CITY of THE DALLES
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Hon. Senator Ted Ferrioli
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Senator Ferrioli,

I write in regards to HB 3479, which passed the house and had its first reading in the Senate on May 6, 2013. This bill pertains to the manner in which cities can assign responsibility for local improvements (streets, sewer, water, stormwater, etc.) to property developers. This legislation arose out of local discussion on development policies in The Dalles, discussions that are still ongoing. Because we believe this legislation will inhibit the City's ability to meet our health and safety goals through orderly installation of local improvements and because this legislation intrudes upon local control throughout the state, we encourage you to either not support this legislation or consider several amendment proposals.

As is the general rule throughout the state, property owners within The Dalles are responsible for initially bringing streets up to City standards at which point the City will take over maintenance. In our community, there are several miles of sub-standard streets that came into the City's jurisdiction through expansion of the Urban Growth Boundary ("UGB") and properties annexed into the city limits. When property is developed (partition, sub-division, new construction, etc.) on a sub-standard street, our current land use and development ordinance ("LUDO") requires that the developer bring the street fronting the property up to standards if an approved engineering design is in place or make a payment in lieu based on uniform estimated improvement rates per lineal foot of frontage (currently set at $176/ft.). Our Council limited a developer's options to these two avenues because alternatives, such as Local Improvement Districts, have not proven to be a predictable or reliable means to finance local improvements in our community. Our council preferred the certainty of addressing improvements on the front end and felt that developers are in a better position to account for local improvements than are property owners who may be carrying a sizeable mortgage.

As the City has limited resources, there are large portions of our community without an approved design in place. Accordingly, some developers only have the payment in lieu option, which sparked the controversy at the center of this legislation. Prior to the introduction of this legislation, the City initiated the process of amending our LUDO to allow for residential partitions to be approved without pre-paying for local improvements. The proposed LUDO amendment requires the residential partitioner to sign a non-remonstrance agreement and makes the obligation for local improvements due upon the first occurrence of either construction of a dwelling unit or formation of an LID. Under this LUDO proposal, the partitioner can complete a partition and sell the property

without expending any money on local improvements. This is the consistent with Section 2(1)(b) of the current version of this bill. Because our local solution also removes the large mandatory expenditure for partitions, the primary objective of this bill, we do not see the need for this legislature.

Not only does the bill duplicate a local solution, its ambiguities and additional language will create problems for property development in our city and in other communities across the state. Section 2(1)(b) places the accompanying restrictions of Section 2(1)(b)A) and (C) on all forms of partitions and not just residential partitions. Commercial and industrial partitions should not be subject to these limitations. Section 2(1)(b)(C) unreasonably interferes with a local government's ability to use funds in a manner that will free up additional resources for local improvements such as using the funds as match for grants and thus this provision should be removed. We are able to track who has paid for what through other methods and can thus ensure that properties are properly credited with payments.

As Section 2(1)(a) appears to extend the restrictions of Section 2 to all forms of development, Section 2(2)(a) will interfere with our ability to offer developers, of any kind of development, the option to make a lesser pre-payment as long as they sign a non-remonstrance agreement to secure the rest of their obligation. Our concern is that this bill handcuffs local communities from developing creative solutions to satisfy local improvement obligation. As a second example, we are currently investigating requiring some minimum payment to finance engineering designs, which would allow more developers to realize savings through installing the improvements themselves. These options would not be available under HB 3479.

Although we believe it inherent from the text, Section 2(3) should be clarified that forms of development other than partitions are not subject to the restrictions of Section 2(1)(b).

Finally, Section 2(3) should allow for additional options for developers to satisfy their local improvement obligations including deferred development agreements and partial payments as the current language makes the ability to pre-pay an all or nothing proposition.

Given our numerous concerns with this legislation that we believe are detrimental to both developers and cities, we strongly recommend that you and your fellow Senators reject this legislation. If the bill must be passed in some form, we encourage you to consider the following amended legislation that we have prepared (attached). Thank you for your consideration of this request and please feel free to contact us at any time if you have questions.

Respectfully,

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HB 3479-City of The Dalles Proposal

A BILL FOR AN ACT

Relating to city fees; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 223.387 to 223.399.

SECTION 2.

(1) The city holding land use and development regulation jurisdiction in which a property is located may assess a charge in lieu of forming a local improvement district or as a prepayment against an assessment for a future local improvement district, in an amount equal to the property's share of the cost of improvements that will specially benefit the property.

(a) When the owner of property applies for a partition as defined in ORS 92.010 of a residentially zoned property, a charge or prepayment assessed under paragraph (a) of this subsection:

(A) May not exceed $5,000;

(B) Is due and payable at the time, and as a condition, of the city's issuance of any subsequent development or building permit for the property; and

(2) If a city assesses a charge or requires a prepayment under subsection (1) of this section, the city:

(a) May not require the owner of the property to enter into a nonremonstrance agreement with respect to the future formation of a local improvement district if the property owner is charged the full estimated costs of full improvements; and

(b) Shall credit the amount of the charge or prepayment under subsection (1) of this section toward any future local improvement district assessments for the improvements for which the charge or prepayment under subsection (1) of this section is assessed.

(3) Notwithstanding subsections (1) and (2) of this section, a city may require:

(a) Full improvements to be completed by the owner of the property either prior to development, concurrent with development, or through a deferred development agreement;

(b) Payment of the full estimated costs of full improvements for constructions of new or additional dwelling units if agreed to by the property owner;

(c) Payment of an amount less than the full estimated costs of full improvements for constructions of new or additional dwelling units with the remainder of the property owner's obligation under local code secured through a deferred development agreement or non-remonstrance agreement;

(d) A nonremonstrance agreement from the owner of the property in lieu of the full improvements.

SECTION 3. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.