



## **HOUSE OF REPRESENTATIVES**

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May 10th, 2023

Chair Fahey, Vice Chairs Breese-Iverson and Kropf, members of the House Committee on Rules,

As the former two-term Mayor of Milwaukie, I am proud of the work we have done over the past four years not only to implement the middle housing changes required by HB 2001 in 2019, but to go further and encourage more affordable housing types on every residentially zoned lot. In tandem with that, we also implemented a robust tree code to improve our urban canopy, which will have beneficial impacts for public health, reducing the heat island effect, storm water, and much more.

All of these are good changes and are resulting in *more* housing in Milwaukie. Around 2,000 new units are currently under construction or in planning phases. That's a 20 percent increase in the number of homes and we did it *without* an urban growth boundary expansion. This code work should result in healthier and more *affordable* housing.

The proposed -6 amendment to HB 3414 throws all of that out the window.

The variance process contemplated by this amendment creates an end-run around all of the great work we and many other cities have done to comply with and further the state's mandate for middle housing. Even worse, it will reassert the stranglehold that single family housing used to have on all the housing zones in a city. Single family housing is the most profitable type to build and its price is based on what the market will bear, not so much on the costs to produce it. Because of this it is clear to me that a pure cost-reduction approach will not affect affordability of this type of housing, it will merely increase profit margins for developers who will continue to charge the going market rate.

Again, the -6 requires that unless a city can make an argument that a development falls within a short list of exceptions, the city is REQUIRED to accept any variances requested by a developer even if they force a single family development to be approved in a middle housing zone.

As I understand it, the purpose of this bill is to make it easier to develop needed housing. However, in the -6 there are hardly any side rails to prevent abuse of this new process. As currently written, ANY person or entity, at any time before or after a permitting decision, may allege a violation of housing law whether or not the permitting decision was appealed and whether or not it even affected the outcome of the permitting decision.

This creates a gigantic loophole ripe for NIMBY abuse that will in all likelihood dramatically slow the development process rather than speeding it up.

Furthermore, the -6 does not contemplate the larger context of permitting decisions. Under this amendment, a city could simultaneously face legal proceedings on the same permitting decision through HAPO, LUBA, and the court system. If two of these proceedings reach contradictory rulings the city will be caught between a rock and a hard place, saddled with immense legal exposure and forced to expend limited resources. Again, there is nothing at all in the -6 to prevent or mitigate this quandary. I would even say that NIMBYs will jump at every opportunity to gum up a development process and I would guess this would not be an uncommon problem.

Over the past several weeks my team and I have worked diligently with the cities, environmentalists, land use experts, and more to craft the -5 amendment. We had communicated to the best of our ability with the proponents of the -6 amendment but, unfortunately, they would not address our largest concerns. We believe the -5 will fix these concerns in several straightforward ways, all while expediting the development process and still establishing a new enforcement tool in the Housing Accountability and Production Office.

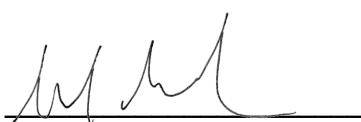
Importantly, the -5 restricts the eligibility for requesting an adjustment to a permitting process to just developers of middle housing, multifamily housing, mixed-use, and affordable housing. These are the needed housing types and should be prioritized in order to create housing most Oregonians can afford. We need every tool available to cause the market to produce more of what we really need rather than \$700,000 McMansions.

Second, the -5 flips the process for requesting a permitting adjustment. Instead of a nebulous and open-ended variance process which forces cities to take on new liability, it creates a clear list of adjustments that cities are required to approve. This creates certainty for both developers and cities. Uncertainty is expensive and I believe this will also have the desired side-effect of further lowering development costs for our needed housing types.

Third, the -5 requires that only a DEVELOPER may file a complaint with the Housing Accountability and Production Office, and it also creates guidelines for how complaints to this new office will be navigated in relation to LUBA and the court system. Put another way, the -5 fits the HAPO into our existing landscape of enforcement tools and ensures they will complement each other, rather than being at odds.

Chair Fahey and members of the committee, the League of Oregon Cities, Mayors from across Oregon, environmentalists, affordable housing developers, land use experts, and many others have submitted further detail on these amendments but I want to leave you with this: in the realm of government and policy implementation, cities are on the very front lines. They DO much of the important work that the legislature requires, and they do it in ways that are necessarily grounded in their communities. I am all for accountability and meeting our housing goals, but we have got to recognize that when cities are crying out so full-throatedly, maybe they are seeing something at the ground level that is just invisible to us in state government.

Please adopt the -5 amendment to HB 3414. Let's create a process for expediting development that is actually implementable and will result in more housing being built, and establish a Housing Accountability and Production Office that will be able to function in the ways we all hope.



Mark Gamba  
State Representative, HD 41