CITY OF MILWAUKIE

May 9, 2023

Rules Committee
Oregon House of Representative
900 Court Street, NE
Salem, OR 97301

Dear Chair Fahey and members of the House Rules Committee,

Your hearing today was announced too late for me to change a long-planned meeting in Eugene – otherwise I would have been there to testify in person.

The adage about legislating as sausage-making really comes to mind with House Bill (HB) 3414, which has also been a case study in lack of transparency and lack of consultation with cities. The governor's six amendments became available to us only about 30 hours ahead of today's hearing, and Representative Gamba's five amendments came out even later. This does not give meaningful opportunity for cities to review these complicated provisions.

I urge you to table this legislation and reconsider in 2024 or 2025. Representative Gamba's proposals do appear to try to rectify some of the ways the introduced bill would undercut important work cities have done on middle housing and related issues in recent years. I also think the idea of a Housing Production and Accountability Office is one worth pursuing. But there is inadequate time for cities to give these proposed revisions the scrutiny they warrant and provide meaningful comment.

Moreover, cities have just implemented our middle housing codes and are midstream on our Housing Capacity Strategy work. Many cities are still working on implementing the Climate Friendly and Equitable Communities (CFEC) rulemaking. In addition to overseeing the housing capacity work for 100+ cities in Oregon, the Department of Land Conservation and Development (DCLD) already has several new mandates this session. The ground against which you prepare to legislate is quite unsettled. Let both DCLD and cities finish the work underway before adopting these onerous new requirements.

I joined with three other mayors in an opinion piece which lays out our concerns in more detail. You can find that piece here: Opinion: Suburban mayors say Oregon plans overreach without solutions to homelessness. The text is also attached for the record.

I have focused here on the impact on cities, but there are also significant environmental concerns, as highlighted by Willamette Riverkeepers and others who have submitted comments today. I share those concerns.

Please table HB 3414 and revisit it in 2024 or 2025.

Thank you for your time and consideration.

Sincerely,

Lisa M. Batey

Lisa M. Batey, Mayor

Opinion piece for Portland Tribune/Pamplin Media

Submitted by (listed alphabetically):

Lisa Batey, Mayor, City of Milwaukie
Julie Fitzgerald, Mayor, City of Wilsonville
Denyse McGriff, Mayor, City of Oregon City
Tim Rosener, Mayor, City of Sherwood.

Overreach. Overreach was the hallmark of the legislature's handling of housing issues in pushing forward the middle housing requirements of HB 2001 in 2019. Rather than providing cities with new tools and perhaps even establishing targets for number of middle housing units produced in a given period, the legislature pushed for a one-size-fits-all approach, mandating that middle housing (tri- and quadplexes, townhomes and cottage clusters) be allowed on every residential lot irrespective of city plans and priorities.

Just last year, these middle housing codes went into effect, and yet now, rather than waiting a couple of years to see what impact the changes have on housing production, forces are now again pushing to impose yet more requirements on cities and take away more local control in HB 3414 and other legislation.

Make no mistake, we acknowledge the need for more housing in our communities. This year's HB 2001 and the Governor's dedication of new funding to foster development of more housing were important moves in response to our houselessness crisis. This year's early legislation will hopefully enable more Oregonians to get off the street and find housing.

But many of the remaining housing bills – and especially HB 3414, for which the legislature scheduled a short-notice hearing on Tuesday, May 9th -- are problematic intrusions into the rights of cities to home rule. This year marks the 50th anniversary of Oregon's groundbreaking and innovative SB 100 legislation (1973), which is often heralded for achieving many of Governor McCall's goals of fighting "[s]agebrush subdivisions, coastal 'condomania,' and the ravenous rampages of suburbia." All of the system's successes have derived from a balance of responsibilities between state agencies and local governments, and it is this balance that is the heart and genius of the system. The legislature has termed this an "equitable balance" and has expressly recognized its importance in statute. ORS 197.010(3).

In just one example, the Governor's proposed amendment to HB 3414 would eliminate the ability of cities to deny variances for residential development except in extremely limited situations. This means new housing development will not have to be consistent in scale or setbacks with existing housing on the block. This is NOT limited to affordable housing, but will actually allow McMansions to flourish and drown the scale of surrounding homes. Where a variance can still be denied, the bill would shift the burden to city staff to write up lengthy justifications for any denial. The bill is designed to let homebuilders bypass established city

policies all in the name of adding housing, even though there is nothing limiting this bypass to affordable or even moderately-priced housing. The provisions in HB 3414 would also allow developers to bypass critically important land use regulations, including regulations to protect trees, wetlands, floodplains, and high value habitat. This is not how good governance works.

Bills including HB 3414 would impose onerous new planning requirements on cities, which are already scrambling to implement state-imposed mandates under housing production strategy requirements and the Climate Friendly and Equitable Communities rulemaking. Our cities have just a few planners each, and a steady stream of incoming applications, and thus limited capacity to take on the onerous code-revision changes mandated by the state. In Milwaukie, for example, we adopted a new Comprehensive Plan in 2020 and have a lot of code revision work queued up in order to implement that plan, but state requirements keep stalling our work.

In Sherwood, as part of completing the concept planning for urban reserves, they have been working on innovative zoning requirements to encourage and incentivize the development of missing middle and affordable housing. Work that would create Cottage Cluster and multifamily zoning types that encourage a wide range of housing options. A variety of housing types are desperately needed in a city that is dominated by single-family detached homes. HB 3414 will invalidate all of this work. Under HB 3414 a developer can create a package of variances that effectivley eliminate the distinctions between zoning types. A developer will be able to build single family detached housing in a Cottage Cluster only zone, for examples. HB 3414 allows developers to maximize revenue, at the expense of communities with no accountability to deliver on affordable and missing middle housing.

Inherent in all these overbearing legislative changes is the paternalistic view that cities won't do the right thing without being forced. This is not true. Cities have enacted middle housing codes, in many cases more flexible ones than those mandated by the state. And we are starting to see more middle housing applications, which HB 3414 will provide an end-run around.

It is also noteworthy that HB 3414 would take away appeal rights from everyone but the applicant in the land use process. This runs directly counter to Goal One of our land use system, which is to encourage public participation. The land use appeal processes could be streamlined, and perhaps the Land Use Board of Appeals needs expansion in order to deal more expeditiously with appeals. But taking away the appeal right altogether – and not just as an interim emergency measure – is a breach of the trust developed in our half-century of land use planning.

It is appropriate for the state government to provide funding for needed housing, and to incentivize code changes they believe will increase the stock of housing. Perhaps it is even appropriate for state agencies to have enforcement powers where communities are not really opening their doors to additional housing. But the current measures that would take away the ability of cities, like ours, who are welcoming of middle and affordable housing, to enforce land use codes in the face of *any* challenge from a homebuilder is a bridge too far.

It is also noteworthy that a recent study from the Urban Institute concluded that while relaxing residential land use restrictions had a slight impact in terms of producing additional housing,

none of those additional housing units were affordable.
https://www.urban.org/research/publication/land-use-reforms-and-housing-costs

In a few years, the middle housing codes will be fully implemented, this year's housing investments will be in the pipeline, and we will have a good sense of what is working to produce housing and what needs tweaking. Moreover, the new beefed-up housing production strategies will be complete and state officials will know which communities have produced additional housing and which have not. Until that time, the extreme overreaching measures being put forth in the legislature this spring should be taken off the table.