



MAINTAINING SUNRIVER AS A PREMIER RESIDENTIAL AND RESORT COMMUNITY PROTECTING AND ENHANCING ITS QUALITY OF LIFE,
NATURAL ENVIRONMENT AND PROPERTY VALUES.

April 26, 2021

The Honorable Kayse Jama, Chair,
Senate Committee on Housing and Development

Re: Proposed Amendment to HB 2534 A Addressing Constitutional and Other Concerns

Dear Chair Jama:

I am the President of the Board of Directors of The Sunriver Owners Association (“SROA”). SROA is the administrator of Sunriver, a planned community in Deschutes County originally established in 1967. Sunriver is comprised of interrelated villages made up of homes, condominiums, recreational areas, shopping facilities, and a resort complex located on 3,373 acres of high desert, meadow, and thickly forested land.

SROA supports the important public policy underlying HB 2534 A: Housing discrimination has no place in Oregon, including within planned communities. Despite its strong support of that policy, SROA has concerns about HB 2534 A as it is currently drafted, including constitutional due process concerns.

The bill could also be misconstrued in a manner that precludes planned communities from adopting facially-neutral land use classifications, siting and development standards. That concern is not speculative; SROA has been defending against a lawsuit that seeks removal of such standards for ostensible violations of ORS 93.270. *See Myers v. Owners of Record*, Deschutes County Circuit Court Case No. 19CV 24112 (on appeal in Oregon Court of Appeals Case No. A173721). Legislative policy already recognizes that such classifications and standards are important components of land use planning, relied on by planned communities to promote the general welfare of their members. *See generally Westwood Homeowners Ass’n, Inc. v. Lane County*, 318 Or 146 (1993) (Oregon Planning Community Act recognizes socio-economic utility of private land controls).

To address these concerns, we have prepared a proposed amendment to HB 2534 A for your consideration, a copy of which is enclosed. We believe that it accomplishes the legislature’s goal of eliminating discriminatory provisions in the governing documents of planned communities, while avoiding constitutional and private land use planning concerns.

To assist you, I briefly summarize our proposed changes:

SECTION 1: HB 2534 A, Section 1, contains an amendment to ORS 93.270, adding a subsection (2) relating to the recorded instruments of condominiums and planned communities. The proposed amendment to this version deletes subsection (2) and replaces it with an amendment to the Oregon Planned Community Act, ORS 94.550 to ORS 94.783.

If enacted, HB 2534 A, Section 1 may also be partially redundant to, and in conflict with, subsection (1)(a) of ORS 93.270. Both subsections may be applicable to certain declarations recorded under ORS 94.580, but subsection (2) would apply to a broader list of protected classes and to a broader set of recorded instruments. A possible outcome is that declarations recorded under ORS 94.580 could contain provisions not allowed in other recorded instruments. We do not think that is the legislature's desired outcome.

Our proposed amendment to the Oregon Planned Community Act would instead make a discriminatory provision in a governing document void and unenforceable by referencing protected classes and illegal conduct already identified in Oregon's anti-discrimination law—and in particular the statute pertaining to unlawful discrimination in real property transactions. It would allow facially discriminatory provisions to be removed by the existing judicial removal procedure in ORS 93.272. And it would make it clear that neutral, non-discriminatory land use classifications, siting, and development standards do not violate the law. This is important in light of the legislative policy not to interfere with private land use planning programs.

SECTION 2: The proposed amendment would delete Section 2 as it would apply only to an amendment to ORS 93.270.

SECTION 3: The proposed amendment would delete Section 3, as it would apply only to Section 4, which would also be deleted.

SECTION 4: The proposed amendment would delete Section 4, as it seems to contain a directive by the legislature that raises constitutional due process concerns as well as the unconstitutional delegation of governmental authority. The delegation of judicial authority to private citizens without necessary safeguards such as, for example, procedural fairness, opportunity for review, and an impartial adjudicator, may impair due process rights. See *Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust*, 508 US 602 (1993) (due process safeguards such as appeal and a trial *de novo* will not cure a failure to provide a neutral and detached adjudicator, even when a legislature delegates adjudicative functions to a private party).

It is more properly the role of the courts, not the President and Secretary of a private homeowners association, to determine whether a provision in its governing documents do or do not comply with the law. An association's President and Secretary are likely to be volunteers not trained in the law, and they necessarily will have an interest in the governing documents at issue. Delegating them with authority to make legal determinations that implicate private property rights is likely to lead to conflict that planned communities are not prepared or organized to resolve. The bill, at present, provides no procedural safeguards to ensure due process and risks inappropriately depriving community members of property rights outside of the court system. It would also place a significant burden on planned communities' finances and resources.

Because the discriminatory provisions are already enforceable under Oregon law, and because there is already an expedited judicial process under ORS 93.272, it is not necessary to include this provision, which raises serious practical and constitutional concerns.

SECTIONS 5 – 7: The proposed amendment would leave the substance of these sections unchanged.

We thank you for your consideration of our concerns and our proposed amendment to HB 2534.

Respectfully,

A handwritten signature in blue ink that reads "James Lewis G.M. for Brad Skinner". The signature is written in a cursive, flowing style.

BRAD SKINNER
Board President

Enclosure

cc: Distinguished Members of the Senate Committee
on Housing and Development
Senator Tim Knopp
Representative Jack Zika
Representative Jason Kropf

House Bill 2534 [Proposed] - 3 Amendment

Ordered by the House March 25
Including House Amendments dated March 25

Sponsored by Representative HELM, Senator FREDERICK, Representative GRAYBER; Representatives MEEK, NERON, PHAM, SOLLMAN (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires homeowners associations and condominium associations to review governing documents and remove discriminatory language or certify the nonexistence of such language on or before December 31, [2023] 2022. *[Provides a cause of action for enforcement. Sunsets January 2, 2026.]*

Makes certain discriminatory language in governing documents void and unenforceable. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

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Relating to removal of discriminatory restrictions in governing documents; creating new provisions; amending ORS 93.270; and prescribing an effective date.

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

SECTION 1. Section 2 of this 2021 Act is added to and made a part of Oregon Planned Community Act, ORS 94.550 to 94.783.

SECTION 2. (1) Except with respect to housing for older persons as defined in ORS 659A.421(7), any provision in a governing document that discriminates against any person in the terms, conditions or privileges relating to the sale, rental, lease or occupancy of a residential lot because of that person's membership in a protected class, as defined in ORS 659A.425(1)(b), is void and unenforceable.

(2) A provision that facially violates subsection (1) may be removed from the governing document pursuant to ORS 93.272.

(3) Nothing in this Act prohibits a planned community from adopting, or a governing document from containing, a facially neutral housing policy, as defined in ORS 659A.425(a), or a facially neutral land use classification, siting, or development standard, that apply equally to all persons.

(4) The amendments to ORS 94.550 to 94.783 by section 2 of this Act apply to all planned communities.

SECTION 3. Section 4 of this 2021 Act is added to and made a part of ORS chapter 100.

SECTION 4. (1) On or before December 31, 2022, each association of a condominium that includes units used for residential purposes shall review each governing document currently binding on the condominium or the units or unit owners within the condominium and shall:

(a) Amend or restate each document as necessary to remove all restrictions against the use of the condominium or the units not allowed under ORS 93.270 (2); or

(b) Execute and record a declaration that the association has reviewed the governing documents binding on the condominium and that the documents do not contain any re-

1 striction, rule or regulation against the use of the condominium or the units by a person or
2 group of persons because of race, color, religion, sex, sexual orientation, national origin,
3 marital status, familial status, source of income, disability or the number of individuals, in-
4 cluding family members, persons of close affinity or unrelated persons, who are simultane-
5 ously occupying a dwelling unit within occupancy limits.

6 (2) Notwithstanding ORS 100.110, 100.135, 100.413 or any requirement of the declaration
7 or bylaws, an amendment to or a restatement of the declaration or bylaws under this sec-
8 tion, upon submission and approval of the Real Estate Commissioner under ORS 100.123,
9 100.125, 100.668 and 100.675, is effective and may be recorded without the vote of the owners
10 or the board members if the amended or restated declaration or bylaws includes a certifica-
11 tion signed by the president and secretary of the association that the amended or restated
12 declaration or bylaws does not change that document except as required under this section
13 and as may be necessary to correct scriveners' errors or to conform format and style.

14 SECTION 5. This 2021 Act takes effect on the 91st day after the date on which the 2021
15 regular session of the Eighty-first Legislative Assembly adjourns sine die.

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