



THE BUREAU OF  
**PLANNING &  
SUSTAINABILITY**

May 11, 2023

Chair Fahey, Vice-Chair Breese-Iverson, Vice-Chair Kropf and members of the Committee.

Re: HB 3414 – housing variances and accountability

Thank you for the historic level of support for housing that we are seeing from you and your colleagues in this session.

The City of Portland shares the urgency in addressing housing production by streamlining and expediting permit reviews. Over the last two years, the City of Portland has changed our zoning code and land use review procedures to reduce the need for public hearings and increase the use of clear and objective standards for housing developments.

### **Variations**

With respect to the variance procedures in Section 2, we understand the need for a nimble variance process that allows difficult sites to be developed into needed housing. This flexibility needs to result in variances that increase the number of housing units compared to compliance with the regulation – as proposed in Section 2 (3)(b)(B) of the -5 amendments.

We appreciate the work that has gone into the amendments, which put some basic parameters on the types of requests that would be eligible for automatic approval. Additional changes to the bill are needed to ensure we don't inadvertently create a loophole for someone to abuse this flexibility. We support using the -5 amendments as the starting point for further work to improve this legislation.

A major issue is to make clear that these preferential variances can only be used to adjust development standards, not procedures. A developer should not be able to switch the type of procedure or eliminate steps in a procedure.



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Key provisions that need to be address are:

- Limiting the number of variances that could be requested on any single project, as drafted in Section 2 (1)(d) of the -5 amendments.
- Exceptions for regulations that are required by State statute or administrative rules, such as the Transportation Planning Rule (OAR 660-12).
- Protection for historic resources. New construction within historic districts could be eligible for a modification, but there should be an exception for protection measures for a site with a historic designation.
- Establishing clear limits on the amount of modification, such as those in Section 2(2) of the -5 amendments, as well as approval criteria that requires showing the intent of the standard is still being met or mitigated.
- Clear definition of what constitutes a “health, safety, or habitability issue”. Specifically, habitability is not defined in statute and will be ripe for legal challenges.

This bill is a major change to development review procedures and standards. A 10-year sunset clause is too long. There should be a 5-year sunset to give an opportunity to assess the type of development that results from these modifications.

### **Housing Accountability and Production Office**

We support the creation of a Housing Accountability and Production Office (HAPO) to provide technical assistance and streamlined enforcement to ensure local jurisdictions are promoting housing production.

This part of the bill needs to be clearer that a housing complaint can only be pursued through one venue – a LUBA appeal, an LCDC enforcement petition, or a HAPO complaint. Having a case in more than one venue would be a tremendous burden on local jurisdictions and could result in conflicting direction from multiple sources. Section 4(2) of the -5 amendments is a start but needs clarification that only one path can be utilized for a given case.

The City of Portland again thanks you for your work and looks forward to the continuing discussion on how to increase housing production.

Sincerely,



Donnie Oliveira  
Director

