Bureau of Planning and Sustainability
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May 6, 2019

Representative Keny-Guyer, Chair
House Committee on Human Services and Housing
900 Court Street NE
Salem, OR 97301

RE: SB 534-A

Dear Chair Keny-Guyer and Members of the Committee:

The City of Portland appreciates the opportunity to comment on SB 534-A. The City of Portland is opposed to this bill because of its broad application that fails to consider unique situations that have already been the subject of deliberate planning and zoning decisions by the City Council. Specific details of the bill would also create uncertainty for both developers and the City.

Historically Narrow Lots

Some older parts of Portland neighborhoods that are zoned R5 and developed as detached single-family houses on 5,000 square foot lots today have an underlying pattern of platted lots that are smaller than the predominant 50-footwide by 100-foot-deep lots. While most parts of inner Portland were platted with 50-foot wide by 100-foot deep lots, surveyors in the late 1800s and early 1900s sometimes platted lots that measured 25 feet or 33 feet wide by 100 feet deep. These "historically narrow lots" were typically sold in bundles depending on the buyer's preference. Often, a single home was developed on two or three of these bundled lots (see figures on page 2). These historically narrow lots are randomly distributed throughout the city due to platting decisions made by developers in the early 1900s.

Pre-emption of local authority

Currently, the City estimates that there are 14,000 – 16,000 historically narrow lots in Portland. Some of these lots are already zoned for higher density development. Most of the historic narrow lots have been zoned R5, where there is a current limitation that only allows a development on a historically narrow lot that has been vacant for 5 years.

As part of the Residential Infill Project, the Portland Planning and Sustainability Commission (PSC) has recommended to the City Council to rezone about half of these historically narrow lots from R5 to the denser R2.5 zone, which allows development that conforms to the historic 2,500 square foot lot sizes.

Figure 1. Historically platted narrow lots in Southeast Portland

Figure 2. Development of historically narrow lots

The attached map (with the detail below) shows the areas that are proposed to be rezoned (purple areas). The proposed rezoning is based on consideration of factors such as: proximity to commercial centers, frequent transit and neighborhood amenities; consistent zoning and development patterns; and site constraints such as unimproved streets, poor street connectivity, or stormwater or topography issues.

Figure 3. Recommended re-zoning of narrow lots

The PSC has also recommended allowing the remaining historically narrow lots in the R5 zone to be built with attached houses. The City Council will consider these recommendations later this year. The few remaining historically narrow lots that are not included in these proposals are constrained by inadequate services, natural resources, or steep slopes.

SB 534-A circumvents the normal local planning process to force development of narrow lots that were never intended to be developed in this pattern in the first place. Moreover, current state law requires cities to allow an accessory dwelling unit on each lot where a house is allowed and HB 2001 will require cities to allow at least one middle housing type on each lot where a house is allowed. In combination with current statute and HB 2001, SB 534-A will have the effect of requiring cities to allow development of at least a duplex on each historically narrow lot.

Adequate Services

Section 2(1) of SB 534-A allows a prohibition on development on a lot if "The lot cannot adequately served. . . ". The phrase "cannot be" is vague and ambiguous and open to interpretation because with unlimited funding, services could be engineered to be extended to any site, no matter how difficult or expensive. This is problematic because the bill fails to address who is responsible for ensuring that water, sewer or street services are, in fact, provided before development may occur. Under the U.S. Constitution, local jurisdictions may only require developers to provide public improvements that are roughly proportional to the impact of their development. As written, a developer may assert that a lot "*could be*" served but the city cannot require the developer to provide those services due to lack of proportionality. The consequence of the SB 534-A requirement that the City allow development, without requiring the developer to provide the public services, is that the City may have to construct those services on a timeline dictated by development of a single lot, rather than the City's long-range public facility plans. As noted above, SB 534-A in combination with HB 2001 would require the City to allow development of middle housing on each historically narrow lot—even in areas that are not adequately served by public services (e.g. neighborhoods with unpaved streets). Moreover, Section 2(1) currently refers to adequate service by streets, water, and sewer, but omits stormwater. Stormwater drainage is a critical public service and at a minimum should be added to the list of services called in Section 2(1). At the very least, Section 2(1) should be amended as follows:

> (1) The lot *[cannot be]* **is not** adequately served by water, sewer**, stormwater drainage,** or streets**, or will not be adequately served at the time development on the lot is complete**;

Effective Date and Implementation

Compliance with this bill would require Comprehensive Plan amendments, zoning code and zoning map changes. It is virtually impossible to make these changes in the 6-7 months that would be afforded by this bill if it is effective on January 1, 2020. **At a minimum, the bill should specify an effective date that aligns with the deadline proposed in HB 2001 for zoning code changes to accommodate middle housing: June 30, 2022.**

In addition to determining which lots cannot be adequately served or are constrained by natural resources or natural hazards, the City will have to conduct a transportation system impact analysis, as required by the state Transportation Planning Rule, to demonstrate that this upzoning will not have a significant affect on the state, regional and local transportation system. SB 534-A does not provide any option to exclude lots that would require cost-prohibitive transportation improvements to accommodate the increase in development. Without an adequate transportation analysis, the plan amendments and zoning changes will be vulnerable to land use appeals.

Statewide Planning Goal 12's implementing administrative rule OAR 660-012-0060 requires cities that increase density to evaluate the potential impact of the increased density on the transportation system. Our experience with the Residential Infill Project shows that that these zoning changes could change growth patterns that could make it difficult to meet mobility standards, especially on state highways, such as North Lombard Street. Without an exemption from the Transportation Planning Rule, the City may be unable to comply with the proposed legislation. Similar to language in Section 3 of HB 2001, should SB 534 move forward, the bill should clarify that the local legislative process to allow

development of these historically narrow lots does not require cities to conduct an analysis under OAR 660-012-0060 as follows:

> **SECTION 3. If a local government amends its comprehensive plan or land use regulations to comply with Section 2 of this 2019 Act, the amendments do not constitute a final action that must comply with a statewide planning goal related to transportation or any implementing administrative rules for a statewide planning goal related to transportation.**

If the City is unable to amend the Zoning Code by the effective date of the bill, the proposed bill would apply directly. The proposed criteria are highly discretionary and will require a land use decision with findings and public notice for every single lot determination. Each of those decisions will be appealable to the Land Use Board of Appeals. The consequence will be LUBA appeals and uncertainty for the City, developers, and neighbors.

Conclusion

The City of Portland has serious concerns about SB 534-A. We appreciate the opportunity to comment and respectfully urge the committee to not move the bill forward. Thank you for your consideration.

Sincerely,

Andrea Durbin
Director

March 2018

City of Portland, Oregon
Bureau of Planning & Sustainability
Geographic Information System

Residential Infill Project

Map 6: Rezoning Historically Narrow Lots

Legend

- Concentrations of R5 Historically Narrow Lots Not Rezoned to R2.5
- Adopted R2.5 Zoning
- Proposed R2.5 Zoning
- City Boundary

NORTH

0 5,000 10,000 Feet

The information on this map was derived from City of Portland GIS databases. Care was taken in the creation of this map but it is provided "as is". The City of Portland cannot accept any responsibility for error, omissions or positional accuracy.

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Ted Wheeler, Mayor • Susan Anderson, Director

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