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Oregon Chapter

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Making Great Communities Happen

March 17, 2019

Representative Alissa Keny-Guyer, Chair
House Committee on Human Services and Housing
900 Court Street NE
Salem, OR 97301
hhs.exhibits@oregonlegislature.gov

RE: Testimony from the Oregon Chapter of the American Planning Association on HB 2001-10 Amendments

Dear Chair Keny-Guyer and Members of the Committee:

This letter provides testimony from the Oregon Chapter of the American Planning Association (OAPA) on HB 2001-10 amendments. The proposed -10 amendments address some, but not all of OAPA's concerns. OAPA is an independent not-for-profit membership organization of over 950 planners from cities, counties, community-based organizations, and metropolitan areas across the state. OAPA provides leadership in the development of thriving communities by advocating excellence in community planning, promoting education and resident empowerment, and providing the tools and support necessary to meet the challenges of growth and change.

Our Legislative and Policy Affairs Committee (LPAC) reviewed HB 2001 when introduced and submitted testimony (dated 2/8/19) not in support of the bill as drafted. OAPA supports the intention of the bill and offered suggestions that we believe would improve the ability for local planners to successfully implement HB 2001. We also continue to offer our help to this committee and the Speaker's office to consider amendments to create a bill that can be passed and will support the development of needed housing across the state and offer an alternative planning approach as well.

Reviewing the subsequent -10 amendments, OAPA continues to be in support of the Legislature taking action to address housing availability and affordability across Oregon, but we still have several concerns with the proposed changes, summarized below, so remain neutral on the pending legislation. Additionally, our members still have concerns over the one-sized fits all approach and limits to local flexibility in implementation.

Recommended Amendments to HB 2001-10

OAPA offers the following comments and clarifying changes (in order as they appear in the -10 amendments, not in order of priority) to the proposed amendments before the Committee considers taking a vote. We offer these from the perspective of city and county planners who will implement a final version of this bill if passed.

1. Clarify intent as to application. Page 1, lines 7 through 10 – This needs to be clarified if intended only to apply to the cities over 25,000 within the Portland Metro area, aka metropolitan service district. If the intent is to focus on Metro or on one city in metro (such as Portland), we recommend being more specific.

2. Use consistent language. Page 1, line 10 – Rewrite line 10 (“...in areas zoned to allow detached single-family dwellings.”) to mirror the language on lines 13 and 14 (“...on each lot that allows for the development of a detached single-family dwelling.”). We understand the intent to allow missing middle housing in zones that allow for the development of single family dwellings. In many communities, existing single family dwellings in commercial or industrial areas are allowed to continue; we recommend against locating new housing in areas where planned uses may not be compatible with new housing.
3. Address all zones that allow single-family development. The bill should also address residential and mixed-use zones where a single-family dwelling is allowed to be developed, and leave commercial and industrial zones alone.
4. Ensure lot suitability standards apply. Page 1, lines 11 through 13 – Subsection 3, requiring that each city with a population greater than 10,000 shall permit the development of a duplex on each lot that allows for the development of a detached single-family dwelling, is concerning. As written it seems that a city would be required to approve a duplex on a lot regardless of lot size, lot characteristics, or environmental constraints. Page 1, lines 20 through 21 and page 2, lines 1 through 3, are similarly concerning as subsection 5 provides local authority to regulate siting and design of middle housing, however, this subsection also states regulations must allow at least one middle missing housing type on each lot without regard to lot suitability.
5. Reconsider attorney fee award. Page 2, lines 7 through 11, subsection 7 – It is not clear whether adequate urban services must be planned or actually in place to serve an area at the time that the code amendments authorizing middle housing are enacted. It is also unclear how a reasonable design standard will be defined but the specter of attorney fee recovery for both the local government as well as an intervenor is going to effectively silence any challenges to urban service adequacy, siting, or design compliance issues.
6. Clarify model code provisions. Page 2, lines 22 through 26 – This section is concerning because it would require the city to apply a model code to be developed by the Land Conservation and Development Commission under the terms of the bill. We oppose requiring local governments to use the model code if they have not adopted one by the dates proposed in Section 3. The purpose of model code is to provide examples that will inform local decision-making. Rather, give cities more time to comply with any required code changes to implement HB 2001 and provide more funding to the Department of Land Conservation and Development (DLCD) for technical assistance to local governments to make such changes. Before proceeding to make enforcement a priority, we strongly suggest DLCD be given adequate funding to support the development of local code changes that will encourage the development of middle types housing. Regarding the development of a model code, we recommend this work include reaching out to jurisdictions that have made this change to their codes to get their experience.
7. Clarify basis for cap on capacity estimate. Section 3b, page 3, lines 24 through 30, states capacity estimates cannot be increased by more than 5% within five years of adopting land use regulations or plan amendments. What’s the basis for this limit? If capacity is higher as a result of implementing the legislation the capacity estimate should be based on factual analysis and not limited to an arbitrary 5%.
8. Delete language related to System Development Charges. Section 6, page 4, lines 6 through 12, should be deleted from the bill. The delay of payment of System Development Charges (SDCs) for middle housing types will not have the effect of increasing the amount of this type of housing. As an alternative, if this section is intended to be included in a final bill, require the delay of SDC payments for all types of housing so it is simpler for local government staff and does not require two systems of accounting of payment of SDCs. Streamlining and simplifying regulations, not making them more complex, allows local government permitting to be more efficient, which provides a cost savings to the applicant.

9. Clarify Section 9. Section 9 (page 4, lines 16 through 20), should be updated to clarify that “governing document” is as defined in ORS 94.550 and as such is limited covenants, conditions, and restrictions (CCRs) and the like. Cities do not have authority to administer CCRs; clarify if the intent is to ensure that CCRs created after the effective date of this bill must also allow middle housing types consistent with city zoning where a single family dwelling is allowed to be developed.

10. Create realistic timelines to remedy deficiencies. Section 3a (1) and (2), page 2, lines 27 through 30, and page, lines 1 through 12, sets out an extension applicable to specific areas where the local government has identified water, sewer, or storm drainages system deficiencies. The proposed relief for, and accommodation of existing infrastructure capacity deficiencies seems unrealistic. A six-month extension of compliance deadlines (notwithstanding the apparent effort to apply for an extension) is not commensurate with the analysis and remedies needed for significant downstream off-site or near-site wastewater capacity deficiencies.

A Planning Approach to HB 2001

OAPA believes it is necessary to heavily weight locally assessed needs as the primary driver of any statewide policy to increase housing types and options. After all, the homes that we live in are the building blocks of local communities, and as Oregon’s planners we are obligated through Goal 1, (Citizen) Community Involvement to ensure that those who live in the jurisdictions we serve are actively participating in decisions that impact their lives. In addition to offering the above comments on HB 2001-10 amendments, we continue to suggest an approach that is more consistent with Statewide Planning Goal 10, Housing, while also satisfying our commitment to the communities we serve:

1. Require all jurisdictions to look at their housing inventory, needs, and regulations.
2. Remove local barriers so that middle housing types can be implemented where they make the most sense, sensitive to jobs/housing balance, infrastructure, support services, and development opportunity, and in sufficient quantities to meet housing needs.
3. Substantially fund technical assistance to communities that need help in doing these things. This investment should adequately support small and larger communities, to ensure that such tasks are completed by 2021.
4. Fund Department of Land Conservation and Development (DLCD) coordination and review to certify that jurisdictions have achieved their obligations.

Thank you for your time and attention to our testimony.

Sincerely,



Kirsten Tilleman, AICP, President
Board of Directors



Damian Syrnyk, Chair
Legislative and Policy Affairs Committee