which kicks off a six-month timeline. The notice is sent to the city, affected public bodies (e.g. special districts, state agencies), and interested parties. It includes: a) findings documenting the basis of referral, b) a description of the housing acceleration program and procedures, c) any actions or submission of materials required by the city, and d) that opportunity for public comment will be provided, and e) actions taken under the housing acceleration program are not land use decisions nor subject to appeal or review.

After notice is published, there is a 45-day fact-finding period, in which DLCDC solicits the following information from a city. Where information is not provided, DLCDC will utilize best available public information to inform the audit.

1. The adopted HCA/HPS, associated record, and mid-point review. A draft HPS is acceptable for cities referred for non-adoption, if available.
2. Local fair housing and equity work that isn't already captured in the HPS, if any.
3. Funding and staffing information of the city.
4. Localized housing data, studies, or relevant information not captured by the state, if any.
5. Information and contacts related to local housing development, if available.
6. Specified information related to housing development or infrastructure, including regulations, plans, and fees.
7. City-requested areas for DLCDC consideration in the audit, including state programs, resource/capacity needs, or other issues outside of a city's control.

After receiving this information, DLCDC must compile and publish this information in a publicly accessible format within 10 days, then open a public comment period for 45 days. This comment period enables feedback from interested parties and members of the public. Submitted comments must be appended to the final audit.

<i>Comprehensive Audit</i>

If a city is flagged for a comprehensive audit, in addition to the sources above, the Department will also conduct targeted engagement and coordination with specific parties. Engagement can include a variety of groups such as city staff, public officials, housing developers, community-based organizations, and priority population community members. DLCD would also coordinate with public bodies such as regional governments, special districts, utilities, and other state agencies to address barriers. This includes concurrent review by OHCS for audits related to affordable housing.

After six months, DLCD must publish the audit report. This audit will include a description of each identified barrier related to the city’s basis for referral. This will include an analysis of the market, local, regional, and state factors contributing to each barrier, including any relevant state actions, investments, policies, or programs related to the barrier, if any.

If a barrier can be wholly or partially addressed by city action, DLCD will identify one or more potential actions that can address the barrier. For each action, DLCD will include an evaluation of the factors necessary for implementation such as city capacity, state funding, guidance, magnitude of impact and so on.

The audit will also determine whether a given action is ‘directly within the control of a city’, which means that the action is within the city’s jurisdictional control and the city has the resources and capacity – with DLCD’s assistance and funding – to implement the action. Where an audit concludes city capacity is a barrier to production, the audit will prioritize building city capacity to support future implementation of actions. This audit will inform the housing acceleration agreement.

In addition to mandatory referrals, the rule enables DLCD to consider voluntary audit requests by local governments, provided DLCD prioritize mandatory referrals.

Housing Acceleration Agreement

Once the audit is complete, the city and DLCD have six months to enter into a housing acceleration agreement. The agreement must be signed by an authorized representative of the city and the Department director. DLCD must provide the city at least 90 days to review the draft agreement. Once signed, the acceleration agreement must be adopted as a supplemental document to a Housing Production Strategy.

The required content of the agreement includes actions, parameters, and timelines by the city and DLCD. DLCD must agree to provide assistance in the form of regulatory review, financial support, and identification of external resources. The city must commit to taking actions which address the barriers specified in the audit. To address a barrier, a housing acceleration agreement may include either:

1. Specific actions outlined in the audit, that a city may select from, or
2. Actions proposed by the city, provided the city demonstrate the action proportionately addresses the barriers on an equivalent basis to actions specified in the audit.

If the audit determines that the factors affecting housing production are ‘directly within the control of a city’ as described above, the city must amend their HPS within six months of the agreement and implement the action within another year, as required under statute. If not, the city must demonstrate in findings how the selected HPS actions address the barrier identified in the audit. For both, DLCDC and the city may initiate mediation or coordination with other public bodies to support implementation.

Enforcement

If a city fails to either enter, or abide the terms of, a housing acceleration agreement, the rule sets out a process by which DLCDC notifies the city and provides an opportunity for course correction before any enforcement action is taken. This includes:

1. Within 30 days of the due date, the DLCDC issues written notice of delinquency to the city. The notice includes the delinquency, how the city could remedy the delinquency, an offer for formal mediation, and a description of the enforcement actions and tools that could apply to the city in lieu of remedy.
2. Within 30 days of the notice date, the city may request formal mediation from DLCDC to assist the city to remedy the deficiency.
3. Within 90 days of the notice date, if the city has taken no action to remedy the delinquency, DLCDC will initiate an enforcement order with the Land Conservation and Development Commission.