



February 22, 2024

Representative Julie Fahey, Chair  
House Committee on Rules  
900 Court Street  
SE Salem, OR 97301

Dear Chair Fahey, Vice Chair Helfrich, Vice-Chair Kropf, and Members of the Committee:

The League of Oregon Cities (LOC) writes to share concerns with HB 4023 and the -2 amendment. The LOC appreciates the intent of this bill and supports policies and new tools that would help site critically needed community-based treatment facilities in Oregon. Unfortunately, the approach in HB 4023-2 raises significant concerns for local implementation and the LOC respectfully requests that the committee work with cities, providers, and advocates on technical improvements.

HB 4023-2 would prohibit local governments from denying or conditioning approval of a residential treatment facility, as defined in ORS 443.400 in land zoned for commercial use, light industrial use, and publicly owned lands. While this bill does not facially violate the federal Fair Housing Act (FHA), it has the potential to violate the FHA as applied. The LOC is concerned that without additional needed clarifications to existing state law, HB 4023-2 will increase confusion and legal liability for cities trying to approve residential treatment facilities that are desperately needed across the state.

Under the FHA, local jurisdictions must permit residential facilities in single-family dwelling zones, at least to the extent that those facilities are similar in the number of residents to single family dwellings permitted in those zones. For example, if a local jurisdiction permits single-family dwellings up to a specified number of residents or limits occupancy according to a specified formula, then residential facilities up to the specified number of residents or that limit occupancy according to the same formula must also be permitted. Nonetheless, many local jurisdictions treat behavioral health housing differently than other types of housing, due to the outdated ORS and in response to public opposition to siting these facilities.

Current state law in ORS 197.667, needs to be updated to be consistent with the FHA. Under current ORS, local jurisdictions may misinterpret or face litigation when interpreting what the federal law requires in terms of permitting residential facilities in zones designated for single-family dwellings. The current wording of the statute states that a local government "may" allow a residential facility in a residential zone where a single-family dwelling is allowed. In actuality, local governments "must" require residential facilities in a single-family dwelling zone in most circumstances under the FHA. ORS 197.667(3) should be updated with the word "shall" to comply with the FHA. That simple change is necessary to prevent violations of the Fair Housing Act too common in residential facility siting. HB 2506,

introduced in the 2023 session attempted to update Oregon statute accordingly and clarify local jurisdictions' responsibilities under the FHA, but did not pass.

Without the needed update in existing ORS for siting residential facilities in residential neighborhoods, HB 4023-2 is likely to create FHA violations when applied and will increase legal liability for cities when approving residential facilities. This is because cities will continue to face strong public opposition to siting these facilities in residential neighborhoods without the needed ORS update clearly stating that these facilities must be approved. HB 4023-2 will be seen as policy direction from the Legislature to instead site facilities outside residential areas, which in effect will treat these facilities and their residents differently than other residential development, thus violating the FHA and creating legal confusion and costly litigation for cities that need to be able to do their part in increasing critically needed community-based treatment facilities across Oregon.

Many cities do not have full time legal counsel, and for those that do, they do not have capacity to absorb the increased legal liability created by the passage of HB 4023-2. With or without the passage of HB 4023-2, the LOC requests that the state provide grant funding to the LOC to work in partnership with the Fair Housing Council of Oregon to develop a legal guidance and training for cities to approve residential facilities in compliance with the FHA and state law.

Thank you for your consideration,

Ariel Nelson, Lobbyist  
League of Oregon Cities