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Chair Keny-Guyer, Vice-Chairs Noble & Sanchez, Members of the House Human Services and Housing Committee:

As you know the League of Oregon Cities represents all 241 incorporated cities in the state of Oregon. As an organization, we advocate for cities to be able to solve issues at the local level. This allows locally elected officials to hear how problems like housing shortages are impacting local residents, approach the issue with a collaborative and locally focused process, and be held directly accountable when they are not addressing the problems. Cities across the state have expressed significant concerns about the need for housing, and they are looking to increase partnership with the state in addressing the complex, multi-dimensional issue of increasing housing construction.

However, in conversations across the state, with cities of varying sizes, the solutions to the issues in each city looks different. Some areas are seeing a lot of interest in development, with large developments and experienced developers coming to the table. Others do not have enough labor force to see more than a few units develop each year, and the developers that are working are smaller scale with limited experience beyond single family unit development. Each city that is investing local resources into housing are balancing a variety of needs, interests, and goals for the city. None have found a single fix that will address either the supply or price issues, but many are working their way through the process to reduce local barriers, increase incentives, and leverage the development opportunities to get a variety of housing types.

HB 2001 presents a proposal for a solution to a few aspects of the issues surrounding the development on certain types of units, but cities are concerned that its one-sized solution fails to account for the realities that cities wrestle with when they make decisions about zoning, fiscal policy, and community involvement. However, we do not believe it should be the end of this conversation. Instead, our goal is to see how cities and the state can better work together toward their shared goal of increasing housing supply that is affordable to a variety of incomes. State mandates like that proposed in HB 2001 do not often lead to the best outcomes because they cannot address the circumstances that prevent the goals from being attained.

Cities are also investing in finding local solutions, looking to update their current codes and plans, updating the information on which we make decisions, and starting community conversations to determine how to improve development outcomes. Cities are looking for assistance in their efforts, not mandates that direct significant resources to implement. The LOC has also been working to find ways to partner with the state to provide additional information and assistance from the current state resources to see improvements for all cities.

Below are our primary concerns with HB 2001, as introduced, and some alternatives that might create opportunities to see an increased planning for a variety of unit types.

### **Concerns**

Overall, cities are concerned about the lack of clarity related to many terms of this bill. In addition, while there is a line for appropriations for the Department of Land Conservation and Development (DLCD) to implement their role, there is no consideration of the fiscal impacts to cities. To enact the updates to the codes called for by this legislation will take resources and staff, and without proper funding from the state, we will not be able to meet this mandate.

### **Section 2: Mandatory Zoning Changes**

The Oregon statewide land use planning process is governed by statute, goals and rules, and is an ever changing process that cities and counties must follow when planning for future growth. The land use planning system requires an overall framework that guides and limits local decisions for growth patterns. The 19 Land Use Goals govern the expectations of what local governments do in their plans. There are a number of goals that impact planning for housing development: Goal 1 (Citizen Involvement); Goal 2 (Land Use Planning); Goal 10 (Housing); Goal 11 (Public Facilities and Services); Goal 12 (Transportation); and Goal 14 (Urbanization). Other goals also come into consideration when you are looking at developability such as Goal 6 (Air, Water and Land Resources Quality) and Goal 7 (Areas Subject to Natural Hazards).

One of the keys to land use system is that cities must plan 20 years out for their development based on research, analysis, and vision. These decisions are codified in each city's comprehensive plans, which lays out the expectations for development and redevelopment of all areas of the state. This includes, but is not limited to, zoning areas within the city's jurisdiction. It also requires the establishment of the urban growth boundary (UGB) and the expectations of for development levels as a city's boundary's expand. However, control of development in the UGB remains a county determination unless the city and county reach and agreement on urban growth within the area. These are complicated issues that require coordination between local governments.

This process is deliberate, and time consuming. It does not encourage cities to work at market speed. Since cities are planning twenty years out, the codes and plans do not always anticipate shifts in the market that can come with time. As market trends change and cities see demands for new or different housing types, it can take time to do the proper work to provide for these units in long-term plans. However, cities want to be inviting to development, and they can and will adapt to new markets when they have the resources to do so.

### *Goal 1*

The proposal in HB 2001 section 2 to mandate an increased density in single family zoning impacts a number of these goals and the planning requirements that come with them. First, Goal 1, which was vital at the time the land use system was developed, requires that cities provide citizens with the opportunity for meaningful participation in the land use process. Cities that provide a good process for citizen involvement have to commit to providing opportunities for residents to influence outcomes and design their communities. When done correctly it increases long-term success when plans turn into development. When a community is invested in the outcomes and understands the reasoning for the decision, they are less likely to oppose change.

By placing a state-wide mandate on larger cities, the result is less trust from the citizens that they have a meaningful opportunity to participate. Short timelines, like 16 months, might allow for proper notice, but they do not account for the time that many cities spend with their community to garner community support for a change as significant as this. This in turn leads to more citizens upset that the state can come in and determine what their community must look like. This undermines trust and increases the sense in many communities that the land use system is nothing more than the state acting as the planning commission and avoiding citizens in the land use process.

The reason for Goal 1 was to address the deep mistrust many communities had with the implementation of Senate Bill 100 in 1973. While Oregonians have learned how to work within the land use system and support it's preservation goals, mandate that undermine their ability to influence the process and decisions will only lead to questions about the utility and viability of the land use system.

### *Goals 11 & 12 and the price of infrastructure*

Goals 11 and 12 require cities to go beyond making zoning decisions about where housing and economic development types of uses will go. There is a requirement that cities plan for and provide adequate services are provided for the site. Services include water, sewer, stormwater, and roads. These are hard infrastructure systems that require significant work to ensure they will meet future needs. Changes in the amount of use an area is therefore not accounted for when the systems are originally planned. Infrastructure is placed in or on the ground to meet the needs that is planned for at the time. Redevelopment plans must also account for changes in need, and provide plans for accomplishing any upgrades needed to the system

Not only must the capacity of the local infrastructure be constructed to the potential need if an area is completely develop, there must also be plans for financing the needed infrastructure under Goals 11 and 12. Because of the limited tools for paying for infrastructure improvement,

many cities have adopted system development charges (SDCs) to determine how much new construction will pay for the capacity they require from each infrastructure system (water, sewer, stormwater, transportation, and/or parks). The methodology for SDCs requires cities to make capital improvement plans, determine what costs will be by project, and determine the capacity that is used by each development type. Then the city establishes a rate for each type of unit constructed. Each city can then set a policy of how much of these costs will be paid by developers and how much will not be charged, which means the funds are provided by the city's general fund or current user fees. These SDCs are set using complex methodologies and intentional conversations about what cities can afford to forego if they do not charge the total cost. They are also dependent on knowing the capacity needs for future development.

All of this means that if a city did not plan for a potential doubling, tripling, or quadrupling of capacity, it is unclear that new units added into older neighborhoods will be serviceable. There may be some capacity left in the infrastructure, but it is finite. The pipes are a certain size; the roads are built to an expected level of travel. Too much redevelopment may require upsizing this infrastructure and there are not plans or funds to do this. SDCs are unlikely to account for this type of development and are based on area-wide projects set out in the capital improvement plan.

Many of our cities are currently struggling to find the funding from many sources to provide for maintenance and improvement of their current systems. The 2017 legislature opened up a large amount of funding for transportation projects, but that is only part of the infrastructure question. A 2016 survey by the LOC found that the 120 cities that responded to the survey identified \$7.6 billion in water related projects, including drinking and wastewater treatment plants, water storage, stormwater improvements, and water and wastewater line repair or replacement. And that was at 2016 levels of expected development and growth.

To comply with comprehensive planning processes, cities need to plan for these services. Without local knowledge of where these infrastructure deficiencies might make it impossible to allow for the infill required by this legislation, cities cannot plan for the infrastructure facilities that are required under Goal 11 or the transportation systems that need to be in place under Goal 12. The rules that guide cities under the land use system require cities to not set goals for development that cannot be properly serviced, but HB 2001 does not account for the time and need for such planning.

#### *Smaller communities impacted*

While there is a population threshold for cities required to do this work, smaller communities will still be impacted. Counties over 15,000 in population are also required to provide for this level of development inside their urban growth boundaries, and those UGBs include all of the cities within

the county regardless of the population size. However, the counties are not responsible for providing the services or preparing these areas for development. Often the urban growth management agreements require the planning and development of these areas to be city responsibilities. The comprehensive plan of these cities must account for the services and development patterns allowed under the zoning established by the county. Therefore, smaller cities without much capacity will be required to do some of this work too.

*Impacts to cities already working on improving housing outcomes*

In the last two years, cities have been required to allow accessory dwelling units (ADUs) for all detached houses that exist within their boundaries (SB 1051 (2017)). Many cities are trying to recover the planning time lost to making changes to the zoning and development codes required to ensure that the regulations around these units would be considered reasonable. Some cities are struggling with how they will permit these units based on undersized infrastructure in these neighborhoods. Anecdotally, cities have not seen a large increase in ADUs as a result, but further research is needed to see if this will change over time.

Other cities were required to examine the city's rental picture because they are "heavily rent burdened" under HB 4006 (2018). While city staff had to use time to finalize reports and conduct meetings, they are also using it as an opportunity to inform their policies to improve the rental market. They are focusing on policies identified by the work of local housing committees, research or the direction of council. These cities are at the beginning of these efforts and shifting focus to address another new mandate will be disruptive.

The state also provided significant funding to help cities to update the information that supports their housing plans (their housing needs analysis ("HNA")) or update local codes to reduce barrier to housing types. These reviews are scheduled to be completed by the end of this fiscal year, and the next steps for many of these communities will be adopting or implementing the new code. The desire for this type of assistance was so popular that the Department of Land Conservation and Development had to turn away more than half the applicants. We are supporting efforts to create a dedicated program to help more communities meet these needs in the next biennium (HB 2075 (2019)).

Cities in the Metro region are working to address the requirements of Metro's 2040 plan and finding ways to ensure that the newly passed Metro housing bond can be used in these cities to increase affordable housing. These planning efforts require planning staff and housing specialists to focus on how to meet the needs of the hardest to house: very-low and low income residents.

HB 2001 section 2 will take away from the time and staff capacity on these ongoing projects. The efforts mentioned above are often just underway in the last couple of years, and this new mandate will slow them down or put them on pause. This can prevent more robust work of removing locally identified barriers from while they focus staff capacity on changing zoning codes and land use regulations to ensure it is clear what may be built based on lot dimensions.

*No guarantee units will be built or affordable*

Finally, if the purpose is to increase housing choice for moderate income families, there is no guarantee that any new units will be produced or that they will be sold or rented at prices affordable to moderate incomes. Nothing provides cities with the ability to control for these needs, only that they allow duplexes, triplexes, quadplexes and cottage clusters be built. Without any assurance that the market is going to produce these units at moderate prices, many officials question if the work is worth the result.

Cities that have recently adopted similar provisions within their code are still too early in the process to see if there is a change in developer behavior. One of the reasons to support local control of land use is that allows cities to experiment with these concepts and see what changes actually move the needle on housing type diversity. For example, it appears that zoning is not the only impediment to triplex and quadplex development. There are many proposed reasons that these units are not being developed where they are currently allows including: cost to build based on building code requirements; limited number of developers familiar with construction – particularly outside of the Metro area; and risk adverse financial markets limiting funding for construction of these units. More needs to be done to address the variety of issues around the difficulty to get these particular unit types developed.

Section 3: Model Code Development

While model codes have been used to provide guidance for local jurisdictions as they implement land use planning codes. In fact, guidance for cities that try to help conversations and analysis related to land use planning are often welcomed by cities as a strong starting point for local implementation. Having this type of product provided by the state is often exactly what cities are asking for.

However, they are often not suited to direct implementation. A model code developed to apply to all cities cannot properly account for natural hazards, serviceability, and other vital pieces of the land use system as they apply on the ground. The purpose of this section is clearly to ensure that cities enact local codes or else find themselves implementing another code, but it fails to account for the ability of the appeals process from being used to delay implementation. It leaves

citizens further outside the process and leaves cities in the position of trying to enact a code that does not relate to local conditions.

#### Section 6: SDC Deferral

As outlined above, the SDC process requires a lot of particular work by a local government to keep capital improvement plans and cost estimates updated. But, the policy choices about how to structure payments and cutting costs also require an important balance of needs. Cities that have enacted a deferral program have to balance their ability to ensure the collection of the fee, timing the repayment to help prevent buyers from being charged an unexpected SDC bill, and preservation that the SDC payments are consistent enough to assure bonding agencies that the fees will be collected to repay bonds.

If SDCs are not paid, cities must find other funds from either property taxes or user fees to make up the difference. Deferred SDCs leave cities at greater risk if projects are abandoned before the developer has fully constructed the project and a lien on the property is of limited value if the project is half constructed. When local jurisdictions implement deferral programs they can plan to have funding to cover this possibility.

In addition, cities are not the only local government to charge SDCs and are not always the building official in charge of providing a certificate of occupancy. This will complicate the problems with this section. We respectfully request that this section be removed from the bill so that we can have a conversation about the variety of pieces that fit into this complex issue.

#### Section 7: ADU regulations

Cities implement restrictions on parking and owner/occupancy for a variety of reasons. The primary reason is to reduce conflicts between neighbors. Parking and having an owner on the property reduce these issues. Similarly, cities are trying to address ongoing concerns that these unit types will not be used for long-term occupancy and instead be used as a short-term rental. Regulations like these might be the only means of increasing the likelihood that these units will be used for long-term rentals and that conflicts with neighbors is reduced. This reduces the barriers to ADUs being an expected additional units in a city's overall housing supply.

#### Section 8: Attorney Fees

LUBA currently has the authority to shift attorney fees in two instances. LUBA may shift fees in some instances, but LUBA must award attorney fees if a non-prevailing party presented a position without probable cause to believe the position was well-founded in law or on factually supported information.

The LOC has been informed that the intention of this section is to require challengers to missing middle housing applications pay for the developer's attorney fees if they lose on an appeal to the Land Use Board of Appeals (LUBA). However, as written, HB 2001 will only shift these fees to cities because only cities can deny a land use application. Success on appeal, however, is not a good measure because a decision to remand can occur for a variety of technical issues which the local government can remedy. Technically, the applicant is the prevailing party, but the final decision may remain the same. Mandatory fee shifting in these cases is not always justified if the final decision to deny an application can be supported after remanded to the local government to re-review.

### **Alternative Solutions**

As stated at the beginning, cities are not opposed to increasing missing middle housing options, and the LOC is working to best determine what cities need to provide increased options in ways that are workable at the local level. Here are some options that will improve outcomes:

#### *Change the definition of "Needed Housing"*

Currently, ORS 197.303 outlines the housing types that must be included in housing plans. The "middle housing" options are not listed explicitly as types that are "needed". If the state wants to see more of this housing allowed in single family zones, it would best to include it as a needed housing type. Similarly to the requirement that cities account for manufactured housing on single family residential lots, these types of units can be added in lower density or single family zones. This would mean that when cities update housing plans, they would be required to include these types of units in those areas. Essentially, the state would be requiring cities to include the outcome in their local planning process and would prevent a city from outright banning this type of development.

#### *Increase Assistance to Cities*

Cities number one request for changing housing development outcomes is increased technical assistance. They are looking for assistance in a number of ways: 1) funding for planning processes; 2) continued investment in updating housing needs analysis and development codes for housing; 3) model codes for newer housing configurations like cottage clusters that can be adapted to meet local needs; 4) increased capacity for local projects through investment by the state; 5) assistance with determining what incentives will have the biggest impact in increasing development; and 6) assistance with moving from long-term planning to implementation of development plans. As the state is investing more in housing, including this type of assistance to local governments will create the opportunity for better outcomes for developers because the cities will be ready to work on the project.

### *Enforcement of Current Standards*

Many cities that are working on updating their housing planning do not want to be facing mandates based on cities that are failing to meet current standards. If cities are not meeting the requirements of the land use system, there are tools available to seek enforcement of the law. The LOC recognizes that DLCD works primarily as a partner in development and has spent a number of years improving relationships with cities to increase the opportunity to move cities through the land use process and meet requirements. Therefore, the enforcement tools are less likely to be used. However, all cities are being impacted by mandates proposed but only some cities are failing to act. If the enforcement tools are not sufficiently diverse to allow for a gentle push before significant enforcement mechanism, then there is room for improvement in the system.

### *Infrastructure Investment*

Second to technical assistance, investment by the state in infrastructure is vital to development of new, different units. Historically, there were resources from the federal and state government that could be used to increase development of infrastructure and to make sure it has the capacity to service increased density in all areas of the city. This is a vital component to successful development, but there has been a disinvestment in infrastructure financing by the federal and state government that has left cities to try to find the means of building, maintaining and improving services. Given revenue limitations and the difficulty of charging current users for future user's infrastructure, shifting these costs onto developers is the only means of insuring the new capacity is paid for. Investment by the state in programs like the Special Public Works Fund or creating a program for SDC payment by the state would have a significant impact on housing development and housing prices.

### **Conclusion**

We share the goal of seeing more housing developed across the state, but we insist that it be done using locally informed processes that reflect the needs, desires, and will of our communities. We are happy to continue working toward better housing outcome that will be successful in seeing more units developed.