OREGON CITY

Community Development – Planning

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

Chair Marsh, Vice Chairs Andersen and Breese-Iverson, and Members of the Committee,

On behalf of Oregon City, I respectfully submit testimony for HB 4037. Oregon City recognizes the Legislature's interest in increasing housing opportunities and Oregon City shares this goal. Sections 1-12 of HB 4037, streamlining and increasing opportunities for affordable housing, deserves the Committee's full support. Oregon City similarly supports Section 21, allowing for the restoration of homes destroyed by natural disaster. However, Oregon City has significant concerns over a number of procedure-related amendments that unfairly punish local governments without due process, deny citizen involvement and sow more confusion in housing policy without offering any measurable efficiencies in land use reviews. For these reasons, Oregon City requests the removal of Sections 14 and 16 through 19.

Delete Section 14. Suspending Local Regulation Before Any Adjudication is Unfair and will Create Confusion

Section 14 would authorize the Housing Accountability and Production Office (HAPO) to enter an interim administrative order that requires a local government to directly apply a model code adopted by the Land Conservation and Development Commission during the pendency of an enforcement proceeding.

Oregon City requests removal of Section 14 because authorizing the suspension of local standards while a complaint is under review is manifestly unfair as it deprives the local government of any due process. With respect, as an agency that is less than two years old, HAPO has only recently identified its complaint-driven investigation procedures and has yet to apply them in any case. The same is true with respect to the model code, adopted in December 2025. As a result, it is not clear how the process will work, what opportunities alleged-offending local governments will have to respond during the process, and until there is some understandable track record, it is too soon to grant HAPO authority to unilaterally suspend local regulations without review.

Further, this authorization fails to recognize that regulations setting housing policy are often highly integrated and unique to the local jurisdiction. They will not lend themselves easily to the type of plug-and-play, one-for-one exchange with the model code that Section 14 implies is possible. In addition, this approach creates uncertainty for applicants, neighbors, and staff regarding which standards apply during an active investigation of a HAPO complaint where standards may be temporarily preempted. Sowing greater confusion in state housing policy will not further the goal of increasing housing opportunities. This section should be deleted.

Delete or Amend Section 16. Removing Plan Review for Unknown Home Construction Techniques is Risky and If Not Removed, Provide Greater Liability Protection

Section 16 would allow applicants proposing one or two dwelling units to submit building plans that are stamped by an architect or engineer and to proceed without local plan review, while still requiring a building permit and inspections.

The bill also attempts to protect cities by exempting a local government from liability for damages arising from nonperformance of plan review. Oregon City agrees this concept is helpful. However, as written, this protection does not eliminate the practical administrative and legal burden on a city. In real disputes, the city could still be forced to defend claims and prove that the damages resulted from the plans, rather than from inspections, permitting decisions, or other aspects of the project review process. That burden adds cost and risk to the city even when plan review did not occur.

Moving beyond the cost of litigation, this amendment disregards the safety benefits realized through plan reviews conducted by disinterested reviewers which provides an additional level of safety. Expanding this authorization to exempt pre-fabricated or other types of non-traditional construction methods from review, when the materials and building techniques may not be as familiar to the purchaser, only increases those risks.

If this Committee is unwilling to delete Section 16 entirely, Oregon City requests that Section 16 be amended to provide a clearer hold harmless standard. Specifically, when an applicant submits stamped plans that the city does not review, the city should be held harmless from claims arising out of any deficiency or error in the permit process, including claims framed as inspection related or permit related when the underlying cause is the unreviewed plans. This amendment would align the liability framework with the bill's streamlined pathway and prevent shifting legal and administrative burden to local governments.

Delete Section 17. Prescribing Ministerial Review for All Clear and Objective Housing Reviews Unnecessarily Curtails Citizen Involvement Without Realizing Any Housing Efficiency

Section 17, including the -6 amendments, would amend ORS 197A.400 to demand that all clear and objective standards application occur pursuant to a ministerial process that prohibits local governments from providing notice beyond mailed notice to neighboring properties within 100 feet of the proposed development, within 500 feet where the development contains more than 20 units and no other participatory rights at the local level. The right to a LUBA appeal extends only to the applicant. Although seemingly straightforward, this provision fails to recognize how lack of clarity in the measure's scope as well as its application will obfuscate rather than expedite the provision of housing.

First, Section 17 fails to acknowledge the current lack of clarity in the law dictating which local standards must be clear and objective – those that regulate the "development of housing" - thereby triggering the obligation for ministerial review. Does the "development of housing" include only regulations directed at the siting and design of a home or does it extend to all of the components necessary for a home to function such as utilities, roads and driveways, steep slope or natural resource protections, as well? State housing laws offer no answer.

The answer may well come with a decision in the case of *Roberts v. Cannon Beach* which is on review before the Oregon Supreme Court. This decision will consider whether discretionary steep slope standards regulating the siting of a roadway or driveway accessing a house must be clear and objective as the "development" of housing. If Section 17 was in place before *Roberts* was decided, the only party entitled to challenge the city's determination that steep slope protections cannot be applied would be the applicant. The neighbors, who benefit from regulations directed at limiting risk of landslides created by adjacent development, would be entirely cut out of any local process or any appeal. Although a ruling in *Roberts* in the near term is likely, that ruling may not be so expansive as to create a bright line rule for determining when utility extensions, off-site road improvements, or any other necessary service component that may also be constrained by the clear and objective mandate.

Second, although the -6 amendments restoring local government ability to provide mailed notice within 100 feet, and 500 feet when the development is for 20 units or more, this provision should not preclude local government posting notice on the property or on its website so that neighbors are provided some forewarning. Goal 1 of the Statewide Planning Goals calls for "the opportunity for citizens to be involved in all phases of the planning process." This proposed section would virtually eliminate the local government's ability to involve the public in any way. In addition, the public testimony phase, even if

operating on clear and objective standards, is an essential tool in the planning process to obtain public feedback on local land use policy and the need for change. When performing long-range planning, the comments received by the public through quasi-judicial land use hearing processes are often utilized to help form policy direction and ensure the balance between community input and regulatory control is obtained.

Finally, LUBA imposes a strict preservation rule that requires that all issues be raised before the local government or they are waived. ORS 197.797(1). Without providing any comment period or public hearing below, there will be no opportunity for an applicant, or any other interested party, to object to any determination in advance of the final decision. This will make the lop-sided LUBA appeal right preserved in this amendment for applicants largely unhelpful and a much more expensive remedy then a local comment period or public hearing.

During the 2025 session, the legislature adopted SB 974 which demands that all housing applications be reviewed through a "limited land use" procedure. These obligations took effect only six months ago. It is far too soon to displace these minimal public involvement procedures with another entirely new scheme. Over the past few years, city planning departments have suffered from the rapid and scattershot implementation of land use policy from the state. This rapid change and limited implementation period before additional policy change is not revealing consistent housing policy, it does nothing more than inject greater uncertainty.

Delete or Amend Section 18 and 19. Imposing "Substantially Similar" Application Review Timeline is Ambiguous

Section 18 would amend ORS 215.427 to add a 90-day timeline for certain housing applications within an urban growth boundary when specified conditions are met, including that the application and lot or parcel are substantially similar.

First, substantially similar must be defined using clear and objective criteria. Without a definition, this provision will create disputes over eligibility and undermine predictability.

Second, Oregon City requests a clear eligibility determination rule at the completeness stage. The City should determine whether the application qualifies for the 90-day pathway when the application is deemed complete. If the City determines the application does not qualify for completeness, the 90-day pathway should not apply later.

Third, Oregon City requests that the bill clarify that timelines may be extended by written agreement between the applicant and the City. This allows practical resolution of issues without conflict over deadlines.

Oregon City also requests that the Committee recognize the practical challenge created by multiple overlapping statutory timelines and shot clocks. Cities and applicants must already track several timelines that apply differently based on housing type, completeness, and review category. Adding a new 90-day category that depends on an undefined similarity standard increases confusion and conflict over which timeline applies. Clear definitions and an early eligibility determination will prevent avoidable disputes and keep the bill's streamlining intent intact.

Requested amendments summary
Oregon City respectfully asks the Committee to amend HB 4037 by removing Sections 14 and Sections 16-19.

The City of Oregon City appreciates the need for housing in the State and our City. We would welcome any opportunities for further discussion on this bill to address the identified concerns while also supporting the production of housing.

Respectfully submitted,

Tony Konkol
City Manager
City of Oregon City