



March 23, 2023

Oregon Legislature
House Committee on Housing and Homelessness
Submitted via OLIS

Re: Opposition to HB 3414 and the –1 amendment

Chair Dexter & Members of the Committee:

Washington County is the second-largest county in the state and includes large areas within the Metro urban growth boundary outside of an incorporated city. As a result, our Land Use & Transportation department provides planning, permitting, review and inspection services for these urban unincorporated areas. The rapid growth of our county, limits on our revenue, a shrinking statewide workforce in planning and permitting, and increased workload from implementing multiple new state statutes and regulations have strained our planning and building teams' capacity.

Washington County staff understand the pressing housing production challenges in our region. While we wholeheartedly support the goal of increasing housing production, HB 3414 is too broad of an instrument to achieve the desired outcome. Washington County staff oppose HB 3414 because:

- It puts a greater burden on limited local government capacity to review and approve housing developments
- It conflicts with clear & objective development requirements
- It disenfranchises community members by making Development Code regulations essentially meaningless

We agree with the HB 3414 Staff Measure Summary that says:

“According to DLCD, Oregon needs to develop more than 550,000 new housing units across income levels to accommodate 20 years of population growth and to account for current underproduction and the lack of units for people experiencing homelessness. DLCD estimates that approximately 49 percent of this housing will require public subsidy. The department reported in its February 2021 Regional Housing Needs Analysis report that underproduction may be attributed to high land and construction costs, inadequate infrastructure, and limited local government capacity, among other factors.” (emphasis added).

The proposed HB 3414 and the –1 amendment do not address these factors limiting housing production, and in fact puts more burden on limited local government capacity to review and approve housing developments.

Burden on Staff Capacity

Section 2 of HB 3414 shifts the burden to the local government to provide findings justifying denial of a variance application, whereas the current process requires an applicant to provide findings justifying the need for a variance. The bill would require a local jurisdiction to research conditions related to

individual parcels, perhaps requiring outside expert help, in order to make adequate findings. These findings would be necessarily subjective since they would be limited to “a health, safety or habitability issue,” a term that is not defined nor clear and objective. With limited staff available to process applications, this would lead to increased complexity, time, and cost for application review, which would be contrary to the intent to streamline and expedite housing approvals.

Staffing capacity and application review issues are compounded by rapidly changing state laws and regulations that require repeated Development Code amendments and process changes. Just as we respond to one set of new state-mandated changes, the goal posts are moved again. These mandates generally do not come with sufficient funding for implementation, so staff is increasingly stretched to cover both the required legislative changes and our developer needs for timely permits and plan reviews. And we are now stretched beyond our capacity.

Conflicts with Clear & Objective Standards Requirement

Washington County’s Community Development Code has clear and objective standards for housing development. Every jurisdiction is required to adopt clear and objective standards for housing regulations which allow options for development proposals – meet the code or seek a discretionary review with a variance or conditional use permit. Therefore, clear and objective standards provide certainty to developers. Variances are intended to provide relief from specific hardships not anticipated by clear and objective standards, not to give carte blanche for developments to disregard all local land use regulations. HB 3414 would render the County’s Development Code regulations all but meaningless.

In order to accommodate unforeseen site-specific circumstances that may preclude absolute compliance with a specific code requirement, our development code includes reasonable “hardship relief” provisions allowing up to a 5% reduction in minimum lot size, and up to a 20% deviation from many numerical code standards, such as building setbacks, building height or parking space requirements. Hardship relief requests can be considered in conjunction with a land use application review and do not require a separate discretionary review process.

Disenfranchisement of Community

Our clear and objective standards were developed with input from community members, the Planning Commission and the Board of Commissioners to implement the community’s vision. Development Code regulations balance the impacts of growth with community livability, infrastructure provision and environmental protection. By making those standards irrelevant by automatically allowing variances, that time, effort and engagement with the community is also rendered irrelevant. As counties and the state have pushed to bring more members of the community into the process of creating local land use policy – particularly through increased engagement with historically disenfranchised populations – laws that negate that local work undermine trust in government processes and increase the likelihood that future engagement will not occur if the work is undone in two years by further changes in state law.

Solutions to address the root concern: process timelines and funding

It is unclear that Development Code standards are the real problem that HB 3414 is working to address. Much of what was expressed by the development community was issues with the timelines to get through discretionary review and concerns about specific types of development standards. There are other tools that would better address the concerns raised during the hearing.

The technical assistance proposed in section 3 could help communities draft clear and objective standards that meet the needs of the development community. Providing model codes, technical assistance, and state resources that can help with local development code audits would likely decrease barriers and shorten timelines more comprehensively than adding additional work in variance review processes. We support efforts to create this capacity at the state level. However, creating another government office which has accountability standards for local government land use creates unnecessary complexity, especially when this role is already filled by DLCD, LCDC, LUBA and state courts.

Rather than effectively eliminating Development Code standards, we encourage the legislature and DLCD to consider a program to fund infrastructure to support housing developments, a program to provide additional funding for local government development review staff, and/or a comprehensive review of actual local Development Code barriers to housing production.

Washington County would welcome the opportunity to partner with the state on ways to increase housing production, but not at the expense of clear and objective Development Code regulations and increased burden on our staff.

Thank you for your consideration and for your commitment to taking prudent actions to help ensure increased housing production.

Sincerely,



Stephen Roberts, AICP
Director of Land Use & Transportation