



American Planning Association
Oregon Chapter

Creating Great Communities for All

February 18, 2021

Senator Kayse Jama, Chair
Senator Dennis Linthicum, Vice Chair
Senate Committee on Housing and Development
900 Court Street NE
Salem, OR 97301

RE: Testimony from the Oregon Chapter of the American Planning Association in Opposition to SB 458

Dear Chair Jama, Vice Chair Linthicum, and Members of the Committee:

This letter provides testimony from the Oregon Chapter of the American Planning Association (OAPA) on SB 458. OAPA is an independent, statewide, not-for-profit educational organization of more than 800 planners from across the state who work for cities, counties, special districts, state agencies, tribes, community-based organizations, universities, and private firms. OAPA provides leadership in the development of vital communities by advocating excellence in community planning, promoting education and resident empowerment, and providing the tools and support necessary to meet the challenges of growth and change. OAPA supports sustainable communities and works to enhance the quality of life for current and future generations by helping to create and stabilize places that are equitable, healthy, and resilient and provide ongoing economic, environmental, and social benefits.

OAPA has reviewed SB 458 and does not support the bill as currently drafted and urges caution in proceeding to adoption. We recommend that the bill stay in committee pending redrafting to address the issues and concerns raised below. OAPA strongly supports the intent of SB 458 to further promote the development of middle housing in Oregon; one of OAPA's Legislative Priorities for 2021 is to "Address the housing crisis." However, OAPA has concerns related to implementation at the local level. With all of this in mind, we offer the following testimony on SB 458. Please consider the following at a high level and focused on policy.

1. Threshold of applicability. It is our understanding that SB 458 only applies to middle housing "that was permitted on or after the effective date of this 2021 Act" as Section 2(2)(a) describes, and "At the time of application for the division" as Section 2 (2)(b) describes. OAPA recommends the bill clarify the thresholds of applicability. Are provisions of this bill intended to apply to any existing middle housing types that predate effective date of passage?

We also observe the Infrastructure-Specific Application Threshold, described in OAR 660-046-0340, is applicable to cities that have received Infrastructure-Based Time Extension Request (IBTER) approval. We ask that the bill clarify the application of the bill under circumstances where IBTER is relevant. On this note, we observe how land division often creates the need for establishing separate utility service.

2. Limited 60 day review – approval or denial. OAPA is concerned about the provisions introduced in Section 2 (C)(3)(c) and (d). Several cities with a population of 10,000 and less than 25,000 (defined as Medium City in OAR 660-046-0020(11)) typically have a small or no planning staff (or contract out for



planning services). Amendments to this bill should consider scaling requirements to the size of the community. Specifically, OAPA raises concern with proposed Section 2(C)(3)(c) that reads: *Shall approve or deny an application for a division no more than 60 days after submission.* The option to approve with conditions should also be clarified. Further, does the bill intend to use the current remedy for violation of statutory timelines, i.e., mandamus, which has an attorney fee component? If so, there are provisions in existing law that provide local governments with appropriate defenses to mandamus claims that are not contained in this proposal, e.g., ORS 227.178(6)(a).

3. Will the Model Code for Middle Housing be modified? We question whether the model code (OAR 660-046-0022(13)) as developed by the Department of Land Conservation and Development (DLCD) for Middle Housing, via recent rulemaking, is to be modified such to include land division provisions introduced by this bill. We also note the date changes in Sections 4 and 5 of the bill (August 8, 2019 to January 1, 2021) raise some technical issues. What happens to the effectiveness of instruments issued or recorded between those two dates? And by moving the dates, does the legislature intend to validate transactions made in violation of the two amended statutes? And because the legislation will not be effective until later this year, how does the legislation affect transactions made between January 1, 2021 and the effective date of the legislation?

4. Fees as necessary to cover the actual costs of approval. We ask that the bill clarify whether existing fee schedules adopted by local jurisdictions are to be revised as the bill appears to introduce a new methodology described under Section 2(3)(d). This reads: *May not charge fees to review or approve a division under this section except as otherwise authorized by this chapter or as necessary to cover the actual cost of approval.*

5. Reasonable Conditions of Approval. We ask that the bill acknowledge the ability for local jurisdictions to apply reasonable conditions of approval to ensure long term maintenance of common walls, driveways, and other matters that are best addressed in appropriate legal easements and documents, typically recorded with partition plats.

6. Is the applicant able to appeal the decision? We observe a provision on under Section 2 (4) that reads: *A person may not appeal the approval of a division of land under this section.* Does this person include the applicant? OAPA has some concern with the attempt to bar any and all challenges to actions of a public body. Article I, Section 10 of the Oregon Constitution appears to provide otherwise.

7. Why does the bill not apply to urban counties? There are substantial urban areas within the state, particularly in Washington and Clackamas Counties, that provide housing opportunities that would be benefitted by this legislation. Why are they *not* included?

In closing, there are a number of implementing measures for SB 458 that should be subject to rulemaking and further input from local government planning representatives. OAPA recommends that the final version of SB 458 respond to the questions raised above. OAPA understands that there is another bill, HB 2283, that is similar to SB 258 and is being amended to address concerns that have been raised regarding implementation, and those amendments could - and should - address the questions raised above. Additionally, the bill should require rulemaking through the DLCD and that local government planning representatives and other stakeholders be able to participate in rulemaking (e.g. video conference if necessary).

Thank you for your time and attention to our testimony. OAPA recommends that the bill stay in committee pending redrafting to address the issues and concerns raised above.



Sincerely,

A handwritten signature in blue ink, appearing to read 'Aaron Ray', written in a cursive style.

Aaron Ray, AICP, President
Board of Directors