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TO: House Committee on Human Services and Housing
Rep. Alissa Keny-Guyer, Chair
Members of the Committee

RE: **SB 8 A – Oppose** (Mandates LUBA award of Respondent costs and attorney fees)

In 2017, the City of Hood River rezoned a local park to allow development of subsidized housing. The city revealed in early 2018 plans to sell the five acres of public woods and fields to the Columbia Cascade Housing Corporation¹ for \$1.

Most thoughtful and caring people will agree that housing for the less privileged is an important social priority, as do I. Much of my legal career was spent in service to children and the indigent. But I also felt deeply the loss of a beautiful public park,² and I appealed the decision as an individual citizen to LUBA. Our city has rules that protect its local parks, rules it had chosen to ignore.

LUBA slapped my arguments down with barely a glance. Several they did not even bother to address. Under provisions of SB 8 A, at that point I would have been personally liable for legal bills for both the city and Columbia Cascade that I'm sure mounted well into the five-figure range. I would have lost my shirt, and most certainly my savings, for trying to protect a local park.

Such a result would have been crushing. You can be sure that in the face of such a risk no low-budget local citizens' group or person of average means or would appeal any city decision in the future. And that, of course, is the whole point of this bill.

Perhaps you may feel this is right: If I waste the city's time and money, waste the time and money of an important quasi-governmental authority, I should pay. I should pay so heavily that my loss becomes an example to others who might be tempted to speak up when they perceive abuses.

But democratic citizen involvement is essential to our land use system, which depends almost entirely on citizen input for enforcement. Without vocal citizen oversight, local

¹ Joel Madsen, Columbia Cascade's Executive Director, offered testimony in support of SB 8 before the Senate Committee on Housing on March 29.

² This is not a NIMBY case; it is a park-protection case. I do not live in the neighborhood of the park, although I enjoy use of it.

governments can pretty much do as they please and ignore the rules that regulate the fair functioning of any good legislative system.

Oddly, ignoring the rules can be even more of a risk where decision-makers have no venal interest, but have the best of intentions to do the right thing in the public interest – for example, where subsidized housing for the less-privileged is concerned. The temptation to do good at all costs, to bend the rules, can be too much to resist.

The social good of public housing gets pitted against other important social interests, like democratic participation in city affairs – or protecting public parks. This should not happen, but it does.

That’s what happened here in our Hood River case. The LUBA decision was appealed to the Court of Appeals. The Court reversed LUBA and the city with the somewhat unusual finding that the city’s interpretation of its own rules was so strained as to be “implausible.”³ In its zeal to do the right thing, the city let the ends justify the means.⁴

But even if the Court of Appeals had ultimately agreed with the city, there is already a provision on the books to allow an award of costs and attorney fees if LUBA concludes that issues raised on appeal are truly frivolous.⁵ SB 8 A is simply unnecessary. In an adversarial justice system, someone has to lose. A party can raise important issues and still not prevail. Punishing the loser regardless of merit simply punishes participation.

But then, the clear purpose of SB 8 A is to punish participation, to discourage all challenges. Even though its application is limited today to subsidized housing development, it takes just a small legislative shift in language to apply a *de facto* gag to opponents of other types of development as well. You know how easily this can happen. The most slippery of slopes are paved with good intentions.

Please consider the opposition testimony of other citizens and many groups representing a range of interests and constituencies: the League of Women Voters, Central Oregon Landwatch, the Oregon Land and Water Alliance, the Oregon Progressive Party, Thrive Hood River, the Oregon chapter of the American Planning Association.

We urge you to let SB 8 A die a quiet death. Tom McCall, the father of Oregon land use planning, would stop rolling in his grave and give his blessing.

³ *Crowley v. City of Hood River*, 294 Or App 240, 246 (2018).

⁴ One week ago, on March 22, the city voted once more on remand to rezone the park for housing. This attempt will also be appealed to LUBA.

⁵ORS 197.830(15)(b): "The board [LUBA] shall also award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-founded in law or on factually supported information."