



HOUSING ALLIANCE

February 10, 2021

Senate Committee on Housing and Development
Oregon State Legislature
900 Court Street NE
Salem, OR 97301

Dear Chair Jama, Vice Chair Linthicum, Members of the Committee:

I am writing to you today on behalf of the Oregon Housing Alliance to address some questions related to SB 155, which came up during the hearing on the proposal on February 2, 2021. As a reminder, SB 155 extends the sunset date until 2028 for a property tax exemption for affordable housing.

The Oregon Housing Alliance is a coalition of more than ninety organizations from all parts of the state. We believe that all Oregonians need a safe, stable, and affordable place to call home.

The role of property tax exemptions in developing affordable housing

Across Oregon, we simply do not have enough affordable and available homes for every household who needs one. For many decades, though, organizations across Oregon, affordable housing developers and public housing authorities have been building safe, stable, and affordable homes. These rental homes receive public funds, and in exchange, follow strict rules about the incomes of people who qualify for the housing, and how much rent can be charged.

We have many local, state, and federal tools to help pay for the development of these apartment homes, although the need for these homes is far greater than the currently available resources. A typical affordable housing development relies on a half dozen or more of these funding sources or tools to meet the necessary rent targets for the project and make the project feasible. Property tax exemptions are one tool to help incentivize and make financially viable affordable housing developments across our state, and over the years, the Legislature has authorized several property tax exemptions for affordable housing.

Property tax exemptions for affordable housing are critical for several reasons. Exemptions recognize the importance of affordable housing in our communities, and provide an on-going financial subsidy to the project by lowering the annual operating expense. Without property tax exemptions, affordable housing developers would need additional resources to serve the lowest income members of our communities, and typically those additional resources would have to come from public entities. Because the rents are restricted to people with low incomes, and because the regulations of funding sources generally don't allow it, the development cannot simply raise its rents to cover a significant cost increase.

Prior to a development being constructed, developers have essentially solved a complex math problem, pulling together grants, loans, and other sources of funding to purchase land, construct a building, and pay for its ongoing operations with the restricted rents that are paid by the people who will ultimately live in the building. A property tax exemption is one additional tool that supports the development and continued existence of the affordable housing in communities.

Attached to this letter is a summary of other property tax exemptions adopted by the Legislature to support affordable housing.

History of the exemption extended by SB 155

As noted in the hearing, the property tax exemption being extended through SB 155 has a unique history. Prior to 2013, many affordable housing developments qualified for a property tax exemption under ORS 307.130, which is the statute which allows non-profit organizations to receive a property tax exemption to support their mission and work. This statute covers many different types of “charity,” from churches to hospitals to museums and service agencies like the Red Cross and YMCA. Oregon courts, the Legislature, and the Department of Revenue have struggled for decades to define what is or is not a charity eligible for this exemption. To illustrate the difficulty of defining “charity,” note that this statute has been amended almost twenty times since its adoption in 1955. Whether or not an affordable housing development received this exemption was a matter of local policy, meaning a local county assessor would have decided whether the project qualified under ORS 307.130.

However, due to a change in policy by Department of Revenue, local assessors began cancelling property tax exemptions previously granted to these projects and instead began taxing them. As a reminder, these projects were financed and constructed with the assumption that they would remain exempt from property taxes. As affordable housing rents are restricted, and cannot simply be raised to meet additional expenses, these organizations faced a significant, unplanned for expense. As a result of this change in policy and subsequent tax bill, one non-profit organization, the organization then known as Corvallis Neighborhood Housing Services, filed a lawsuit¹ to challenge the change in policy. Note that the organization and its affordable housing developments had not changed; rather, the Department of Revenue had changed their policy as to whether these projects were still eligible for the exemption.

The Tax Court found that the affordable housing developments did not meet the criteria for the property tax exemption under ORS 307.130 because they received rent, albeit reduced, for the units. As a result of the change in policy and subsequent court decision, many affordable housing properties across Oregon were no longer eligible for this exemption. They were faced with closing down or seeking additional public subsidy. To avoid further appeal, the Department of Revenue and Corvallis Neighborhood Housing Services agreed to a moratorium on new exemptions while preserving those previously – prior to July 1, 2014 – approved by local assessors, and they asked the Legislature to consider a bill to that effect.

In 2014, the Legislature considered and passed HB 4039², which created an exemption explicitly for these properties. This exemption was created in recognition that the affordable housing, owned and operated by a non-profit organization, continues to provide benefit to our communities and to the people who live in these affordable rental homes. The exemption also recognized that the owners of the affordable housing had not financed these properties with the expectation they would pay property taxes in the future, and financing, grants, loans, and expected revenue from rents had not factored in an unexpected expense from loss of the property tax exemptions.

HB 4039 was a temporary, four year exemption from property taxes. The Legislature at the time did consider a broader look at which nonprofits qualify for the charitable exemption under ORS 307.130, however their work did not result in a proposal during another session. In 2016, when this exemption was last considered for renewal by the Legislature, the Staff Measure Summary³ included significant background information on the Court case, and action by the Legislature. In 2016, HB 4081⁴ extended the sunset until 2022, and passed both the House and the Senate unanimously.

¹ <https://law.justia.com/cases/oregon/tax-court-regular-division/2013/tc-4996.html>

² <https://olis.leg.state.or.us/liz/2014R1/Measures/Overview/HB4039>

³ <https://olis.leg.state.or.us/liz/2016R1/Downloads/MeasureAnalysisDocument/33531>

⁴ <https://olis.oregonlegislature.gov/liz/2016R1/Measures/Overview/HB4081>

The impact of this sunset extension

SB 155 does not allow any new affordable housing developments to qualify for this exemption. The policy simply maintains the existing affordable housing. In 2016, the Legislative Revenue Office indicated the total impact⁵ of this policy is less than one million dollars per biennium.

Continued provision of affordable housing

During the hearing on SB 155, several Legislators inquired about whether these properties were being maintained as affordable housing. I want to highlight the currently available protections in place generally for affordable housing, as well as for this exemption.

When regulated affordable housing is built with public dollars, regulatory agreements are put in place that require the housing to remain affordable for at least thirty years, and more commonly sixty years. In some jurisdictions, local dollars also mean that the housing should remain affordable for ninety-nine years. As noted above, these projects have multiple funding sources, all of which have restrictions. To qualify originally for the 2014 legislative extension of this exemption, the organization had to be a non-profit organization, and developers agreed to inform assessors if there was ever either a change in ownership or a change in the property use that meant they were no longer operating as an affordable housing property with restricted income eligibility and restricted rents.

For this particular exemption, to the best of our knowledge, all of the housing that received the exemption in 2014 still remains as affordable housing.

We urge you to support of SB 155, and maintain this important exemption for affordable housing. We would be happy to answer any remaining questions you have about this proposal. I can be reached at 503-816-2882, or amcintosh@neighborhoodpartnerships.org.

Thank you very much for your time, and for your service to our state.

Sincerely,



Alison McIntosh
On Behalf of the Oregon Housing Alliance

⁵ <https://olis.oregonlegislature.gov/liz/2016R1/Downloads/MeasureAnalysisDocument/33095>