



TO: House Committee on Human Services and Housing
FROM: Jon Chandler (jchandler@oregonhba.com)
RE: HB 2890
DATE: March 22, 2013

The Oregon Home Builders Association opposes HB 2890, for philosophical, legal and practical reasons. HB 2890 would delete ORS 197.309, which provides:

197.309 Local ordinances or approval conditions may not effectively establish housing sale price or designate class of purchasers; exception. (1) Except as provided in subsection (2) of this section, a city, county or metropolitan service district may not adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178, a requirement that has the effect of establishing the sales price for a housing unit or residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale to any particular class or group of purchasers.

(2) This section does not limit the authority of a city, county or metropolitan service district to:

(a) Adopt or enforce a land use regulation, functional plan provision or condition of approval creating or implementing an incentive, contract commitment, density bonus or other voluntary regulation, provision or condition designed to increase the supply of moderate or lower cost housing units; or

(b) Enter into an affordable housing covenant as provided in ORS 456.270 to 456.295.

In other words, under current law, a jurisdiction cannot require, by operation of law, a builder or developer to sell a house at a particular price, but they are totally free to develop voluntary and incentive based programs to increase the stock of affordable housing. If the statute is repealed, on the other hand, local governments could set price targets and force builders to meet them.

We believe that giving local governments the ability to set prices – to force builders to sell at a loss or new home purchasers to buy at a premium – is unfair, inequitable, and unjust.

The philosophical basis for this position is quite simple: people who build or purchase new homes have no greater responsibility for addressing the issue of affordable housing than anyone else. There is no moral or ethical obligation that is assumed by home buyers, or that is created through the construction process, that warrants legislative or local action to place the onus for meeting affordable housing needs on people involved in those transactions.

Affordable housing is a societal problem and needs to be addressed by the entire community; we do not believe that there is any justification, other than expediency, to charge a subset of the community with a burden which should be borne by the whole.

375 TAYLOR STREET NE SALEM OR 97303
503-378-9066 VOICE 503-362-5120 FAX

Our legal objection is based on our belief that there is no connection, no nexus, between the act of building or purchasing a new home and the responsibility to pay a special assessment for affordable housing, and that the imposition of a financial loss on either builders or buyers – who are engaging in an activity that is not only fully permissible but which has no rational relationship to the problem being addressed – would be vulnerable to constitutional challenge. We also believe that local government price controls that would be allowed by HB 2890 are in fact a form of tax on either property owners, home builders or new home buyers or all three, and as such would be subject to challenge as being outside local government's taxing authority.

Our practical objection is that mandatory inclusionary zoning simply won't work and would be too costly.

- **Oregon's development patterns and building industry are vastly different from those in other states where mandatory inclusionary zoning is allowed.**

Other jurisdictions where mandatory inclusionary zoning has been used – California, Maryland and Florida, for example – have a different land use system and types of builders than Oregon. The average subdivision in Oregon is quite small compared to these other jurisdictions, so there would be fewer non-inclusionary zoning homes over which to spread the cost of the below-market homes. Moreover, in most other jurisdictions, the housing market is dominated by national or regional builders, many of whom are publicly traded, which gives the builder the ability to absorb additional costs in a way not available to builders in Oregon.

- **It might not appreciably increase the supply of affordable housing but does distort the housing market.**

While the data is mixed, a relatively recent study (2008) was done by the University of Maryland, which analyzed the inclusionary zoning experience in California between 1988 and 2005. They found that in jurisdictions with inclusionary zoning compared to those without such policies, overall housing starts were not affected, but single family starts declined and multi-family starts increased. In another study, published by the Harvard Kennedy School, the authors found that the record of inclusionary zoning policies in Massachusetts have "not been terribly productive" in terms of affordable units achieved.

- **It drives up the price of housing.**

The University of Maryland study also found that housing prices increased by an average of 2-3%, and as much as 5% in some California markets while the size of the homes decreased by 48 square feet. Although these price increases might seem small, they are significant to purchasers – and at the least, are trends in the wrong direction when the underlying problem is one of affordability.

- **It would require extensive local bureaucracy to administer.**

Unless an inclusionary zoning program is going to result in a windfall to participants (i.e. the first purchaser acquires the property at a discount but can sell at then-prevailing market rates), a sophisticated and expensive process to monitor and control property transfers for some period of time would need to be instituted. An equally elaborate system for administering the program would be required, as well.

- **Before a mandatory program is considered, voluntary approaches should at least be attempted.**

There are a variety of approaches that local governments could use to increase the supply of affordable housing that would not increase the costs to either the builder or the purchaser; almost two dozen examples are listed on the handout which accompanies this testimony. Few if any jurisdictions in Oregon incorporate many of these in their codes, and we would suggest that these and others should be tried and found lacking before any sort of mandatory program is allowed.

In summary, we believe that HB 2830 is bad public policy and bad housing policy, and we urge the committee to reject it.



TO: House Committee on Human Services and Housing
FROM: Jon Chandler (jchandler@oregonhba.com)
RE: HB 2890
DATE: March 22, 2013

The following list was developed out of a conversation between staff for OHBA and 1000 Friends of Oregon, and was simply the product of two long-time land use practitioners thinking out loud; it is therefore neither exhaustive nor the product of anything other than their mutual experience.

Important disclaimer: none of these items have been vetted or approved by either 1000 Friends or OHBA. It is intended as nothing more than an illustrative list of housing policy options.

- minimum average densities
- where appropriate, restrictions on SF homes allowed in MF zones
- allowance of accessory dwelling units as outright uses
- density bonus for affordable housing
- increased densities allowed outright in transit corridors, mixed use centers, and within city centers or schools, etc...
- SDC abatements for affordable housing
- protections for mobile home parks/relocation requirements
- less onerous off-street parking requirements
- zoning residential land to achieve certain average density within zone or city-wide
- duplexes or triplexes allowed in SF zones either as of right or with minimal process
- limited site & design review
- allowance of skinny streets, lower right of way requirements (street trees, parking strips) and street standards generally
- clear and objective standards for MF or higher density SF
- relaxed height limitations
- fee waivers/reductions
- SDC waivers/reductions
- local government participation in state required programs (storm water and wetlands maintenance, etc)
- locally funded interest rate buy-downs or other incentives
- move-to-the-head-of-the-line permitting
- limited local appeal
- expedited local approvals
- one-stop processing and approval

