



Testimony by City of Wilsonville Mayor Julie Fitzgerald Opposing HB 3414-6 and Supporting HB 3414-5:

**-6 Amendment Harms Housing Production, Equity, and Climate Goals;
-5 Amendment Provides for Implementable Process that Protects Community Standards and Advances Statewide Goals to Increase Housing Production**

Scheduled for public hearing on May 9, 2023, before the House Committee On Rules

Chair Fahey, Vice-Chairs Breese-Iverson and Kropf, and Members of the Committee:

On behalf of the City of Wilsonville, I am testifying in support of HB 3414-5, and in opposition to the -6 amendments. I note also for the record that the City opposes the base bill HB 3414, as reflected in testimony submitted for a hearing on March 3, 2023.

In essence, the -5 amendment restructures the variance section proposed by HB 3414 to provide developers and cities a clear administrative path allowing flexibility from a wide range of development standards for middle housing and multifamily development. To qualify for an adjustment(s), a developer must demonstrate how the intent of the adjusted standard is being met or mitigated and that the adjustment(s) will: reduce development times, increase housing production, or improve affordability.

The City of Wilsonville has a long track record of producing a variety of housing integrated within every neighborhood, with half of our 27,000 residents residing in single-family homes and half living in multi-family communities. For the last several years, we have worked with other jurisdictions, DLCD, and the State legislature to improve Goal 10 and make it easier to meet housing needs in every City across the State. **HB 3414-6, while well-intentioned, will not address the real barriers to housing production and will actually undermine our unified efforts for providing equitable housing.**

Despite the bill's referral to the House Committee On Rules over a month ago, the -6 Amendment does not address the most concerning, highly-problematic issues called out in prior testimony. **HB 3414-6 contradicts adopted state housing production priorities, removes important local tools to meet new state requirements and adds new layers of bureaucracy that will prevent already limited city resources and staff from focusing on encouraging and approving housing development applications.**

HB 3414-6 Variance Requirements Undermine Housing, Equity, and Climate Goals

HB 3414-6 requires cities to approve a developer's request for any number of variances or adjustments for residential development, **allowing developers to bypass a number of state and local development priorities that would result in significant detriments to livability, health, environment, climate, and equity.** Cities will not be able to enforce housing production strategies, protection of natural resources (Goal 5 and 15), transportation infrastructure standards, climate-friendly regulations, or new urban growth area development and it will prevent cities from meeting recent state mandates including:

- Middle housing code (HB 2001, 2019),
- Housing Production Strategies (HB 2003, 2019)
- Oregon Housing Needs Analysis policies (OHNA) (HB 2001, 2023); and
- Climate Friendly and Equitable Communities (CFEC) Rules.

HB 3414-6 Sweeping Language Undermines Other Statewide Planning Goals

The proposed legislation does not define "land use regulation" and as historically used in Oregon, application of this term would be broad, beyond development standards, leaving the vast majority of land use regulations that, if a variance is requested, must be approved. **This opens the door to a variance of a land use requirement beyond the development code and the scope of a quasi-judicial decision.** It could infer modifications to legislative land use policies and requirements, which is explicitly not allowed in the quasi-judicial process and would require a separate legislative hearings and notice process. This issue was shared with those drafting the -6 amendments and yet, the language remains while language was added to allow a policy change for a single development application (but not in the policy document itself). Whether this is legally feasible is highly questionable, but it certainly would create a bias, unfair, not clear-and-objective process for applicants. Plus the impacts could be sweeping and detrimental to providing livable communities with housing opportunities for all.

The City understands the intent of this bill is to allow modest adjustments and modifications to development standards to avoid important housing projects from being denied when the requested modifications are minimal, having little to no negative impact. In particular, there is a hope to avoid much needed affordable housing projects from costly delays, denials, and appeals. However, HB 3414 does not just apply to affordable housing projects. The bill does not just apply to modest adjustments and modifications but rather allows full variances and waivers. The bill does not just apply to development standards and regulations, but all land use regulations. The bill provides some exclusions that allow cities to deny a variance request, but that list is woefully incomplete. Rather than write language based on the most common issues, from a place of relative specificity, this is written to allow adjustments to everything, except for a few things. As currently written, HB 3414 negates thousands of policies (such as Goal 5

natural resources, the Willamette River Greenway regulations, open space requirements, tree preservation, and multi-modal transportation improvements) rather than focusing on the ones that are problematic.

HB 3414-6 Slows Down Housing Approvals

The broad variance language in HB 3414-6 creates an increasingly ambiguous and discretionary review process for housing projects and undermines the importance of clear and objective standards (a clear path for developers). **This will shift the focus of local planners, slow the development review process, and make it difficult for cities to hit housing production targets.** The lack of objective standards will only add additional process and slow down housing approvals.

In addition, if a city denies a variance based on one of the listed reasons, the city must adopt findings supported by substantial evidence in the record demonstrating the necessity of the denial. This shifts the burden to local city staff to provide substantial evidence for the variance request. Cities are processing multiple applications and permits at a time, a couple of months is barely enough time to review every standard against an application, let alone become familiar enough to understand the need for the variance and to assess it against all the exceptions in the bill and then develop “substantial” evidence. This means staff time and capacity will divert from approving land use applications and associated construction permits in a timely manner. **We should be streamlining processes and ensuring there is a clear and objective path to approval, not the opposite.**

HB 3414-6 Puts Profit Over People

Easy to obtain variances should be an incentive for only those developers willing to achieve a higher standard, preferably for subsidized affordable housing units, but at a minimum some cost reduction or increased production. **HB 3414-6 is designed to let homebuilders bypass established city policies all in the name of building the same housing currently allowed.** The provisions in HB 3414-6 allow developers to bypass critically important land use regulations, including regulations to protect trees, wetlands, floodplains, and high value habitat. It would also allow developers to negate standards for multi-modal transportation systems, open space, and solar access. All of these development requirements are principles of smart growth and are critical to healthy, active, sustainable communities that decrease GHGs, further environmental justice, and make us more climate resilient. Without adequate staffing, a city will be forced to approve variance requests even if they violate health and safety standards due to the high burden of proof. This is not how good governance works.

HB 3414-6 Increases Legal Uncertainty

In essence, Section 4 of HB 3414-6 is unclear to how this proposed review of violations squares with traditional litigation routes of local governments' land use decisions (LUBA appeal) and non-land use decisions (Circuit Court writ of review) and when local governments and developers can confidently say a decision is final. There is no statute of limitations for enforcement, meaning someone could complain years after-the-fact, leading to uncertainty for developers and local governments. Similarly, if a complainant is dissatisfied with the normal course of disputing an issue (land use issues via LUBA and others via circuit court), they can seek yet another avenue through this enforcement mechanism. Essentially, when does a local government action become final and not subject to further review? All of this legal uncertainty is certain to further slowdown housing production.

HB 3414-6 contradicts adopted state housing production priorities, removes important local tools to meet new state requirements and adds new layers of bureaucracy that will prevent already limited city resources and staff from focusing on encouraging and approving housing development applications.

The City of Wilsonville opposes the bill in its current form and respectfully requests that HB 3414 not advance, due to the significant impacts the proposed variance process and new complaint process will have on cities' abilities to plan for, review and approve housing developments and meet our shared housing production goals and targets passed in HB 2001.

However, if HB 3414 moves forward, the City of Wilsonville supports the -5 amendment as it actually meets the goals of HB 3414 – to increase housing production, reduce development timelines, and improve affordability – while minimizing red tape and administrative burden on local government.

HB 3414-5 Presents a Reasonable, Implementable, and Effective Approach

The -5 amendment restructures the variance Section 2 and focuses on those items which an adjustment or waiver is most frequently requested on residential development applications. These adjustments present a wide range of development standards for middle housing and multifamily development. However they are specific, measurable, and focused on development standards so **HB 3414-5 does not undermine housing, equity, climate goals, or other statewide land use planning goals.**

The language provides a clear, administrative path, without discretion. This approach will be easy for cities to implement and therefore, **HB 3414-5 will not substantially increase development application review timelines.** Further, to qualify for an adjustment(s), a developer must demonstrate how the intent of the adjusted standard is being met or mitigated and that the adjustment(s) will: reduce development times, increase housing production, or

improve affordability. **This along with a specific list of allowed adjustments in the -5 amendment, narrows the potential for substantial negative impacts and ensures some benefit for the community.**

The -5 amendment also narrows the complaint and enforcement function of the HAPO Section 4 to reduce legal uncertainty and administrative burden on local staff and focus on housing production:

- The office will only receive complaints from developers related to specific housing developments. The office will not receive complaints related to local legislative/planning decisions.
- A developer must choose a path (LUBA or HAPO) within 14 days, which is the existing requirement for LUBA appeals. If they choose HAPO and do not like resolution, they may then appeal to LUBA. Limiting appeals from continuing on-and-on through various avenues.
- Statute of limitations (should not affect any development application approved before the HAPO operational date).

This provides necessary clarity on when the complaint has a final decision and development can go forward, which is critical to our housing production goals.

If the committee would like additional information from a practitioner, please contact:

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The City of Wilsonville respectfully urges the committee to table HB 3414 or adopt HB 3414-5. Affordable housing is a critical issue but HB 3414-6 takes an unreasonable approach that undermines many local and state goals. Thank you.

Sincerely,



Julie Fitzgerald, Mayor
City of Wilsonville