

To: Whom it may concern serving in the Oregon Legislature or their staff

FR: Mark Fitz, Resident of Damascus, Oregon

RE: SB 226-2 Damascus Euthanization Bill

DT: June 3rd, 2019

I apologize for any typos as I discovered that SB 226-2 was before you this morning. This is a deep subject and I am moving faster than I should in providing written testimony. I urge you to consider the bigger realities of this bill and find a better solution. The best solution for Damascus and all of Oregon would be for this bill to clarify a municipalities responsibility to meet Oregon's Land Use requirements and that this responsibility cannot be delegated locally. That Oregon pre-empts local city councils and county commissions to be solely responsible for answering to LCDC on passage, update, or meeting Statewide Land Use Goals.

Background of Damascus

If you are new to this story, as someone who got involved later, let me tell you an outsider coming into it perspective. The City of Damascus was formed due to the force of personality and political capital of a retired Fire Chief named Dee Wescott. This man is a legend and had profound ideas with great intentions. He was loved and well known.

He organized and put in motion the first new city in Clackamas since Happy Valley decades prior. He made that city's foot print as big as Gresham, which is where it's problem started. He dreamed big and brought in a diverse coalition of people to realize it. Dee was the first Mayor of Damascus. Dee passed away before finalization of the first Damscus comprehensive plan, and left a vacuum that the next two Mayor's could not fill. The third mayor after him advocated for Disincorporation though she could never get a majority of the City Council to go with her on that.

Into that vacuum of leadership came some Charter changes due to ballot measure. One of these being a vote for any land use plan change or adoption. In that time the City Council has passed four different Comprehensive Plans which failed voter approval. Though repeatedly advised by our legal council that the Charter does not apply to the administrative requirements placed on a City Council specifically by Oregon's Land Use system and it's law, the previous City Councils abided by it seeking voter approval.

That brings us here to today. Where a functional City Council is meeting, can and will pass a plan to LCDC, and seeks the Legislature to give time for them to correct the problems of the past once and for all.

In fact, if you adjusted this Bill to direct that a City Charter cannot restrict any Municipality in the State of Oregon from answering and finalizing it's land use obligation to LCDC, that would fix this problem better than what you are seeking. As it would settle once and for all the pre-emptive power of Oregon land use over a local municipality on this issue (as other cities have tried to refer Comprehensive Plan changes to voters, and no doubt will again).

Damascus Today

Damascus is legally a City. Under Oregon's Constitution that enables it rights you are seeking to deny it.

Under Section 4 of SB 226-2 the Legislative intent is to "cure any defect in the procedure" which is interesting. Because the whole procedure of the Legislature attempting to destroy a City's Charter violates the Home Rule clause of the Oregon Constitution. I also cite in Section 1 of SB 226-1 that your legislation discusses the "surrender" of the Damascus Charter. That's you legislating a change to a Home Rule Charter.

This is the Legislature's third time at bat on this subject. You might want to examine the one-off nature guided directly at one single city. This clearly violates Oregon's Home Rule Charter provision of our Constitution.

Article XI, section 2, of the Oregon Constitution, provides in part: "The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the state of Oregon[.]"

What the Legislature keeps attempting to do can be described as a legislative sniper shot to legally assassinate the City of Damascus. It would be one thing if the City of Damascus adjusted the voter turn out and threshold requirements. Of course you could not get the full City Council of Damascus to buy in on that. So this is doomed to be overturned by the courts as it has in the past.

In fact today you have a City Council meeting. This City Council is also capable of referring a Plan to LCDC (the true sin of Damascus) to comply with the legitimate Pre-emption needs of Oregon and it's Land Use laws. You should support this! It would be a happy ending for all of Oregon.

If this wasn't Damascus but another city it would be clear. Ironically, given the lack of support for Damascus, The League of Oregon Cities even states that their moto for this year's Legislative Session is "Let Cities Work and that they will be "encouraging the preservation of Home Rule." Home Rule matters and must be upheld.

It is important at this moment of convenience to realize that bigger things are at stake here. In Donald Trump's America, the progressive voter focused institutions must be preserved. Many seek to degrade our values, and we must be vigilant to protect against today's political convenience thinking of a bigger picture of resilient local yet messy democratic public process. Home Rule Charter and the democratic local control associated with it may be inconvenient, but they matter.

To quote a League of Oregon Cities white paper on the subject of State Pre-Emption and Municipal Home Rule and it's history (The Origins, Evolution and Future of Municipal Home Rule in Oregon, League of Oregon Cities, 2017, <http://www.orcities.org/Portals/17/Library/HomeRuleWhitePaper6-15-17.pdf>):

[I]n nineteenth-century Oregon, only the Legislative Assembly had the power to incorporate new cities and to establish and amend city charters. If a group of citizens wanted to incorporate a city, the Legislature had to pass special legislation that both created the city and provided the new city with specified, limited powers. The populist movements of Gilded Age

America, however, led to fundamental changes in city-state relationships across the country, including in Oregon. Beginning in 1901, the Oregon Legislature began to consider constitutional amendments that would redistribute power over local charters to their respective localities. That effort coincided with the push for an initiative and referendum amendment to the Oregon Constitution. Eventually, in 1906, consistent with a wave of home rule reform sweeping the nation, the voters of Oregon adopted a constitutional amendment that granted the people the right to draft and amend their own municipal charters, independent of special legislative approval.

At the dawn of the 20th Century the Oregon Legislature left behind local city formation for a reason. The local control and direct democracy of a Home Rule charter is up there with universal suffrage and civil rights. Please honor this Oregon history.

The case law on this subject is very clear as well. You are seeking to dissolve a City because its own citizens seek to keep a city. The last few years have actually put Damascus in a better place. Rare in politics is it that the whole opposition gets up and annexes into a neighboring city. The sitting City Council does not seek to change those annexations. They only seek to pick up where they left off given the solution provided by people moving to neighboring Happy Valley.

Please honor local control and the intent of the Oregon Constitution. Do not allow SB 226-2 to continue.

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