



March 15, 2017

BY EMAIL

Members of the House Committee on Agricultural and Natural Resources

Representative Brian Clem, Chair
900 Court St NE
H-478
Salem, OR 97301

Representative Susan McLain, Vice Chair
900 Court St NE
H-477
Salem, OR 97301

Representative Sherie Sprenger, Vice Chair
900 Court St NE
H-388
Salem, OR 97301

Representative Greg Barreto
900 Court St NE
H-475
Salem, OR 97301

Representative Sal Esquivel
900 Court St NE
H-382
Salem, OR 97301

Representative Caddy McKeown
900 Court St NE
H-476
Salem, OR 97301

Representative Karin Power
900 Court St NE
H-274
Salem, OR 97301

Representative David Brock Smith
900 Court St NE
H-379
Salem, OR 97301

Representative Brad Witt
900 Court St NE
H-374
Salem, OR 97301

Re: House Bill 3245

Dear Chair Clem and Members of the Agriculture and Natural Resources Committee:

On behalf of Housing Land Advocates, I respectfully submit this testimony in opposition to House Bill 3245. This bill would allow hearings officers and planning commissions to conduct hearings and make decisions on applications for amendments to city comprehensive plans. These are not small or technical decisions; rather, this is proposed for any changes to the key planning documents and maps of cities. Under HB 3245, the only way the average resident of a local community could bring the proposed plan change to their elected body would be to appeal the decision of the hearings officer or planning commission. We have seen local government appeal charges range from a few hundred dollars to thousands of dollars. These high fees effectively shut community members out of their local land use process.

Housing Land Advocates (HLA) is a nonprofit public interest group that advocates for land use policies and practices that help provide an adequate and appropriate supply of housing in accordance with state and federal policy as expressed in Oregon's statewide housing goal and needed housing statutes and the Federal Fair Housing Act.

HLA advocates for thoughtful land use planning that aligns with housing policy. It advocates for appropriate state and local legislation and puts on an annual all-day conference on land use and affordable housing.

HLA also participates in local and state proceedings to ensure that state and local governments fulfill their state and federal obligations involving land use and housing, principally in Oregon's urban areas. This is why HLA is testifying on HB 3245 today. HLA monitors the Department of Land Conservation and Development's ("DLCD") weekly notices of the proposed comprehensive plan and zoning amendments of cities and counties to determine whether they potentially affect buildable land supplies or otherwise compromise local compliance with state housing goals, rules, and statutes. When necessary, HLA participates in local plan amendment proceedings. When necessary, HLA seeks guidance and enforcement from the Oregon Land Use Board of Appeals. This is a role that has long been critical to the enforcement and integrity of state land use policy affecting rural resource lands, wildlife habitat, transportation planning, and urban growth management. Other organizations have a broader or different focus, but all depend on the continuing availability of Oregon's efficient, economical, accessible, and authoritative appeals process for credibility and effectiveness.

House Bill 3245 strikes at the core of this important enforcement tool. It enables Oregon cities to set up financial and procedural barriers to entry into the state appeals process by all but those who have the resources to pay open-ended appeal assessments for costs billed by city attorneys, planners, and experts in addition to their own additional costs for local appeals. It enables cities to establish these barriers at the most critical nexus between state and land use policy, the local comprehensive plan. Oregon's courts have described local comprehensive plans as local "land use constitutions." Plan amendments, whether legislative or quasi-judicial, textual, or graphic, are "land use constitutional amendments." The changes all too often break key links between state land use requirements and the local zoning regulations and permits that authorize actual development. Whatever their form, comprehensive plan amendments always involve policy judgments of the kinds that governing bodies are elected to make.

Review by the Oregon Land Use Board of Appeals is the principal enforcement tool left because:

Acknowledgement is over.

Periodic review by local governments of their own land use plans has atrophied and is now used irregularly and only in some jurisdictions.

Land Conservation and Development Commission ("LCDC") enforcement orders are complicated, cumbersome, and prohibitively expensive.

Review by the Land Use Board of Appeals is the only tool that applies statewide. It is the only tool that is efficient, economical, accessible, and authoritative.

House Bill 3245 would enable Oregon's cities to encumber all four of those advantages for comprehensive plan amendments--the most important local land use decisions:

- Efficiency: It would enable cities to add time-consuming local procedural hurdles.
- Economy: It would enable cities to impose high costs for jumping over those hurdles.
- Accessible: It would enable cities to make appealing to LUBA unaffordable and inaccessible to all but the well-financed by making final local decisions unaffordable and procedurally treacherous.
- Authority: It would discourage access to timely and authoritative review and correction of errors, thereby denying timely and reliable guidance to citizens, applicants, and local planners.

HLA does not believe that House Bill 3245 can be rendered harmless by restricting its application to certain types of plan amendments.

Substantively, comprehensive plans implement a wide range of statewide land use goals that state law says are equal in weight. Limiting access to appeals involving one goal and not another upsets that balance.

Procedurally, even quasi-judicial map amendments to local comprehensive plans almost always involve a significant policymaking component that should be reserved for decision by elected governing bodies.

The land use decisions we make today will affect the housing supply for generations of Oregonians to come. These decisions are so important that the public, including organizations like Housing Land Advocates, should have the opportunity to present these decisions directly to elected bodies, without the added expense of local appeal fees tacked on to appeal planning commission decisions. Please vote no on this bill.

Sincerely,



Jennifer Bragar, President joined by the full Board of HLA
Danell Norby, Secretary Ed Sullivan
Anna Wendt, Treasurer Ellen Johnson
Mary Kyle McCurdy Al Johnson
Ben Schonberger Rebecca Kennedy
Jamin Kimmell Brian Powell