



American Planning Association
Oregon Chapter

Creating Great Communities for All

December 5, 2023

RE: Comments from the Oregon Chapter of the American Planning Association (OAPA) regarding housing production framework – November Draft.

Dear Governor Kotek.

This letter presents testimony from the Oregon Chapter of the American Planning Association (OAPA) on the November 3, 2023, draft housing production framework. Thank you for this opportunity to provide our testimony. OAPA appreciates the work that's gone into this latest version of the housing production framework; it has come a long way since it was first introduced. That said, we remain opposed to two of the concepts contained therein: the adjustments concept, and to the one-time expansions to the Urban Growth Boundary (UGB).

Below we offer a brief summary of our continued opposition to adjustments and UGB expansions for the same reasons we have stated in our previous letters dated September 15, and October 30. On the following page, we offer more specific comments and observations on the draft housing production strategy.

OAPA opposes Adjustments because:

- Creating a new highly discretionary adjustment process controlled entirely by applicants undermines the work of many jurisdictions to create clear and objective standards for housing.
- Switching the burden of proof away from the applicant and to the local government to justify the denial and further asking local government staff to determine whether denial of a variance is necessary to address a "health, safety or habitability issue" without any process is almost certain to lead to litigation.
- The adjustment language shifts the burden of proving an adjustment should not be granted to the local government, instead of an applicant having to demonstrate that granting the adjustment will result in a public benefit, such as additional housing units. The burden of proof being on the local government has the potential to cause unnecessary delays and increased processing time, which is counter to the goal of building more housing quickly. This is especially true considering most jurisdictions are understaffed and may end up bogged down in process.
- The adjustment language limits the ability to appeal an adjustment to only the applicant, which is inconsistent with established state law that parties may also appeal a land use decision to LUBA.
- The possibility of attorney fees assessed against local jurisdictions for improper denials will put reviewers in an unfair and difficult position, particularly given the vague nature of the standards in the legislation.
- One size does not fit all. Mandatory adjustments will have greater impacts on jurisdictions that already have lowered standards or have a mechanism of doing to

allow for more housing.

- The exceptions that may not be subject to an adjustment do not recognize all of the statewide planning goals, and resources protected by the planning goals that cities and counties must protect through land use regulations.
- The exceptions do not address protection for other resources such as groundwater under Statewide Planning Goal 6.

OAPA opposes the proposed one-time UGB expansions because:

- UGB expansions for increased housing should not be considered unless a housing needs analysis confirms the existing UGB does not have sufficient land.
- UGB expansions in the Metro region are inappropriate. The Metro UGB contains thousands of acres of vacant buildable land. Moreover, the Metro Charter provision that states that existing neighborhoods are exempt from increases in density by Metro must be nullified before any UGB expansion is considered. In addition, Metro has multiple opportunities for cities to petition to expand the UGB and Metro is statutorily required to ensure a 20-year land supply.
- Land supply is not the primary barrier to housing production. Rather, lack of infrastructure is a major factor that has prevented thousands of acres within existing UGBs from developing. Some of these areas have failed to be developed for lack of urban infrastructure despite having been brought into the UGB complete with conceptual zoning and development plans that occurred more than twenty years ago.

OAPA recognizes the reasons for the adjustment concept (to remove barriers to affordable housing production) and the UGB expansions (to aid in overall production of housing units); however for the reasons summarized above, we believe these approaches are an unnecessary distraction from actually achieving these goals and will cause more harm than good. We believe a great deal of time and resources have gone into improving these bad ideas. Unfortunately, making a bad idea less bad does not necessarily transform it into a good idea.

OAPA strongly advocates for strengthening the one great concept that was originally contained in HB 3414 (2023) and fortunately is still proposed – the Housing Accountability and Production Office (HAPO). The very purpose of HAPO is to reduce barriers to producing needed housing and hold jurisdictions accountable for doing so. There is no need for the likely chaos and burdens on towns and cities that blunt instruments like adjustments and unneeded UGB expansions will create.

In addition to strong support for HAPO, OAPA strongly supports funding and resources to extend infrastructure to areas within the UGB that are programmed for housing and employment, but lack the infrastructure to develop despite existing concept plans.

Of highest importance, OAPA supports housing production that addresses historical inequities, environmental justice and increases access to affordable housing. This means investing in public participation and meaningful outreach to all populations so that all people have a voice and access to the decision making process. OAPA believes planning processes for housing development can be streamlined while at the same time including and centering underrepresented communities.

Below we offer some specific feedback on the draft housing production framework.

Sunset for adjustments. If the adjustments concepts are enacted, OAPA suggests a relatively short time frame of no more than five years in order to minimize the disarray that will likely result. We also recommend that local jurisdictions be incentivized and/or required to audit their codes (and then update them) with respect to siting standards that may pose undue barriers to affordable housing. One very helpful tool is the reduction or elimination of minimum parking requirements.

Comments on the additional specificity of the adjustment concepts. An overall comment on the adjustments concept is the lack of analysis as to how any particular adjustment will promote more housing or more affordable housing (or housing that supports CFEC rules, equitable outcomes, transit use, resilience economies, and the like). OAPA does appreciate separating single family from multi-family although it is not clear where middle housing fits in as it occurs in the same landscape as single family dwellings.

Specific comments on a.ii.1.a: are there any codes that require landscaped area, common area or open space requirements for single family? It would be somewhat surprising if so.

c: **Parking Minimums.** OAPA agrees with allowing removal of parking minimums and as we have stated previously we strongly promote eliminating parking minimums (which is promoted by national APA) as it promotes equity, affordable housing and climate change.

g: **Unit Density Maximums.** We ask for clarification on what this standard is going to accomplish. Is this to allow adjustments to promote building at maximum density?

2.a: Consider an exception to adjustments to standards that utilize Crime Prevention Through Environmental Design (CPTED) standards such as to passive surveillance via orientation and glazing.

h.: OAPA agrees that transit orientation should not be grounds for an adjustment. And we again ask for an exception that would also include CPTED as something that can't be adjusted as mentioned above.

j.: If applicable to this standard, OAPA opposes adjustments to required balconies or decks as these are often the only private open space for multi-family housing.

Please let us know OAPA's thoughts on the list of Type III to Type II, the list is the first draft out for comment. OAPA generally agrees with using a Type II instead of a Type III and especially because often the reason for a Type III has to do with standards that impact housing production as well as equity and affordability.

For 10 years, temporarily require select land use decisions for housing within UGBs that may be processed under Type III procedures to be processed under Type II procedures.

b.iv. OAPA is generally supportive. Applying a Type III process to housing often adds to the uncertainty and costs and is not necessary to ensure orderly development.

Please note the table for a density increase discussion, would OAPA like to be a participant (I assume you would). Please also note the table for a density structure by population rather than geography – if OAPA has a recommended structure we would welcome reviewing a concept. Our general comment is that either approach — population or geography — does not capture how density is related to community and why we do planning. OAPA suggests directing efforts to places that have or can have transit and looking at adjustments to meet transit supportive density needs. The goal should be walkable and bikeable neighborhoods supportive of local economy. Places that don't have transit and are unlikely to have (or have much of) transit could still be places that are mixed-use and walkable and would need appropriate housing densities.

We believe the issues of housing producing/affordability is not that minimum densities are able to be met but rather that developing closer to maximum densities is where the barriers are that need to be addressed as much as possible in our land use system. The table does not provide insight about how the standards will affect any particular development code. Does it default to the minimum? Does it increase the current minimums? Does the 20 per unit for cities in Metro preclude application to single-family (or middle housing), and if so, should it? Obviously, 5 or 6 units per acre is single-family — is there a reason not to expect and provide that the process increases densities in cities despite the county they are in or the size of the town?

Under the one-time alternative UGB expansion a.i. talks about “current density minimums,” but there is no such thing for the land that would be brought in. This means that the default densities don't have any particular relationship to the place and how the land should be integrated into the city.

We thank you for the opportunity to provide this testimony on the latest version of the housing production framework.



Aaron Ray, AICP (he/him/his) <president@oregonapa.org>
President, Oregon Chapter of the American Planning Association
Relevant Resources, Better Planners, Exceptional Communities

Kevin Cook

Kevin Cook (he/him)
Chair, Legislative and Policy Affairs Committee
Oregon Chapter of the American Planning Association
LPAC@oregonapa.org | www.oregonapa.org