

**MEMORANDUM**

TO: Clackamas County Board of County Commissioners (BCC)  
FROM: Dan Johnson, Director  
RE: Oregon Housing Needs Analysis Rulemaking Concerns Letter  
DATE: November 4, 2025

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**REQUEST:** Approve a comment letter to the state Land Conservation and Development Commission on draft rules for housing development code requirements.

**BACKGROUND:** In 2023, Oregon House Bill 2001 directed the Land Conservation and Development Commission (LCDC) to implement the Oregon Housing Needs Analysis (OHNA) through rulemaking. Since then, the Oregon Department of Land Conservation and Development (DLCD) has been convening work groups and committees to advise on the adoption of Oregon Administrative Rules in three topic areas:

1. Housing Needs and Production (adopted by January 1, 2025).
2. Housing Accountability (adopted by January 1, 2025).
3. Housing Capacity and Urbanization (to be adopted by January 1, 2026).

Department of Transportation and Development staff have been participating in the Capacity and Urbanization Technical Advisory Committee (CAUTAC) and the Housing Actions Work Group (HAWG). Staff have appreciated the opportunity to be involved in the rulemaking process. At the same time, staff do not feel that the current draft rules are representative of the perspectives of, and concerns raised by, local jurisdictions. The attached comment letter highlights the County's main areas of concern with the current draft rules.

DLCD is currently accepting public comments through November 7, 2025. The final proposed rules will then be published November 26, 2025. An LCDC meeting will be held December 4 – 5, 2025 and the rules will be considered for adoption.

**RECOMMENDATION:** Staff recommends the Board approve the attached letter for submission to the LCDC and authorize Chair Roberts to sign on the Board's behalf.

ATTACHMENT: #A: Draft OHNA Rulemaking Comment Letter

Respectfully Submitted,

*Dan Johnson*

Dan Johnson  
Director

**DRAFT**

Land Conservation and Development Commission  
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***RE: Clackamas County Comments on Draft Rules for Oregon Housing Needs Analysis (OHNA)***

Dear Chair Hallová, Vice-Chair Lazo, and members of the Land Conservation and Development Commission,

Thank you for the opportunity to provide comment on the Oregon Housing Needs Analysis (OHNA) Draft Rules.

Clackamas County staff have participated in the OHNA Capacity and Urbanization Technical Advisory Committee (CAUTAC) and the Housing Actions Work Group (HAWG). We have appreciated the opportunity for staff to be involved in the rulemaking process. Through this process it has become clear that the current draft rules are not representative of the perspectives of, and concerns raised by, local jurisdictions.

We echo concerns raised in comment letters by our partners at the Association of Oregon Counties, League of Oregon Cities, Oregon REALTORS, and the Oregon Homebuilders Association, and agree that the current draft rules misrepresent the intent of the original legislation. The goal of HB 2001 (2023) was to increase production-driven housing planning through clear accountability measures and decrease the administrative and analytical burden placed on jurisdictions. We are specifically concerned that the rules, as currently drafted, will unnecessarily increase the analytical and administrative burden on local jurisdictions, which will slow the progress local governments have been making to increase housing production.

In particular, we are concerned with how, through the Rebuttable Presumption compliance pathway, the Model Code will be required to be adopted as a part of the Housing Production Strategy process unless a jurisdiction demonstrates that their zoning and development standards are comparable. The draft Model Code has not been peer reviewed and there is no proof that the draft code will result in better outcomes than existing local codes. The Model Code should be optional ONLY.

**Use of the Model Code outside of Acceleration program:**

In several instances, the Housing Production Strategy process uses the Rebuttal Presumption compliance pathway to either require that the Model Code be used or have a jurisdiction demonstrate that their zoning and development standards are comparable and no more restrictive than the Model Code. The Model Code's application in this manner is inconsistent with HB 2001 Section 17 (now implemented by 197.335) in that LCDL has been given the direction to apply the Model Code when a jurisdiction fails to comply with ORS 197.320, which in this case is the Acceleration program.

The Rebuttable Presumption compliance pathway does not have guidance on how to compare the documents or specific clarity on how the Model Code will actually achieve the desired outcomes in a better way than a jurisdiction's existing standards. Using the Rebuttable Presumption in this way is not providing a local jurisdiction with more flexibility or certainty which are two of the primary charges of the rulemaking effort. Instead it is creating increased analytical burden and ambiguity related to the level of effort to undertake this task.

We request that the Model Code be available as optional technical assistance and not required outside of the Acceleration Program.

**Model Code review:**

We agree with our partner jurisdictions who have stated that it is presumptuous to suppose that the Model Code, unsupported by real life market data or outcomes, is more liberal or permissive than ordinances created by cities across Oregon that are supported by market outcomes and built housing. Requiring large cities to implement the Model Code as default is inappropriate and disrespects the work of planners across Oregon to build ordinances that work, are supported by built housing, and are reflective of the needs of their communities. Local jurisdictions already document in reports to DLCD on housing production how many and the types of middle housing that are produced under existing local development codes. Before making this a requirement, the Department should review the outcomes that occur in jurisdictions that adopt model codes and the units constructed under these codes.

We also have concerns that the application of the Model Code has the potential for creating non-conforming uses. Additionally, the inclusion of specific procedures and decision timelines that are different than a local code will create confusion for both the developer and local jurisdiction implementation. These elements should be addressed before the Model Code is required to be applied. In closing, we continue to recognize the urgent need for more housing, and more affordable housing, in all areas of the state, and we are committed to increasing housing opportunities at all levels. As we have said throughout the development of the OHNA rule and rule amendment process, the requirements may be well-intended, but the State must recognize that the requirements are disingenuous without continued funding to achieve them. Analysis, data tracking, and enforcement are not substitutes for housing.

While each new requirement may not appear burdensome when discussed and proposed in isolation, the collection of the sum of mandates or requirements adds both time and costs on top of existing work. It is imperative that the State continue to account for these factors by providing local jurisdictions with sufficient funding for initial and ongoing implementation of the rules, needed infrastructure to support the housing, and funding for construction and operation of new affordable housing. If we are to address the housing crisis, we must look at all available solutions. Knowing that the state is underbuilt for housing, we still believe that the State efforts would be better directed toward providing incentives or funding for development of housing.

Sincerely,

Craig Roberts, Chair  
On Behalf of the Clackamas County Board of Commissioners