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March 5, 2019

Representative Brian Clem, Chair
House Committee on Agriculture and Land Use
900 Court Street NE
Salem, OR 97301

RE: HB 2003

Dear Chair Clem and Members of the Committee:

The City of Portland appreciates the opportunity to comment on HB 2003. The bill contains certain concepts that the City of Portland supports as well as concepts that the City opposes. We would welcome the opportunity to participate in discussions to refine the bill moving forward.

Planning and Zoning for Housing

HB 2003 would establish a different process for determining future housing needs and local strategies for addressing those unmet needs. The City of Portland supports the intent of the legislation to update and clarify how cities and counties should incorporate development trends, changing demographics, and forecasted growth to identify strategies to provide the capacity to meet their expected housing needs. However, HB 2003 proposes a single statewide methodology for cities with 5,000 people up to 650,000 people. This simplified “one size fits all” method could prevent the City of Portland from making adjustments to its methodology to address emerging and future housing needs, and, in turn, impede the adoption of effective housing strategies.

The City of Portland supports the intent of this bill to overhaul and update the housing needs analysis procedures as part of a local jurisdiction’s comprehensive plan. This update is needed. LCDC has not made substantive updates to the statewide housing goal (Goal 10), or the two administrative rules that carry out this goal, since the early 1980’s. However, it is not clear how this bill impacts Goal 10 and its administrative rules. A better approach would be to direct LCDC to undertake rulemaking to update the Goal 10 rules. This rulemaking process would include a wide range of stakeholders, including local jurisdictions, which could help ensure the “one size fits all” changes allow for more detailed analysis where a jurisdiction wants to go further. As part of this legislation or as part of rulemaking, there would be a requirement for local government compliance with the new rules by a certain date. Two years

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would be a reasonable amount of time for a city to budget for the work, do the analysis and have the findings adopted as comprehensive plan amendment. Any jurisdiction that does not comply is subject to LCDC's existing enforcement authority. The Oregon Department of Administrative Services should provide technical advice to LCDC as part the Goal 10 rulemaking process.

Section 1 contains new terms to define affordability for particular income levels. There have been several bills adopted in recent years that also define affordable. The definitions and the use of the terms need to be consistent.

The bill uses the terms "cities" and "metro" to refer to local governments. As written, the bill would not apply to unincorporated residential areas within urban growth boundaries, notably the urban residential areas within Clackamas, Multnomah and Washington Counties, which provide a considerable portion of the region's total residential land supply.

Section 3 requires local jurisdictions to update their housing needs analysis at least every eight years. The City of Portland supports this provision and it is consistent with Metro's schedule to update the regional growth forecast every 6 years.

Section 7 creates a technical assistance program for 10 priority cities. The City of Portland supports the creation of this program and encourages that it be adequately funded to provide meaningful assistance.

The directions in Section 8 are too limiting. Specifically, the changes to subsection (5) limit local jurisdictions to only considering current density and mix of housing types in determining the housing capacity. This direction does not account for local plans that are increasing densities that may lead the market, but are trying to achieve other goals, such as transit oriented development or climate smart communities. (B) thru (E) in subsection (5) should be retained. Limiting capacity calculations to only recent development will result in unnecessary Urban Growth Boundary expansions.

It is not clear why Section 10 repeals ORS 197.303. The City of Portland is concerned that it would exclude manufactured dwellings and farmworker housing from the definition of "needed housing."

In Section 13(2), the word "shall" should be replaced with "may" to give cities the option to provide additional land for housing. Otherwise, it could be read to mandate that local governments allow housing on land purchased for other public purposes, leading to potential bond covenant violations. Additionally, local governments have procedures to identify and dispose of surplus land. Local governments may rezone land for residential purposes if rezoning complies with the comprehensive plan. This proposed provision appears to allow local governments to circumvent Oregon's land use program and allow local governments to violate their own acknowledged plans and land use regulations by allowing residential uses on lands planned and zoned for non-residential uses so long as they are surrounded by residential zoning. This proposal allows local jurisdictions to disregard the statewide planning goals, including Goal 1, which requires public participation. Oregon's statewide planning goals require local jurisdictions to balance competing interests. Section 13 also requires cities and counties to allow for housing on public property that is owned and controlled by other public entities without the normal public dialogue that would go with the typical land use map change process. There is no reason why local governments cannot conduct a regular zone



change process to change the zoning map to allow for the intended density. The goal of affordable housing should be balanced with, and not outright supersede, other important statewide planning goals, such as natural resource protection and public participation. If the goal is to ensure courts afford substantial deference to City governing body decisions that balance competing comprehensive plan objectives, the City of Portland would be happy to propose additional language to address that objective.

Section 20 limits a local jurisdiction's authority in design review to reduce density (or floor area) and building height, except in limited circumstances. The City of Portland appreciates that the bill maintains the integrity of our discretionary design review process in the Central City, the Gateway regional center and our historic districts. The proposed limits on reducing density are consistent with the policy direction in our proposed Design Overlay Zone amendments, which limit a reduction in proposed density, but maintains the City's authority to adjust height. However, the City opposes proposed language in Section 20 to shift the burden to the City to demonstrate the "necessity" of density or height reductions for health, safety, habitability or measures adopted pursuant to statewide goals. The applicant bears the burden because they must demonstrate that their proposal complies with all applicable regulations, including those designed to protect health, safety and habitability of the City. Once the applicant has met that burden, the City must approve their proposal.

System Development Charges (SDCs)

Local governments utilize SDCs to ensure that the cost of public infrastructure is appropriately shared by taxpayers, ratepayers, and new development. Detailed statutory requirements ensure SDC methodologies and rates are fair and justified. Statute also already requires considerable public oversight and avenues exist for challenging a local government's methodology and expenditures. It is in that context that the City of Portland opposes—and respectfully urges the committee to strike—the system development charge (SDC) related provisions of HB 2003 that:

- Authorize the Secretary of State to audit and police local government SDCs (Section 15);
- Eliminate the statute of limitations to challenge SDC methodology (Section 23(7)(b); and
- Mandate local governments to report detailed SDC information and proposed changes in local methodology and rates to the state Building Codes Division (Section 16, Section 17, Section 23(9), Section 24(2)(a)).

These proposed provisions undermine local authority to determine and review SDC rates, methodologies, and capital expenditures, erode certainty for taxpayers and developers regarding SDC rates and methodologies, and needlessly establish new bureaucratic processes.

Auditing the City of Portland's SDCs is within the authority and at the discretion of the elected City Auditor. Section 15 of HB 2003 authorizes the Secretary of State to infringe on the elected City Auditor's authority to audit the City's SDC methodology, use of revenues, modifications of its project list, and modifications to the public process associated with such modifications. Moreover, this proposed authority is not simply advisory. Section 15(2) proposes a vast expansion of the role of the Secretary of State to police local governments: "The Secretary of State may issue orders necessary to enjoin any violation of ORS 223.297 to



223.314, subject to a local government's right to request a contested case proceeding under ORS 183.413 to 183.470."

Section 23(7)(b) eliminates the statute of limitations for challenging an SDC methodology as facially deficient. Current statute provides two months for such challenges—ample time for a party to assert whether an SDC methodology has problems and it ensures that once scrutiny of SDC methodology occurs (customary by the development community), everyone has predictability and certainty moving forward. This certainty is important for developers as well as for the local governments that are collecting SDCs and making capital expenditures with the revenues raised. Under Section 23(7)(b), a methodology can be challenged anytime, by anyone, by going directly to circuit court under a writ of review.

Section 16, Section 17, Section 23(9), and Section 24(2)(a) require local governments to report detailed SDC information to establish a centralized repository of information at the state Building Codes Division (BCD). These sections charge BCD with a function that is properly maintained at the local level and this public information is already available locally. In addition, Section 17(2) and (3) stipulate that BCD can require paper, instead of electronic, copies, and that BCD does not have to reimburse local governments for the cost of complying with this mandate.

Conclusion

The City of Portland appreciates the concept of updating the state framework for determining housing needs and local strategies to address those needs. The City also has serious concerns about many of the SDC provisions in the bill. We appreciate the opportunity to comments and would be happy to inform further discussions on these topics moving forward. Thank you for your consideration.

Sincerely,



Joe Zehnder
Interim Director

