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March 23, 2023

House Committee on Housing and Homelessness
Oregon State Legislature
900 Court St NE
Salem, OR 97301

RE: House Bill 3569

Dear Members of the House Committee on Housing and Homelessness:

I am a practicing city planner who writes concerning two bills that are in committee and specifically scheduled for March 23, 2023 public hearings by the House Committee on Housing and Homelessness: HB 3414, "Limits conditions under which local governments may deny variance for housing development within urban growth boundary", and HB 3569, "Establishes alternative process by which local government must approve application to develop housing on lands zoned to allow residential uses". Below I focus on HB 3569.

HB 3569

Sect. 3(2): It is poor practice and bad precedent to in HB 3569 to waive whole statues and agency rules resulting from the Oregon land use planning program. It signals to those opposed to government regulation of land use that, if they can convince the legislature of a crisis, they can convince the legislature to make whole swaths of regulation voided to their liking.

Sect. 3(4): The proposal in Sect. 3(4) (lines 24-26) to establish an application completeness review period of 21 days would introduce and irksome wrinkle from the standard 30 days in ORS 278.178(2).

Also, more practically the premise that 7 days would make a difference in housing production is absurd. Building permit review alone, which the state already regulates through the Building Codes Division with a time limit of a few weeks for when the review of first application submittal is due, takes longer. There are also local civil engineering reviews of required public infrastructure. Where platting land is involved, the time to record a plat with a county surveyor's office. There are also outside reviews as required by federal and state agencies. Lastly, the timeline for development is mostly within the control of developers, and more so

their lenders. Their activities take longer in total from project conception to construction final inspections than do government review times in total.

Sect. 3(2): The Sect. 3(2) criteria (lines 5-15) are unnecessary also because Oregon law already requires local governments to have land use regulations that provide a "clear and objective" path to development without any need for discretionary reviews. The bill would signal that those local governments that already comply will be punished for their good deeds, and that the legislature does not trust local governments and assumes that they scheme to undermine the building of housing. Developers that do opt for deviations through the common application types of adjustment, conditional use, planned unit development, and variance make a choice to do so. In exchange, they meet requirements that can include discretion. It would be ludicrous to allow developers to circumvent discretionary process when cities already grant developers the right to develop through a clear and objective path and the option to develop through discretionary paths.

Sect. 3(6): Sect. 3(6) waives public hearings, a galling strike against State Planning Goal 1 about citizen involvement. More practically, it would disrupt the custom most local governments use of classifying land use reviews as Type I, II, III, & IV, with public hearings limited to the higher types. The types already embody the idea that by some things needing public hearings, other things shouldn't.

Section 3(8): Section 3(8) limits appeal rights, a contradiction of expressed state policy preserving appeal rights. For example, ORS 227.175(10)(b) caps the fee a local government might charge for an appeal hearing at $250, and if an appellant prevails at the hearing or upon subsequent appeal, the local government must refund the fee. The intent is to make it affordable to the common person. Through HB 3569, would the state now say that the appeal process remains a protected aspect of citizen participation – except when politically inconvenient to the legislature? Also, the legislature appears to forget that appeals are not simply a path some appellants use to obstruct projects they don't like as nearby homeowners with no sound basis, but also that homeowners and other parties – renters, companies, and other – can appeal when a local government has actually made a careless or possibly deliberately callous decision that merits appeal. The appeals process serves as a check on local government potential abuse of land use authority – and local governments know this – and HB 3569 would interfere with that.

Sect. 5: Sect. 5 is unnecessary here and in most any bill. The legislature has already many times declared too often a bill as an emergency, allowing it to take effect sooner, for political exigency rather than actual emergencies. This would be a continuation of poor practice.

A last observation about HB 3569 is that it would have the outcome of eviscerating historic districts, historic landmarks, and contributing buildings by pre-empting historic review and preservation, which are premised on different and special buildings and places needing custom regulation to conserve and preserve.

I address larger issues around the bill below.

The Larger Issues

Like many other states and localities nationwide, the legislature avoids the foundational troubles with housing production: that it is for-profit and compounded by the lack of nationwide economic protections afforded citizens abroad, chiefly living wages, the right to unionize for living wages, and universal, single-payer health care. The fact is that much housing nationwide is produced by a few national for-profit corporations. The production of housing is limited by Wall Street financing and developers who live on borrowed money than whatever a local government does. The provision smacks of the legislature looking for a simple and clear blame and fix to tout to the electorate while doing nothing to solve the local expression of a national problem.

Compounding the troubles of private financing, a chief obstacle to development is the need for public infrastructure. Local governments requiring developers to build or fund such is the only way to avoid expense of taxpayer dollars on infrastructure serving new development. In a state with a tax caps through Ballot Measures 5 (1990) and 50 (1997), local governments are not free to raise taxes to take on the burden of infrastructure by themselves if they were so inclined. They both are pre-empted and can't afford it. Also, the state dribbles a few drops of money through several competitive grant programs across agencies, as if local needs should compete for public needs.

The legislature ought to face reality: It needs to put on the ballot repeals of Measures 5 (1990) and 50 (1997) and continue reform of the state tax system. It needs to raise corporate taxation. It needs to raise the personal income tax on the wealthy, say persons earning more than $250,000 in income. It needs to tax capital gains from bonds and stocks and sellers of second and additional homes. Then turning focus to housing development, it needs to buy from willing landowners or seize by eminent domain lands and build and manage housing itself, including strategically during recessions when land values fall and the state can seize more cheaply valued lands. Rent control needs consideration. In other democracies, taking Singapore as but one example, most people live in public housing that the government directly built and manages, and the housing is of quality enough that middle class people take to living in it and consider it the norm. In short, democratic socialism would solve the national housing crisis, something that no Republican will ever admit, but also one that Democrats in the legislature don't admit either.

Amounts of money that are large for ordinary people though small to state government can already be found without need to utter the word "socialism". For example, *Willamette Week* reported February 1, 2017 in "Corporate Lobbyists Turned Oregon's Iconic Bottle Bill Into a Sweet Payday For Their Clients" that a 2011 bill raising the bottle deposit to 10¢ allows unclaimed deposits to go to companies that distribute beer and soda, an amount estimated to be $30 million annually. This would be $60 million per biennium, and the state could buy land and build a nice housing project for that money. (After all, a new conventional construction

three-story walk-up apartment building of about 24 apartments is about $12 to $14 million in project valuation.) Besides the embarrassing question of why the state is gifting money to beer and soda companies, there is the added impetus to take back money taken for a public need and spend it directly on the more important public need of housing. I also mention briefly the 30-year tax break for Nike from a few years back as an example of why the legislature ought to remember that trust in it is dim, voters can and do remember, and further attempts at petty pre-emption will go badly.

The problem with HB 3569 bill is that it would add fuel to the fire of discontent and trigger eventual backlash. Already wealthy cities such as Lake Oswego and West Linn, by the virtue that money is power, can develop however they want with pro forma or marginal compliance with state law, without any fear of sanction from the state, unlike other Oregon cities. Bills such as HB 3569 (and HB 3414) would prompt other cities to seriously consider flouting legislative mandates, particularly rural localities, exacerbating the urban/rural divide. Local governments could even follow the precept that revenge is a dish best served cold. For example, HB 3569 Sect. 3(2)(d)(B) (lines 11-12) including commercially zoned land that allows residential use, might prompt cities to say, "Ok, we'll revise commercial zoning permitted and conditional uses to prohibit housing in commercial zones. Take that, legislature." The legislature would be sorry then, and I can only feel pity for the Department of Land Conservation and Development staff having to deal technically and neutrally with the local government expressions of discontent masked as notices of proposed amendments that are really meant for the legislature but routed through DLCD.

Hacking away at the Oregon land use program is to squeeze blood from a turnip and distract attention from the real problems of housing: (1) for-profit financing and lack of direct state funding of public infrastructure and housing construction by the state itself and through local housing authorities and (2) lack of tax reform by the legislature.

In closing, I urge the Committee to let the proposed bill expire.

Sincerely,

Colin Cortes