

March 4, 2025

Committee on Housing & Homelessness
Oregon Legislative Assembly
900 Court St NE, Salem, OR 97301

RE: Comments from March 3, 2025, Hearing on House Bill (HB) 2138

Dear Chair Marsh, Vice Chairs Breese-Iverson and Andersen and Committee Members:

I appreciate the opportunity to submit written comments and will start by joining in the concerns voiced at Monday's hearing by Mayor Joe Buck of Lake Oswego. Milwaukie, like Lake Oswego, takes seriously the need for housing production and we are looking forward to upcoming work on our high-density residential zone and other steps laid out in our Housing Production Strategy.

But that work will actually be delayed and sidelined should cities have to undertake yet another major code revision mandated by HB 2138. Across Oregon, city planning departments have been in a nonstop cycle of code revisions since passage of the original middle housing bill, HB 2001, in 2019. The speaker at Monday's hearing from the Oregon Department of Land Conservation and Development enumerated some of the legislation of recent years, but she left out two significant pieces – last year's Senate Bill (SB) 1537 and the governor's Climate Friendly and Equitable Community rulemaking. The five or six mandates issued since 2019 have been an enormous drain on city staff time, resources, and public outreach capacity. In a city with only a few planners, other work falls by the wayside when such serial unfunded mandates come out of the legislature.

We are seeing results, and the legislature should let the existing rules have two more years to bear fruit before imposing yet more demands on cities. Milwaukie's first cottage cluster was completed last summer and a second one – a 15-unit land trust home ownership project – is underway. By the end of 2026, Milwaukie will have seen over 1,400 new housing units built in the decade since our 2016 Housing Needs Analysis. That is over a 15% increase in housing in a decade, and the pace looks set to continue. We should have no problem meeting the targets established in the recent Oregon Housing Needs Analysis.

Milwaukie is a built-out community with no urban growth boundary, but we have a handful of larger undeveloped parcels which are being explored for middle housing. Two of these – a 38-unit cottage cluster and an 88-unit development of fourplexes – received planning approval over a year ago. As I understand it, they have not begun construction because of the inability to secure funding. In yesterday's press event, the governor opined that city rules are hamstringing the development of middle housing, but this is not the case in Milwaukie, and I suspect not in many other cities, either. That financial institutions are unwilling to provide financing for middle housing is not something that cities can resolve. The legislature's energies would be better



focused on addressing these funding challenges and enacting needed legislation to enhance home ownership potential by making condominiums easier to build.

The provisions of HB 2138 will pull cities back from implementation of their housing production strategies into yet another cycle of planning, code updates and public input. As the governor's staff indicated that another revision to HB 2138 would be forthcoming, I will not try to provide detailed comments at this juncture. The current draft includes some provisions that Milwaukie already has in place, and others which we might find unobjectionable. But the bill also has some heavy-handed issues of concern. I will call out just two.

First, creating a density bonus for a developer who creates a single middle housing unit at 120% of area median income (AMI) will not move the needle in terms of creating more affordable housing in many communities. The Portland metro-area AMI, which includes far wealthier areas, is significantly higher than the median income in Milwaukie. Thus, 120% of AMI is something on the order of 150% of Milwaukie's median income. The vast majority of the 1,400 units of housing built in the last decade are offered at rents affordable to those making 120% of AMI. If the desire is to incentivize more affordable middle housing, the threshold should be 60%, or no higher than 80% of AMI.

Second, removal of community members' appeal rights runs counter to Oregon values as represented in Statewide Land Use Planning Goal 1. The appeal process inherently has costs and burdens that deter frivolous appeals. We have only had a single appeal of a land-use decision in Milwaukie in the past five or more years, and it did not significantly delay the application at issue. This prohibition on appeal is an unwarranted intrusion on rights that Oregonians have long held.

Finally, I will note that the proposals in HB 2138 largely feel punitive. I understand that some communities have been resistant to middle housing, but the solution to that was supposed to be state review of cities' middle housing codes and housing production strategies. Shifting this state work once again to cities that have been compliant is a bridge too far.

I will note that these are my comments and do not necessarily represent the views of the full Milwaukie City Council. The pace at which revisions appear and hearings get scheduled often do not allow full councils to discuss a bill at a public meeting, as required by the public meeting laws. But I join Mayor Buck in urging the legislature to prioritize the effective implementation of past legislation before enacting further mandates.

If I can provide any further information, please do not hesitate to contact me at bateyl@milwaukieoregon.gov.

Lisa M. Batey

Mayor