

Dear Committee Members,

I am writing to you regarding Section 2 of HB 3414. While I strongly support the efforts of the Governor, the Legislature, and local governments to aggressively access to needed housing and housing equity, Section 2 is like using a sledgehammer to drive home a framing nail. The blow could destroy our land use framework.

I have enjoyed a professional career of more than 40 years in the fields of land use planning and historic preservation. I have reviewed land use applications on behalf of local governments in both Oregon, my home, and in Washington State. And, I have submitted land use applications on behalf of residential property developers. Development clients are going to love the carte blanche opportunity for a variance and many local governments are going to hate processing the explosion of variances their already overworked staff must review would review under Section 1.

Section 2.a prohibits denial of a variance unless it is necessary to address a health, safety, or habitability issue. These issues are broad and not defined or limited in HB 3414. For generations, the U.S. Supreme Court, has held that zoning regulations, including historic preservation and protection of sensitive lands are valid uses of the Police Powers such as health and safety. Does this mean that a local jurisdiction can exercise its historic preservation code or heritage tree code, or wetland ordinance, or even its zoning setback standards as lawful exercises of the Police Powers and deny the request for a variance?

HB 3414 does not provide any specific guidance on what is meant by health and safety; it does not establish meaningful parameters to guide local government action. Having worked so many years in the local land use arenas, it is easy to see that the real effect of Section 2 will be to open new avenues for litigation at LUBA. Section 2 gives local governments two choices (1) spend precious resources defending their actions at LUBA, or (2) turn a blind eye to their comprehensive planning documents.

Please, do not use a sledgehammer to drive home a nail. Be thoughtful; abandon Section 2 and focus on the benefits, not the burdens, the amendments HB 3414 provide.

Sincerely,

Eric Eisemann
Principal
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