Testimony by City of Wilsonville Mayor Shawn O'Neil Opposing SB 974-1:

Proposed Legislation will Produce Fewer Building Permits and Further Slow the Pace of Housing Production

Scheduled for public hearing on March 19, 2025, before the Senate Committee On Housing and Development

Co-Chair Pham and Anderson, and Members of the Committee:

I am testifying on behalf of the City of Wilsonville in strong opposition to SB 974 and SB 974-1. **These bills seek to short-circuit the timeframe for building permit approvals, but as we have seen from similar regulations, the result will be the opposite: an increase in permit denials that leads to a reduced pace of permit issuance, thereby slowing housing production.**

If the problem that SB 974-1 is trying to solve is the perception of lengthy engineering review times, and there is a desire to have engineering review on a shot-clock, then engineering plans should not be allowed for submittal until a development receives a final decision through a land-use application process. In this case, legislation should model the timing after the land-use application processes established in Oregon statute — *e.g.,* times for completeness review and times for compliance review. **This is key because the reason that engineering reviews can take so long is because developers submit incorrect designs that don't conform to public works standards.**

SB 974 and SB 974-1 also presents substantial safety risks and financial liabilities for cities. Cities need to have the ability to perform due-diligence via final plat review and engineering permit review when a city is accepting real property and improvements in perpetuity — the city is acting on behalf of the public when it accepts the liability and life-cycle costs of the infrastructure being permitted. Developers move on so they are focused on the present, while cities must deal with issues in perpetuity, which requires that cities must take a longer-term look and more fully consider consequences of present actions, ensuring that all public standards are met in the permitting process.

While it may not be obvious to a lay person, legislators should be aware that local jurisdictions are likely to deny applications much more often than work with applicants to resolve issues, since doing so diminishes the timeframe for action. A process of denials and resubmittals increases time spent to get to an approved application, rather than

lessens it. Local jurisdictions are likely to also increase the detailed requirements for completeness review to support their ability to meet timeframes, which means more time and expense spent in completeness review.

In 2018, the Federal Communications Commission (FCC) acted to preempt state and local authority to regulate the placement of small cells and also set "shot clocks" that control the timeframe in which local governments must review applications for small cell siting. While the intent was to speed up permitting, it actually slowed it down substantially. The effect of the rule was to force cities to deny many more applications, charge higher fees for external review, and require much more detail and developer expense at initial application.

The "urban housing application" of Section 8 (21) definition is so broad that basically any part of the approval and construction of a housing project is now a land-use decision. This definition would appear to implicate building permits, which have previously not been considered land-use decisions.

There is no way Land Use Board of Appeals (LUBA) could handle the volume of work this bill envisions. Furthermore, LUBA is required to follow extremely tight timelines that it already struggles to meet. LUBA lacks sufficient staffing and still relies on a paper filing system that contributes to the timeframe for rulings.

Section 10 would apply to engineering review of Section 11; however, engineering review has historically been outside the scope of LUBA jurisdiction as well. There are other mechanisms, such as a writ of review, for people to challenge local government actions. It is not appropriate for it to be considered a land use decision or be referred to LUBA.

Implementing Section 11 is simply impracticable given the broad definition of "urban housing application." For example, if an applicant separately applies for annexation and a comprehensive plan map amendment, does a city need to have final engineering review within 120 days after the applicant has submitted the annexation and comprehensive plan amendment application even though the developer has not even planned out a single road for its development?

The award attorney fees proposed in Section 10 of SB 974-1 is problematic and, combined with the shot clocks, will lead jurisdictions to approve engineering plans without sufficient review. Then the question will arise whether local governments will accept constructed infrastructure that is not built to public works standards but in

accordance with approved engineering plans. If local governments do accept constructed infrastructure that is not built to public works standards, there is significant liability concerns, and if they don't approve substandard plans, then local governments likely will face litigation from developers because the local governments approved the engineering plans.

The issue of public safety and municipal liability for defective construction is of top concern to cities, which is why appropriate review of engineering permits is so important. To help resolve this concern, the City recommends adding the following language in Section 11 after line 18 on page 8 of the -1 amendment:

> "(3) If a local government or special district has not approved site development permits for public infrastructure and it is deemed approved after 120 days pursuant to (2), the local government or special district, can pursue damages for 30 years from the date of approval in circuit court against the developer for failed infrastructure attributable to lack of meeting public works standards in place at the date of approval. If the developer or legal successor cannot cover the damages, as determined by the Court, the local government or special district may recover the cost of infrastructure repair or replacement due to failed infrastructure from the State of Oregon. The legislature shall allocate sufficient reserve funds to cover potential failed infrastructure. After 30 years, the cost to repair or replace any failed infrastructure attributable to not meeting local public works standards when a site development permit was issued pursuant to (2) shall be paid by the State of Oregon, and sufficient reserve funds to cover potential failed infrastructure shall be allocated by the legislature."

The proposed design review provisions of Sections 12(5) and Section 13 (5) of SB 974-1 seem to completely undermine local authority to determine the qualities of development that are specific to each city's needs and aspirations. This represents an abhorrent intrusion by the state legislature onto local communities that leads to ugly cookie-cutter housing across the state.

Regarding the issue of plat liability that is raised in Section 14 (8), the City recommends the following language to be inserted after Page 14, line 12:

> "(3) If a local government or special district has not approved the final plat and it is deemed approved after 120 days pursuant to (2), the local government, county, or any property owners within the plan can pursue damages for 30 years from the date of approval in circuit court against the developer for issues attributable to lack

> of meeting platting standards in place at the date of approval. If the developer or legal successor cannot cover the damages, as determined by the Court, the local government or special district or private owner may recover the cost from the State of Oregon. The legislature shall allocate sufficient reserve funds to cover potential platting errors. After 30 years, the cost attributable to not meeting local platting standards when approval of a plat was issued pursuant to (2) shall be paid by the State of Oregon, and sufficient reserve funds to cover damages shall be allocated by the legislature."

The City of Wilsonville agrees with the recommendation of the City of Bend to form a work group that includes planning and building staff from cities of a variety of sizes, especially those where the staff may consist of one planner and one building official. Collecting data on different processing times to identify those cities that are meeting the bill drafter's expectations on processing time and those that are not, and then determine if there are common factors impacting permit issuance timing. This may be an area where the newly formed Housing Accountability Production Office (HAPO) can help with funding, staff recruitment, and evaluation of existing processes.

The City appreciates your consideration and urges opposing the legislation as presented or to support these proposed amendments to SB 974 and SB 974-1. Thank you.

Sincerely,

Shawn O'Neil, Mayor
City of Wilsonville