



# Oregon

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**To:** Rep. Dexter, Chair, House Committee on Housing & Homelessness

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**Date:** March 31, 2023

**RE: House Bill 2001 – Market-Rate Housing Production**

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The purpose of this memorandum is to provide clarification on state law in response to a concern raised by stakeholders on market-rate housing production. Our understanding of the nature of the concern is that inclusion of production targets for middle- and higher-income households in the OHNA policy will exacerbate a current misconception of housing production: that the production of market-rate housing is “not needed” because the units are more expensive. The concern is that this misconception will lead to stymied market-rate housing production, both in the Goal 10 planning process and at the permit counter.

As a matter of policy, it's important to be clear that the OHNA policy, Goal 10, and associated statutes and administrative rules explicitly recognize the production of market-rate housing as a critical need for delivering affordable housing choices for all Oregonians. Said simply, to address the current housing crisis, we need more housing choices for everyone, everywhere. But we think it's important to clarify how this will happen via state policy and statute, both through the planning process and at the permit counter.

### **The Planning Process – Goal 10 and Needed Housing**

Goal 10 requires local governments to plan for and encourage “...the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households...” This includes all household incomes, including middle and high income. As documented in the [original](#) and [refined](#) OHNA methodologies, the need for market-rate housing is clear: housing affordable at middle (80-120% MFI) and upper (120+% MFI) incomes comprise more than half of the total estimated need over twenty years.

Under the Goal 10 process, as amended by the OHNA policy, local governments will be required to plan for an abundance of diverse housing options and adopt strategies to facilitate the development of both market-rate and affordable housing. It will be impossible to address the housing shortage without robust state and local policies that facilitate substantially more market-rate production, including enabling many more diverse housing options that have historically been illegal to build on most residentially-zoned lands such as small apartments, manufactured/prefabricated housing, and middle housing.

The OHNA policy makes clear, while it's important to track and evaluate our progress in achieving market-rate and affordable housing production, that a need for one does not obviate

Subject or Addressee

Date

Page 2 of 2

the need for the other. The policy will reinforce the existing statewide obligation to plan for an abundance of diverse, affordable options for all Oregonians.

### **The Permit Counter – Local Approval Criteria**

Another major concern we have heard is that establishing targets would have implications for applicants of market-rate housing at the permit counter. Specifically, that a permit for market-rate housing may be denied because a city needs affordable housing and ‘does not need’ market-rate housing. To be clear, denial of a proposed market-rate housing development based on its market price or rent is illegal under state law. There are three statutes reinforcing this:

**ORS 197.309** prohibits a city or county from imposing a standard that has the effect of establishing the sales price or rent for a housing unit, except through a specific and limited inclusionary zoning (IZ) policy. To DLCD staff’s best knowledge, Portland is the only city in the state that employs an [inclusionary zoning policy](#), meaning that all other cities in Oregon do not apply any development approval criteria specifying the affordability or price of new construction.

**ORS 227.173** requires a city and **ORS 215.416** requires a county to approve or deny a permit application based on locally-adopted standards implementing the comprehensive plan. For housing development within the urban growth boundary, if an applicant submits a proposal for housing that meets all locally adopted clear and objective standards (or the standards in an optional discretionary alternative), that application must be approved by the city or county.

In combination, these two statutes mean that there is no case in which a city or county can legally deny an application for market-rate housing that otherwise meets all locally adopted standards. Additionally, these standards are prohibited from establishing the sales price or rent by law, except through a narrow IZ policy that only the City of Portland employs.

With this in mind, we think it’s important to acknowledge that the concern raised is valid – the need for affordable housing has, at times, been weaponized to stymie the development of needed market-rate housing in local processes. We think this will continue to be an important dynamic to address. If the Legislature enacts HB 3414, which proposes Housing Accountability and Production Office, DLCD would have additional authority and resources to support and, when necessary, to ensure that local review standards and procedures comply with state law, without relying on expensive and time-consuming litigation and appeal to resolve disputes.

Thank you for providing the opportunity to provide this clarification. We would be happy to further clarify or respond to any follow-up questions.