



February 8, 2023

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

Re: Technical Comments on HB 2889

Dear Chair Dexter and Members of the Committee,

The League of Oregon Cities appreciates the opportunity to provide technical feedback on HB 2889. The following comments are shared as suggestions to clarify the bill's intent and support implementation.

Implementation Timelines

With no effective date specified in the bill, the bill would take effect on January 1, 2024. That creates the following questions/concerns about how the requirements of the bill will apply to cities with ongoing processes:

Sections 12-17 of the bill (the sections that apply to housing needs and capacity analyses by cities outside Metro) are written as though OHCS and LCDC have already adopted the necessary rules and the OHNA numbers have already been distributed. Some cities will be doing their first round of housing needs and capacity analysis before the OHNA numbers are available (i.e., cities with deadlines in 2025 and 2026 have started that work this year). **How do the new statutory requirements, many of which are dependent on the OHNA numbers, apply to cities that have to run the housing needs and capacity analyses without OHNA?**

Sections 26 and 27 create new requirements for urban reserves. Section 28 of the bill provides that the new requirements don't apply to urban reserves that are acknowledged on or before the effective date of the bill. At least one city is currently working through the urban reserves process and expects their urban reserves to be adopted by the end of the year, but if that adoption is appealed, they won't be acknowledged until all appeals are resolved – which will not happen before the bill takes effect. **Suggest amending Section 28 to grandfather urban reserves “adopted” instead of “acknowledged” before the bill’s effective date.**

Additional Technical Suggestions

Section 2, line 24: The bill directs OHCS to regularly review and amend the rules following every decennial census. We suggest revising to acknowledge that OHCS may not need to amend or repeal the rules after every review. Suggest revising to something along the lines of “must review, and **may** amend the rules adopted pursuant to this section...”

Section 3, lines 14-16: The phrasing “for areas outside of the urban growth boundaries for each county” is confusing, as counties do not have UGBs. Is this intended to mean the area of each county that is located outside of any urban growth boundary? The LOC supports amendments to clarify the roles of cities and counties in unincorporated urbanized areas.

Section 7: Note that these deadlines will be too late for some cities to use in their scheduled HCA analysis.

Section 10: We are supportive of rules that provide greater flexibility, options and certainly for local governments amending UGBs and/or comp plan and land use regulations to support housing production. Again, given the rulemaking deadline (which is realistic) several cities will not be able to use these for their upcoming HCA adoptions.

Section 12, lines 9-10: No issues with the definition, but the introduction of an “allocated housing need” in this set of rules, which will become effective before OHCS/LCDC have adopted the rules the OHNA numbers are distributed is problematic for cities who will be preparing and adopting an HCA and HPS on earlier timelines.

Section 12, lines 21-22: Capacity analysis has previously relied on comprehensive plan designation (not zoning), which seems more pertinent to UGB/20-year planning. Suggest replacing “zoning” with “comprehensive plan designation.” Also, “capacity for density” is unclear. Does it mean the capacity of the land (total acreage minus any unbuildable areas such as protected areas) or does it mean the density allowed by the zone (or plan designation)?

Section 13: As drafted, this appears to require an entirely new BLI and housing capacity analysis upon remand for any reason, which essentially mean starting over. Depending on the timeframe, that may make sense, but in other cases, it may not. Suggest a change to allow, but not require a jurisdiction to rerun the analysis if appeals have taken so long that they are well into the planning period and it makes sense to redo.

Section 16, lines 28-30: Recommend more specific language here, as it’s unclear what “concerns the urban growth boundary” means. Is that limited to an expansion or retraction

of the UGB, or is it intended to capture actions broader than that? What might those be? Also, we assume that “a statewide planning goal related to the buildable lands for residential use” is Goal 10 (and maybe Goal 14), but that’s also unclear. As drafted, just about any comprehensive plan amendment that was required to address Goal 10 would trigger the requirement for the city to inventory its BLI and analyze housing capacity.

Section 16, lines 31-32: The bill appears to have deleted the language currently found in ORS 197.296(4)(a) - making it no longer applicable to cities outside Metro. It remains applicable to Metro. Was that intentional? The language from ORS 197.296(3) also did not transfer over but we assume that was purposeful because ORS 197.296(3) addresses BLI and housing needs analysis requirements which are substantially changed and addressed by the bill.

Section 16, line 7: Correct “reasonability” with reasonably.

Section 16, lines 22-24: Recommend adding “unmet” before “allocated housing need” to clarify that cities are only expanding the UGB and/or adopting efficiency measures to address the unmet portion of the need. Also, as noted previously, some cities won’t have an OHNA allocation by the next time they need to consider UGB expansion and/or efficiency measures. Unclear how this subsection will apply to their analysis if they don’t have an “allocated housing need” as defined in section 12.

Section 16, lines 40-41: Suggest revising to clarify that this applies to any amendments under this section (as drafted it appears to apply to entire comp plan and land use regs, not just what is being amended). Also, insert “applicable” before “goals and rules” so it’s clear that only those applicable to the amendment need to be addressed.

Section 16, line 5-6: It’s unclear how a city ensures that buildable lands are zoned at density ranges likely to be achieved by the housing market. A local government doesn’t control the market, especially over a 20-year planning period. Suggest replacing “zoned at density ranges” with “planned at density ranges” to account for fact that some properties, especially those not yet annexed may retain a different zone (such as agriculture) until annexed, served and able to be developed at urban densities.

Section 17, lines 9-12: Needed housing is defined here and in section 12. We have concerns about the potential unintended consequences of the changes to the definition of needed housing because the changes seem specific to the use of the term in housing capacity and needs analyses, but the term is also used elsewhere in Chapter 197 and in LCDC’s Goal 10 rules. It’s unclear if the changes proposed in these rules will impact those uses.

Section 17, lines 28-33: The parsing out by housing type will be challenging, especially in advance of having an OHNA allocated housing need, and because it doesn't appear these are addressed in the rulemaking for OHNA. (4)(d) will be especially difficult, based on available data and there will be a wide margin of error.

Section 18, lines 11-4: We support that urban reserves and exception/nonresource lands have been split, so that urban reserves are analyzed first for the purposes of an UGB expansion.

Section 21, lines 43-44: "Permit" is a term of art in land use and typically means allowed without a land use approval. For clarity, suggest replacing with "allow" here, as that seems to be the intent.

Section 21, line 2: What does this mean? Needed housing is defined previously. This implies that cities don't have to allow all of the needed housing types.

Section 26 lines 11-15: The LOC supports allowing for rural reserves outside of Metro. As drafted it would require the designation of rural reserves at the same time as the designation of urban reserves. At least one city is in the formal adoption process for urban reserves and anticipates adoption by mid-2023. This means they would not be able to designate any rural reserves in the future, until such time as they have a need for additional urban reserves. Recommend the addition of a clause that provides for cities with adopted urban reserves to add rural reserves without having to redo their urban reserves.

Section 28: As previously noted, a city is currently working through the urban reserves process and expects their urban reserves to be adopted by mid-year. However, if that adoption is appealed, it won't be acknowledged until all appeals are resolved – which will not happen before the bill takes effect. Suggest amending to vest urban reserves "adopted" instead of "acknowledged" before the bill's effective date (assuming the bill isn't effective until 1/1/24).

Sincerely,
Ariel Nelson
League of Oregon Cities