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TO: The Honorable Mitch Greenlick, Chair
House Committee on Health Care

FROM: Karen Girard, Manager
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Subject: SB 235A, Defines “enclosed area” for purposes of the Oregon Indoor
Clean Air Act

Chair Greenlick and members of the committee, I am Karen Girard, the Health Promotion and Chronic Disease Prevention Manager for the Oregon Health Authority. I am here today to present information related to SB 235A, which defines “enclosed area” for the purposes of the Oregon Indoor Clean Air Act (ICAA).

Oregon’s Indoor Clean Air Act protects nearly every Oregonian from the health risks of secondhand smoke. When it was first passed in 2001, the Indoor Clean Air Act was a major public health accomplishment for Oregon, offering a real opportunity to reduce health care costs and deaths from tobacco-related diseases like cancer, heart disease and stroke. By prohibiting smoking in the workplace and public places and within 10 feet of all entrances, exits and accessibility ramps, the Indoor Clean Air Act offers critical public health protections now that will result in reduced deaths later.

In 2015, the passage of HB 2546 expanded the ICAA to include marijuana and inhalant delivery systems (e.g. e-cigarettes). These expansions strengthened Oregon’s law and positioned Oregon as a national leader in smokefree workplace laws.

In addition to strengthening the ICAA, HB 2546 also removed the definition of “enclosed area” from statute and allowed it to be defined in rule. When HB 2546 was being crafted, OHA and multiple stakeholders, including the Department of Justice, recommended doing this in order to give OHA and all stakeholders--including businesses, employees, the public, and local enforcement staff--the opportunity to fix numerous compliance and enforcement issues that the original definition of “enclosed area” had given rise to.

Originally, the ICAA defined “enclosed area” as

“all space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling.”

While there are multiple components to this definition, the primary component that both businesses and inspectors struggled with interpreting and complying with was the requirement that walls must “extend from the floor to the ceiling”. The attached picture helps highlight this issue. As you can see, there is a small gap at the top of the wall running the length of the wall. This business owner claimed that this gap meant that this wall did not extend from floor to the ceiling and thus exempted this structure from the ICAA since it wasn’t technically enclosed. The local inspector disagreed.

The definition developed by the Rules Advisory Committee (RAC) that OHA convened in 2015 following the passage of HB 2546 addressed this issue by removing this problematic phrase “extend from the floor to the ceiling.” The RAC also expanded the definition of enclosed area to include structures with three walls and no ceilings or two walls and a ceiling. They did this based primarily on research demonstrating that such locations can trap second hand smoke, but also on the successful implementation of a similar definition in Benton County and on similar successful efforts in other jurisdictions around the country.

Through the RAC process, OHA also recognized the need for providing additional training to local public health department staff in charge of working with local businesses to achieve compliance. Accordingly, OHA delayed enforcement of the current rule while it works to train staff and educate businesses.

In addition, OHA has recently heard from bar and restaurant stakeholders that didn’t participate in the 2015 RAC that the current definition does not address some of their concerns. Key among these concerns is that many businesses invested heavily in constructing smoking areas that met the original “three walls and a ceiling” definition, but not the current definition, and that they are still grappling with issues related to inconsistency in the inspections and enforcement process.

After hearing this feedback, OHA decided to convene another RAC that included bar and restaurant stakeholders to consider and address these issues. The initial meeting of the new RAC took place two weeks ago on May 2nd. At this meeting OHA proposed a definition that went back to three walls and a ceiling (same language as SB 235A), but that eliminated the problematic requirement that walls extend from the floor to the ceiling. While the issue has not been resolved yet, the discussion highlighted multiple additional issues such as how to define a wall and a ceiling.

In order for the ICAA to maximize protection of public health and for businesses, employees, and the public to know their rights and responsibilities, these are crucial and complex issues that need to be addressed. The flexibility that the rulemaking process provides is necessary for allowing OHA to engage impacted stakeholders, gather information, and learn from past experience in order to develop an understandable, enforceable definition of enclosed area that is protective of public health and not overly burdensome on impacted businesses, as it also works with stakeholders to develop a related inspections and enforcement process that can be applied consistently, efficiently, and effectively in all parts of the state. Putting this problematic definition back into statute at this time will hinder OHA from developing a more acceptable definition that will work for everyone involved, while meeting the intent of the ICAA.

As it is currently written, SB 235A would create confusion and uncertainty for Oregon businesses, prevent OHA and its stakeholders from working together to develop a better solution, and put people in Oregon at risk by allowing people to smoke or vape in areas that can trap secondhand smoke and increase exposure for workers and the public. OHA is committed to working with businesses and enforcement agencies to write definitions that are as clear as possible.

Thank you for the opportunity to testify today. I am happy to answer any questions you may have.

