



HOUSING ALLIANCE

May 6, 2019

House Committee on Human Services Housing
Oregon State Legislature
900 Court Street NE
Salem, OR 97301

Dear Chair Keny-Guyer, Vice Chair Noble, Vice-Chair Sanchez, members of the Committee:

I am writing to you today on behalf of the Oregon Housing Alliance to express our support for SB 8A, and to answer some additional questions regarding SB 8A that arose during the public hearing on April 29, 2019. SB 8A provides attorney's fees for instances in which an affordable housing development is appealed to the Land Use Board of Appeals, and the developer or the city prevail.

The Oregon Housing Alliance is a coalition of ninety organizations from all parts of the state. We believe that all Oregonians need a safe, stable, and affordable place to call home.

As you heard on Monday, April 29, we have skilled affordable housing developers across our state who are experts at building safe, stable, and affordable rental housing and affordable homes for sale. Their work is complex, and begins with identifying potential locations, needs, and resources. You heard directly from these organizations who invest significant time and resources into public input processes before a development is permitted, and before decisions regarding the development itself could be challenged on land use questions.

For example, there are a range of public input processes a project might undergo, which involve notification and opportunities for public involvement and/or testimony:

- A zoning process or perhaps a comprehensive plan to zone the site as allowing multifamily housing. If the site is not zoned for multifamily housing, it would need to be rezoned prior to being planned for affordable housing, which would trigger a public hearing.
- If the site is owned by the local government, a public hearing to sell the land to an affordable housing developer would occur, and likely to rezone it as well.
- If there is any other sort of land use application – a subdivision, a planned unit development, a code variance – those all require public hearings and opportunities to comment before a planning commission. The decision by the planning commission is also appealable to the local jurisdiction.
- Some local funding sources – CDBG or HOME dollars for example – also have advisory committees which have public processes to approve funding awards for affordable housing.

We know many developers have opportunities for public input during the design process. As you heard during the public hearing, some organizations use a “design charrette” or other process where neighbors and the developer come together to look at the design and the surrounding neighborhood to develop the best project possible, and to try to address concerns.

The action which this bill will impact, an appeal to the Land Use Board of Appeals, or LUBA, is a final step in a long public input process – neighbors to the site have most likely had a significant number of public input opportunities such as the ones noted above, and affordable housing developers have gone through a process to try to get to agreement and support from the neighbors. There are many opportunities for public input, and any real concerns that aren't simply about living next door to affordable housing have had ample opportunity to be raised during public input processes prior to a decision being appealed to LUBA.

We do know, however, that even when sites are zoned appropriately, there may be concerns expressed or challenges filed by local neighbors that have little to do with the proposals themselves. These neighbors may be motivated by concerns over living near affordable housing and misconceptions about who lives in affordable housing or who simply want density to be limited, use zoning and design arguments to increase the difficulty of siting housing.

In response to questions during Committee on Monday, April 29, we did undergo a survey of cases decided by the Land Use Board of Appeals during the calendar year of 2018¹. The Annual Report completed by LUBA indicates that there were 177 appeals decided, of which 45 were affirmed.² Our limited review of these cases indicated that only one was related to regulated, affordable rental housing³, and we do not believe that SB 8A would apply to this case. The case, *Crowley v. City of Hood River*, is related to the zoning of publicly owned land, and while the plan is to use this site to develop affordable rental housing, there is not currently a restrictive covenant on the property that might trigger the provisions included in SB 8A.

We believe SB 8A will be limited in its impact. We believe the bill will provide a small but meaningful assurance to affordable housing providers that if opportunities for public input and their efforts to involve neighbors and community members in design and development still result in appeals all the way to the Land Use Board of Appeals, and they prevail, they will be able to recover at least some of those attorney's fees under the provisions in this bill.

When affordable housing developments are challenged and appealed to the Land Use Board of Appeals, it costs precious time and resources. Affordable housing developers rely on public dollars to build and finance affordable rental housing. Delays due to neighborhood backlash and appeals mean that projects may cost more to build, may not include as many homes, or may not be built at all.

Challenges to affordable housing may be a delay tactic, or an attempt to reduce the size and scope of the project, even in the face of overwhelming need across our communities. We believe that Senate Bill 8A will help to provide reimbursement for attorney's fees as well as potentially reduce the number of claims which only seek to delay the project. We are concerned about what we perceive to be the large number of projects which face delays simply because neighbors are concerned about living near affordable rental housing and they wish it to be built somewhere else.

Affordable housing is unique. It is, as you have heard, often difficult to finance due to complex funding sources and timelines for those funding sources. As you have also heard, it can be difficult to build due to complexities with siting, zoning, local processes, and more. We cannot let the additional costs of delay tactics to be added to the cost of the homes our communities need.

Given the crisis our state is facing with homelessness, extreme rent burden and a severe lack of affordable housing, SB 8A can be an important message sent by the Legislature to share that affordable housing should be built in all of our communities, and that everyone deserves a safe place to call home.

I did also want to take this opportunity to clarify a statement I made during the public hearing last week, for the record. I noted during my testimony that LUBA can currently award attorney's fees to prevailing parties when

¹ The Land Use Board of Appeals makes decisions available, by year, on their website. 2018 calendar year decisions are available here: <https://www.oregon.gov/LUBA/Pages/2018Opinions.aspx>.

² <https://www.oregon.gov/LUBA/docs/SB%2077/2018%20Annual%20Report.pdf>

³ *Crowley v. City of Hood River*, <https://www.oregon.gov/LUBA/docs/Opinions/2018/01-18/17071.pdf>

the position is not well founded or factually supported, per ORS 197.830 (15)(b)⁴. My testimony stated that this is allowed, when in fact it is required. However, it is still our understanding that this standard is very high, and attorney's fees are very rarely awarded under this provision.

We are hopeful that SB 8A would simply discourage the complaints at LUBA that are simply based on not wanting to live next to affordable housing, and are appealing in hopes that the project will lose its funding or won't have needed resources to see it through to that point.

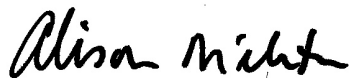
We know that people who live in and need access to safe, stable, and affordable housing are just like the rest of us – parents trying to provide a better life for our children, seniors who have helped to build our communities and now rely on social security for their income, people who experience a disability who rely on a limited and fixed income, and other people working low wage jobs who need assistance in the face of rising housing costs.

Affordable housing is an important part of our community infrastructure, and the people who call these apartments home are vital members of our community – they work as construction workers, bank tellers, school teachers, day care providers, health aides, and janitors; they are the seniors who helped to build our community; they are the people who experience disability and deserve a place to call home integrated into our community. Safe and stable housing that people can afford is key to accessing opportunity.

We urge you to support SB 8A.

Thank you very much for your time, and for your service to our state.

Sincerely,

A handwritten signature in black ink that reads "Alison McIntosh". The signature is written in a cursive, flowing style.

Alison McIntosh
On Behalf of the Oregon Housing Alliance

⁴ ORS 197.830 (15)(b) *The board 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.*

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