



House Committee On Agriculture, Land Use, Natural Resources, and Water Testimony on HB 2659

April 4, 2023

Chair Helm, Members of the Committee,

Thank you for the opportunity to provide comments today on HB 2659. By way of background our organizations represent thousands of professionals engaged in the housing industry, business owners, transportation providers, and concerned citizens. Additionally, representatives from our organizations served on the Climate Friendly and Equitable Communities (CFEC) rulemaking advisory committee or were actively engaged in the rulemaking process.

While our organizations do not have a position on HB 2659 at this time, we wanted to take the opportunity to provide the Committee with background information on the CFEC rulemaking in hopes that the Legislature will provide needed oversight to any future process related to these rules.

At a fundamental level, we do not disagree with the premise that Oregon's largest communities should be more walkable, bikeable, and have access to multiple transportation options. We also firmly believe in housing equity, and support changing our planning system to allow more diverse and abundant housing in our neighborhoods. However, we also believe that changing our planning system to the degree that the CFEC rules did should be done carefully, with robust analysis, and thoughtful collaboration with local governments, businesses, housing providers, and communities. In short, there was a way to make these rules achieve their intended objectives, without causing significant unintended consequences, and shaking trust in the rulemaking process. Unfortunately, that is not what took place.

Despite our organizations' best efforts to assist DLCD throughout the development of the CFEC rules, most of our questions, concerns, and suggestions were minimized or altogether ignored. What unfolded was a highly controversial process that resulted in not only many of our organizations, but several local governments, filing lawsuits against DLCD for failed process and significant issues of legal authority.

Before the CFEC rules were formally adopted, our organizations jointly [submitted a series of questions](#) regarding various provisions of the CFEC rules and their potential impacts to our communities. We understand that DLCD staff may have had limited capacity to respond in writing to these questions at the time we submitted them, but we firmly believed it was essential for these concerns to be fully understood by the public before the rules were adopted. Our request for answers in writing was denied.

These unresolved concerns and unanswered questions are the reason why a large coalition of organizations and over a [thousand Oregonians submitted another coalition letter](#) requesting that DLCD slow down, study the impacts, and broaden the conversation to include other impacted stakeholders who had not been previously included in the rulemaking process. Regrettably, this request was also disregarded.

To make matters worse, the rules were redrafted multiple times, without proper notice to the public. Despite active engagement on these rules for two-years, our organizations were not even confident in the final rule language until they were filed months later with Secretary of State's office. This rushed and arbitrary timeline for adoption is what led us to where we are today.

It is important for the Committee to note that many of the provisions that we, as well as local government, expressed concern about are issues that local jurisdictions are now having to deal with as they try to implement these broken rules. These issues are causing significant concern from community members, and are likely to have serious downstream implications for local governments, housing development, local businesses, and freight transportation.

A new set of [temporary rules](#) was just released to the public yesterday evening, comments are already due on April 17th, and the rules are preemptively set for adoption at LCDC's meeting on April 20-21, 2023. While we appreciate the intention of DLCD to remedy issues in the rules, we remain hesitant about supporting new rules that don't truly alleviate the multitude of problems and that are completed through another rushed process. Additionally, we are concerned about the Commission's plan to adopt the temporary rules so quickly, without taking more time to consider public comment.

If DLCD is going to reopen the CFEC rules, we hope that they will be done with robust engagement with RAC members, on a reasonable timeline to address all concerns, and will be accompanied by thorough analysis of impacts to local government and the regulated community. Another rushed and limited process will not yield better results, and will only stand to further erode the trust the public has in agency rulemaking.

Whether it is through additional rulemaking or a legislative solution, we urge the Department to please include our organizations in conversations, listen to our concerns, and consider the following principles as it considers changes to the rules:

- **Conflicts with Legislatively Granted Authority** – As the Courts will have to decide, there are considerable questions about whether many of the rules go beyond DLCD's statutory authority and in some cases, conflict with statutory authority delegated to other agencies by the Legislature. As creatures of statute, any revisions to these rules should be within the bounds of DLCD's authority and, as discussed below, align with the policies and statutes passed by the Legislature.
- **Alignment with Housing Goals and HB 2001 (2023)** – It is essential that the CFEC rules are amended to ensure that Oregon's communities can meet their housing objectives, and that we are reducing barriers to housing development statewide. Our organizations and many communities have expressed significant concern about certain provisions of the CFEC rules having negative implications for housing production, community growth, and increasing the

cost of housing. Alignment with the forthcoming OHNA methodology and HB 2001 is essential, and the CFEC rules must be changed to prevent any conflict with the Governor's objective of achieving 36,000 housing units a year.

- **Negative Impacts to Freight, Small Businesses, and Economic Development** – Some rule provisions, particularly around parking, access, circulation, and loading zones, etc. are likely to result in restrictive interpretations of the types of development allowed both inside and outside of climate friendly areas. Significant revisions are needed to ensure that the rules do not have unintended consequences for our supply chain, local businesses, and workers desperately trying to recover from the economic loss caused by the pandemic.
- **“Allowing” vs “Prescribing” in the Rules** – Many of the rules are overly prescriptive and go far beyond what is appropriate in administrative rule. The CFEC rules could yield positive results if they are amended to grant local government's needed flexibility to incentivize and allow denser development patterns. Instead, the rules are overly prescriptive and likely will have the opposite effect they are trying to cause, as the “one-size fits all” approach does not consider local barriers and market realities.
- **Unanswered Questions and Transparent Process** – There are still many unanswered questions about these rules that go beyond the clarifications proposed in the temporary rule amendments. Before another round of rules are adopted, stakeholders' questions need to be answered, and the public needs to be properly informed of intended rule changes.

Thank you for your time and consideration of our concerns. Please do not hesitate to reach out to any of organizations with questions or concerns.