



April 2, 2019

Chair Clem, Vice-Chairs McLain and Post, Members of the House Agriculture and Land Use Committee:

Re: HB 2003 and the proposed dash 4 amendment

As you know the League of Oregon Cities represents all 241 incorporated cities in the state. LOC remains concerned about the requirements and changes in law included in HB 2003, but appreciates the improvements reflected in the proposed dash 4 amendment. However, we still have concerns with amendments proposed in the dash 4 amendment and the remaining sections from the original bill.

Section 1: Regional Housing Analysis (Dash 4 Amendments)

First, LOC is supportive of the changes to the proposed regional housing analysis process and the limitation of its impact to local governments, in the near future. We are also supportive of the requirement that those performing the analysis will consult with local governments in finalizing the analysis. We also appreciate that there will be a review of the information and utility of these types of studies before there is a requirement that local governments use this data. LOC believes that performing this analysis once will help cities in starting local processes.

However, we are not certain that a year will be enough time to complete 11 regional studies that includes a 20 year need analysis, an inventory of current housing stock, an analysis of the shortage of housing, and report back to the legislature of the findings. This appears to put a significant burden on the Oregon Department of Administrative Services (DAS), Oregon Department of Land Conservation and Development (DLCD), and Oregon Housing and Community Services Department (OHCS) in a short period of time.

Sections 2-11: Housing Production Strategy (Dash 4 Amendments)

Cities across the state have been starting to use housing strategy documents as a way of setting out the local path to implementing the findings of their housing needs analysis. However, the new requirements in section 2-5 create a new requirement for cities to complete on a regular interval of every 6 years (for cities in the Metro region) or 8 years (for larger cities outside Metro). In addition, this work will also be required if periodic review is undertaken or another legislative review or comprehensive plan that addresses housing is undertaken. This is a new requirement on cities that will have fiscal impacts beyond the resources provided in section 24, as those dollars are only available for the next biennium. The amount of information that must be provided in the strategy pursuant to (3)(e) is complex and will take time and investment from cities.

Section 3(4) also appears to conflict with the requirements for plans in section 3(2). Section 3(4) states that proposed changes to a comprehensive plan or land use regulation cannot be included in the strategy. However, the strategy is required to include reductions of regulatory impediments and incentives and requires a schedule for adoption and implementation of each strategy. This level of specificity for changes to local regulation may call for including regulatory changes within the strategy. If the intention is to prohibit enactment without a land use process of these changes, that needs clarification. Otherwise, it is unclear what is intended by the prohibition within section 3(4).

LOC is also concerned that the criteria referenced in section 4(6) for evaluating a city's housing production strategy is the same as the criteria that DLCD is required to use to evaluate a city's success in achieving housing production under section 5(2). These two measurements and sets of criteria should be different. The strategy should be evaluated on a set of criteria that is related to the city's work to identify and plan to address current plans, incentives, and regulations. The review of if a city is meeting production and implementation of the strategy is inherently different. LOC recognizes that the rules will establish the criteria, but the legislation requires DLCD to use the same basic criteria for both evaluations.

Further, the criteria established in section 5(2) is not all based on the actions of the cities. The unmet housing need, development cycle and timing, and other suggested criteria may not be related to the city's regulatory structure but may be dependent on the availability and decisions of the private market to create development in their region. In LOC's conversations with cities across the state, many cities, including larger cities outside of certain areas of the state do not have the developers that are necessary to meet the needs of the housing shortage. This is not due to city action but the impacts of regional markets, the recession, and aging population of the workforce in the area. Section 5 of the proposed amendment would allow DLCD to provide increased oversight or even seek enforcement in cities for private market issues beyond their control.

Section 13: Public Property for Housing (Dash 4 Amendment)

LOC is concerned that section 13 is written too broadly and could significantly impact local government land use planning and preservation for vital public infrastructure. As drafted, the amendment requires a city to allow development of housing on public property that is "zoned for residential development or surrounded by parcels zoned for residential development" (emphasis added). It is the second category of land that is concerning.

Cities may preserve lands for important government functions besides parks or open space but will not be used by the residential development until sometime in the future. This is particularly true for lands that are expected to be used to serve residents of the area, such as schools or public facility infrastructure that will serve future capacity needs. Placement of these public amenities may need to be near where the services will be utilized. The mandate that cities use these properties for housing may prevent the future use that might be delayed for a variety of reasons, but often tied to the cycle of capital improvement financing.

LOC recommends that cities be permitted to amend the use of these lands for housing development with discretion to determine if it is the best use of the public property.

Section 18: Attorney fees (HB 2003 as introduced)

LOC has no position on the provision of attorney fees to intervening applicants. However, as it is drafted it is unclear if the permit for partition of subdivision must also be related to a project to construct publicly supported housing.

Section 20: Burden shifting (HB 2003 as introduced)

LOC opposes this shift in the burden of proof. Cities must create findings that support land use decisions, such as conditioning development. It is through those findings that we establish the basis of the decision, and those findings are provided deference in appeals. Not requiring an appellant to show the deficiency of the findings does not fit within the process for appealing a local government decision. Instead, cities will be left to assert their findings without requiring the appellant to show how those findings are deficient.

Conclusion

While we believe that the dash 4 amendment provides significant improvements from the original bill. We strongly support creating new data resources for cities to work with as we try to create local solutions to the housing shortage.

However, we remain concerned that the state is increasing the workload of cities without sufficient financial support. Periodic review was intended to provide the same consistent update to local plans, but the expectations of the process coupled with the disinvestment in resources to support the process have prevented its success as a policy. It is possible that a similar cycle will occur with the new requirement to continuously update housing strategic plans. In addition, cities view the increased enforcement and oversight by DLCD as likely to hold them accountable for decisions that are made by the private development market. When a city fails to abide by the goals and statutes, enforcement can be appropriate, but the criteria for assessing a city's

compliance should be based on the regulatory structure that a city provides to the development market to work in, not the results of those private decisions.

LOC has strongly advocated for increasing the partnership between the state and cities in trying to address housing shortages. However, instead of seeing investment in local processes and joint problem solving, HB 2003 and similar legislation appear to provide more work with limited funding to pay for it. Without knowledge that these programs will change outcomes, it does not make sense to create a new layer of land use planning work that is untested or unclear. Instead, investing in the processes that do exist, but cities have not been able to afford, would be more likely to move the needle on housing and help cities work on addressing this significant problem.

LOC appreciates your consideration of the impacts this bill will have on cities and is happy to work toward a solution on housing as a partner to the state.

Sincerely,

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