March 7th, 2023

RE: Proposed Amendments to HB 2506

Dear Chair Dexter, Vice Chairs Helfrich and Gamba, and members of the committee,

My name is Matthew Serres, and I am the legal director at the Fair Housing Council of Oregon (FHCO). We are a private non-profit civil rights organization whose work is to end housing discrimination and ensure equal access to housing throughout Oregon. We are submitting testimony in support of several proposed amendments to HB 2506 also reflected in the testimony of Housing Land Advocates.

FHCO remains neutral on the proposed revisions to the definition of "residential facility," because of possible considerations as to how those facilities align with the underlying zoning standards. FHCO recognizes the critical need for more behavioral health housing and expanding that definition is probably consistent with the Governor's housing goals. We cannot say for certain, however, how adding the additional facilities to the definition of "residential facility" would impact zoning and land use.

Additional changes to the proposed legislation are needed to ensure that the statute is consistent with federal fair housing law and that it will be fully enforced.

Under the federal Fair Housing Act, local jurisdictions must permit residential facilities in single-family dwelling zones, at least to the extent that those facilities are similar in the number of residents to single-family dwellings permitted in those zones. For example, if a local jurisdiction permits single-family dwellings up to a specified number of residents or limits occupancy according to a specified formula, then residential facilities up to the specified number of residents or that limit occupancy according to the same formula must also be permitted. Nonetheless, many local jurisdictions treat behavioral housing differently than other types of housing, purely on the basis of public pressure or stigmas associated with mental illness.

As the testimony of Kathy Wilde of Housing Land Advocates (HLA) correctly observes, additional changes are needed to ORS 197.667, in order for it to be consistent with the Fair Housing Act. The critical issue is that, as the statutory scheme is currently written, local jurisdictions may misinterpret or attempt to circumvent what the federal law requires in terms of permitting residential facilities in zones designated for single-family dwellings. That is because the current wording of the statute states that a local government "may" allow a residential facility in a residential zone where a single-family dwelling is allowed. That wording is misleading because, in actuality, local governments must require residential facilities in a single-family dwelling zone in most circumstances under the Fair Housing Act. In order to fix the inconsistency between state and federal law, FHCO recommends that the use of the word "may" in ORS 197.667(3) should be replaced with the word "shall." That simple change could have a significant impact in preventing violations of the Fair Housing Act too common in residential facility siting.

Additionally, we also agree with HLA testimony that the bill should include a provision for the award of attorney fees for developers of affordable and supportive housing on further appeal to the Oregon Court of Appeals—not only if such a developer overturns a denial at LUBA or if a decision granting such use is affirmed at LUBA. The allowance of attorney fees is important to incentivize the enforcement of state and federal laws that protect the right of residential facilities to operate in single-family dwelling zones.

Thank you for the opportunity to suggest amendments that would improve components of the bill to eliminate inconsistencies between the federal Fair Housing Act and state law siting standards.

Sincerely,

Matthew Serres
Legal Director
Fair Housing Council of Oregon