



American Planning Association
Oregon Chapter

Making Great Communities Happen

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February 22, 2019

Senator Shemia Fagan, Chair
Senate Committee on Housing
900 Court Street NE
Salem, OR 97301
shous.exhibits@oregonlegislature.gov

RE: Testimony from the Oregon Chapter of the American Planning Association on SB 8

Dear Chair Fagan and Members of the Committee:

This letter provides testimony from the Oregon Chapter of the American Planning Association (OAPA) on SB 8. OAPA is an independent, statewide, not-for-profit membership organization of over 950 planners from across the state working for cities, counties, special districts, state agencies, community-based organizations, and private firms. OAPA provides leadership in the development of vital communities by advocating excellence in community planning, promoting education and resident empowerment, and by providing the tools and support necessary to meet the challenges of growth and change.

Our Legislative and Policy Affairs Committee (LPAC) has reviewed SB 8 and urges caution in proceeding to adoption. The strength of the Oregon land use system is grounded in requiring that applicants, no matter how meritorious their objectives, comply with all of the applicable land use requirements and ensures such compliance by setting a fairly low bar for seeking judicial review. OAPA is concerned that allowing for attorney fee recovery in this case could set a dangerous precedent for eroding a long-established policy favoring open and all-inclusive appeals.

Currently, Oregon land use law allows for the recovery of attorney fees in very limited circumstances. First, the Land Use Board of Appeals (LUBA) may award attorney fees where a party “presented a position without probable cause to believe the position was well-founded in law or on factually supported information.” The second is where LUBA reverses an application denial and orders the local government to approve the application, as opposed to remanding the matter. Both of these authorizations are limited by the circumstances of the case, as presented, rather than to a particular party or to the nature of the application.

By contrast, SB 8 mandates an award of attorney fees against any unsuccessful challenger regardless of the merits of the appeal. This is likely to have a chilling effect on judicial challenges to affordable housing projects.

OAPA champions efforts at removing barriers to the provision of affordable housing but is reluctant to support the strategy proposed in SB 8 for two reasons. First, an appeal does necessarily delay the provision of affordable housing. Except in very limited circumstances, an applicant may proceed with construction once the local approval is final, notwithstanding an appeal. Second, and more importantly,

OAPA is concerned that allowing for attorney fee recovery for a particular class of applications will open the door to similar requests by others claiming that their urgency justifies the same demand.

An inclusive land use system is one that allows appeals by everyone, even those whose motives may not be as meritorious as others. As the potential risks of allowing attorney fee recovery as outlined in SB 8 outweigh the potential benefits, OAPA encourages the Committee to not adopt the proposed amendment to ORS 197.311, Section 2.

Thank you for your time and attention to our testimony.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Aaron Ray', with a stylized flourish at the end.

Aaron Ray, AICP, President Elect
Board of Directors

A handwritten signature in blue ink, appearing to read 'Damian Syrnyk', with a stylized flourish at the end.

Damian Syrnyk, Chair
Legislative and Policy Affairs Committee