Testimony by City of Wilsonville Mayor Shawn O'Neil Supporting an Amended HB 2138-1:

Ambiguous Phrases and Lack of Clarity in Some Sections of Proposed Legislation May Result in Unintended Consequences Detrimental to the State Goal of Increased Middle-Housing Production

Scheduled for public hearing on March 3, 2025, before the
House Committee On Housing and Homelessness

Chair Marsh, Vice-Chairs Anderson and Breese-Iverson, and Members of the Committee:

I am testifying on behalf of the City of Wilsonville in support of an amended version of HB 2138-1. The City of Wilsonville has been actively engaged with senior management of the Governor's Office and Department of Land Conservation and Development over the past year-plus in providing feedback on draft legislation, including hosting a tour this past summer of Wilsonville's residential development opportunities.

Wilsonville was one of the first jurisdictions to adopt an HB 2001-compliant middle-housing code and has had substantial experience implementing it, including several middle-housing land divisions. Wilsonville also brings the experience of broadly allowing a variety of middle-housing housing throughout the City for decades. We hope you find the City's comments helpful in further shaping HB 2138-1.

Wilsonville is concerned that a combination of bonuses, novel definitions, and other special allowances in statute and rules lead to confusing definitions divorced from what a reasonable person could imagine what a word means. As an example, with the combination of density bonuses outlined in Section 3, defining duplexes as detached with middle-housing land divisions, a developer can put three detached units, each on its own lot, and call it a duplex. As a local government, it is difficult enough to explain, and for owners, neighbors and developers to understand, the array of choices to develop on a given site under current middle-housing statute and rules. These changes, though on the surface well-intentioned, add more complexity that may further confuse and bog down housing production.

Below are additional specific comments on different sections of the -1 amendment.

Section 1 (c) new definition of cottage cluster:

- The development form that five or more units of a broader defined cottage-cluster would take is unclear, particularly in how it interacts with definitions of multi-unit housing. Could "small" apartment buildings around a courtyard qualify as a cottage cluster under this definition? Is that the intent?

- Wilsonville suggests examining the approach we have used for years in our code: Wilsonville allows for a combination of attached and detached multi-unit development. We have allowed development of a cottage cluster-type development with larger units by calling it a multi-family development, while also maintaining a separate cottage-cluster definition for a specific development type focused on encouraging small homes.

- **Removing the limit of 900 square feet removes an important incentive to the construction of smaller needed housing.** There are other ways to accomplish what this legislation is trying to enable; for example, by allowing larger units around a courtyard, without changing this definition.

Section 1 (d) Middle Housing Land Division Definitions:

- **In Wilsonville's view, the statute should not refer to the units of land resulting from middle-housing land divisions as "lots and parcels."** Referring to them as "lots and parcels" can inadvertently give special rights to these units of land not intended in SB 458, which was the original middle-housing land-division bill in 2021 that made clear that the "child lots" were only for property ownership purposes, closely akin to condo ownership, rather than zoning or allowing number of units. The language in HB 2138-1 confuses this concept and language.

- Wilsonville uses the term "middle housing land division units" to refer to units of land or "child lots" that result from middle-housing land divisions. This more precise definition creates much more clarity when looking at a plat to understand what the legal rights of a given unit of land are. It is vital to keep clear the legal rights of a middle-housing land division unit and a traditional lot, as they are quite different, especially in terms of additional housing units allowed. **The City thus suggests using "Middle Housing Land Division Unit" instead of "lot or parcel" to achieve the same result without confusing the difference between a**

unit of land created from a traditional subdivision or partition versus a middle housing land division.

Section 3 Density Bonuses

- Middle housing possibilities are already complex to understand for many developers and property owners and these changes make them more so. While the City is not taking a stance, at this time, on the merits of the concept of density bonuses, we want to point out some potential technical issues and possible solutions.

- **For the affordability bonus, the threshold for the bonus seems too broad. It should be narrow enough to only apply when there is intentionality in seeking the bonus.** If the threshold for qualifying for the bonus is set too high, such as 130% of AMI, then a majority of smaller units would qualify and a majority of middle-housing lots would likely also qualify for the additional unit, intentional or not. However, if the affordability bonus is set lower, such as at 80%, then this creates a specific incentive for a specific type of underproduced unit that would not be built without specific intentionality to take advantage of the bonus.

- For accessibility bonus, similar to the affordability bonus, the threshold for the bonus should be narrow enough to drive intentionality. If the only requirement is that the units have minimal stairs to navigate to the entrance and have single-level living, that may cause a large percentage of middle-housing developments to qualify, rather intentional or not. However, if the requirement ensures some type of interior accessible design, outside of single-level living, that can better provide the desired incentive to produce specific needed units.

- For a technical standpoint, it is unclear how density bonuses work for cottage clusters, as they are already exempt from density requirements and are only limited by site-design constraints.

Section 13: Clear and objective standards for the tree code:

- (C) Tree Code. The ability to have an alternative discretionary path is not clear in the proposed language. **An updated statute needs to ensure that an alternative discretionary path is still available to work out potential better solutions on a**

case-by-case basis. The City has been reviewing subdivisions with tree regulations for nearly 30 years successfully, including having no tree-related issues being appealed to LUBA. The proposed requirement would take away aspects of the flexibility that has allowed this to be successfully navigated for decades.

The City's proposed amendments to HB 2138-1 would provide greater clarity and remove uncertainty that allows local governments and developers to focus on producing more middle-housing residential development.

The City of Wilsonville is one of the fastest growing cities in the State and has a long track-record of producing a variety of housing integrated within every neighborhood, with half of our 27,000 residents residing in single-family homes and half living in multi-family communities.

Wilsonville has a streamlined land-use review process with clear and objective standards, which has provided an avenue for all of this housing production, and we continue to strive to improve that process wherever possible. Recently Metro regional government released building permit data that shows Wilsonville has provided 20%-25% of ALL the new housing produced in the greater Portland Metro area over a recent 10-year period.

The City appreciates your consideration of these proposed amendments to HB 2138-1.

Shawn O'Neil, Mayor
City of Wilsonville