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Alana,

Please accept this letter as testimony for the upcoming Building Codes Division Rulemaking Advisory Committee (RAC) meeting scheduled for August 7, 2020.

As a member of the RAC, I was more than a little disappointed with the content of the draft rules included in our committee packet. As a member of the RAC, it was my understanding that we would be discussing the identified topics listed in the previous agendas (reference RAC May 26, 2020 Meeting Agenda). In our two committee meetings, there has been opportunity for very little organized substantive discussion on the individual listed topics. The discussions that have taken place are definitely not reflected in the proposed rules. I believe we are too early in the process to rush rules into existence that will only serve to further burden jurisdictions, contractors, and service providers alike. Several of the topics identified as crucial discussions for the committee including "sufficient jurisdictional safeguards" and "validation of past permits" are not even addressed in the proposed rules. I believe that the members of the current RAC have the desire, dedication and ability to assist the Division in drafting well thought out language for proposed rules that will address the recent opinions by the Attorney General and address Division administration concerns. I ask the Division to hold on draft rulemaking related to issues before the RAC until the committee has a chance to provide substantive quality input. I offer comments on the provided draft rules by section as follows:

OAR 918-020-015:
What is the purpose of the new Building Official Registration? It seems duplicative given jurisdictions' operating plans already list name and certifications of the person appointed as the Building Official. Current rules (OAR 918-20-180) require a jurisdiction to notify Building Codes Division of any changes to that operating plan within 30 days. The proposed rule requires an annual renewal or the Building Official Registration instead of a four-year renewal for current operating plans. The proposed rule as worded does not appear to allow for a part-time building official to serve multiple jurisdictions without requiring intergovernmental agreements between the jurisdictions. I believe this is an oversight and am not sure how the proposed Building Official Registration benefits either Building Codes Division or a particular jurisdiction over the current requirements for updating the jurisdictional operating plan found in OAR 918-20-180. The current process provides the division with much more complete information in a much timelier fashion that the proposed rules. The requirements related to Building Official registration should be removed from the proposed rules and the current process of providing updates to the jurisdictional operating plan should be retained.

OAR 918-20-XXX1 (new):
Why do these rules propose that a Building official must be "directly employed" by a municipality? As we have discussed in the RAC meetings, the AG opinion (No. 8296 dated March 14, 2019) simply requires that a jurisdiction must maintain adequate safeguards if it will have private parties performing governmental functions. In our committee meetings we have discussed this opinion and agreed as members that we should be discussing what appropriate controls might look like for a jurisdiction. That discussion has not been placed on the agenda or taken place yet. To simply require that a jurisdiction must "directly employ" a building official appears to be a significant over-reach of DCBS authority which will have significant negative impacts on local jurisdictions and BCD.

Language in subsection (B) requires a jurisdiction to "directly employ" one or more staff members to meet the requirements of a building official as defined. This requirement could require smaller jurisdictions to hire multiple staff members if they wish to retain local control of their building department and provide desired services to their community stakeholders. This requirement is a significant over-reach from the provided legal opinions and committee discussion and therefore should be removed.

Companies licensed under ORS 455.457 currently provide Building Department services to local jurisdictions across the State. In fact, ORS 455.188(9) requires *A municipality that administers and enforces a building inspection program pursuant to this section shall recognize and accept the performances of state building code activities by businesses and persons authorized under ORS 455.457 (Licensing specialty code inspectors and plan reviewers) to perform the activities as if the activities were performed by the municipality.* The proposed language requiring a Building Official to be "directly employed" appears to directly conflict with this statutory mandate and should be removed.

OAR 918-020-0070:
The proposal to repeal the purpose and scope section of OAR 918, Division 20 is an unclear policy decision that removes existing, beneficial guidance. This section gives good direction to both the Division and individual jurisdictions as to the purpose of this section of Oregon Administrative Rules. Especially important is the acknowledgements that:

"The purpose of these rules is to encourage municipalities to assume responsibility for the administration and enforcement of building inspection programs to the fullest possible extent.",

"Municipalities are encouraged to develop operating plans that meet the identified needs of their individual communities.", and

"The intent of the division is to cooperate with municipalities to obtain and maintain authority to administer and enforce efficient, effective, timely and acceptable building inspection programs."

If the Division is proposing to move away from these foundational elements for building inspection programs, that should be a specific discussion with jurisdictional stakeholders and likely the legislature.

OAR 918-020-0090:
Proposed language in section (m) requires that each jurisdiction "directly employ a Building Official". As noted above under proposed changes to OAR 918-020-015, AG opinion (No. 8296 dated March 14, 2019) simply requires that a jurisdiction must maintain adequate safeguards if it will have private parties performing governmental functions. RAC committee members have discussed this opinion and agreed we should be discussing what appropriate controls might look like for a

jurisdiction. To simply require that a jurisdiction must "directly employ" a building official appears to be a significant over-reach of the requirements of the Department's legal guidance from the AG and an unnecessary policy decision better beyond the needed scope of regulatory guidance. Such a decision will have significant negative impacts on local jurisdictions, counties and the Division.

Proposed language in section (m) also provides qualifications for persons to be appointed to the person of Building Official. These qualifications are severely lacking at any guarantee that candidates meeting these standards can appropriately provide administrative service to the community. While the proposed language sets a minimum year of services as an A-level structural inspector or plans examiner, it also allows for a bachelors or graduate degree in structural or civil engineering with no jurisdictional experience to qualify for appointment. While the proposed language ignores a degree or licensure as a professional architect as qualifying criteria, The rule is both overly general and too restrictive: education in design alone does not necessarily provide the experience to guide a jurisdictional program focused on appropriate code application and enforcement, while some professions or certified examiners or reviewers would not qualify. We strongly encourage the Division to look to national certification and actual inspection and plan review experience as the qualifying criteria for a Building Official appointment. National certification is a well-established multi-test process requiring proficiency in technical, administrative, legal, and budgeting aspects of a building department.

New language is proposed in section (o) that would dictate how compensation to inspection companies providing service to the jurisdiction must be structured. This has not been discussed in the RAC. The proposed rule limits the ability of a jurisdiction to structure contracts appropriate to their specific needs, and does not solve any existing financial, ethical or structural problem with contracting. The required state fee model outlined in 918-050-0100 Statewide Fee Methodologies for Residential and Commercial Permits require a fee schedule for building permits based on the valuation of the project. Under this required fee structure, small permits often do not cover the cost of services to issue permits and provide inspections for an individual permit. Requiring a jurisdiction to charge fees on a sliding scale based on the value of work and eliminating a jurisdiction's ability to pay a contract employee under a similar methodology is not appropriate and will severely burden jurisdictions in these and other difficult economic times when a multitude of smaller permits require service from the jurisdiction. Individual jurisdictions are in the best position to manage their budgets and establish fair compensation in contracts with companies providing service to them. This proposed language should be removed.

OAR 918-020-0095:
The proposed language in section (e) duplicates proposed changes to OAR 918-020-0090 sections (m) and (o). As indicated above, the proposed language is excessively flawed, overly restrictive, or simply inappropriate. In addition, duplicative language should not be placed in rules, appropriate references should be provided to the individual location of the rule.

OAR 918-020-0105:
The proposed language in section (e) points to the proposed requirement in OAR 918-020-0090 for a jurisdiction to directly employ the building official. As discussed above, this language does not align with the AG opinion (No. 8296 dated March 14, 2019) and is a significant over-reach by the Division. The proposed language should be removed.

OAR 918-30-XXXX(new):
The proposed language regarding conflict of interest is confusing and unnecessary. As written, the proposed language appears to prohibit any person certified or licensed to perform plan review or inspection services for a municipality from making any decision that would benefit themselves, a relative or their company. The proposed language does not indicate "anyone working in the capacity

of a plans examiner or inspector for a municipality" it simply puts the requirement on anyone holding a certification or license "regardless of how employed or contracted for". ORS 455.459 provides understandable specific requirements related to specialty code inspection and plan review conflict of interest. *A person shall not inspect or review any project or installation in which the person, employer of the person or relative of the person has any financial interest or business affiliation.* The proposed language along with language in OAR 918-098-1475 appears to reach well beyond this direction given by the legislature and further limit individuals and businesses from utilizing certified individuals to provide information, explanations and guidance to clients needing assistance preparing submittals for submittal and review by local jurisdictions even when the certified individual or their employer have no connection to the plan review or inspection process. This proposed language should be removed, and the Division should review current language in OAR 918-098-1475 to provide consistency with the legislative direction from ORS 455.459.

OAR 918-098-1015:
The proposed language requiring Building Official registration is unnecessary and should be removed as discussed in various sections above.

As part of the regulatory process, the Division is required to comply with ORS 183.540 regarding the reduction of economic impact on small business. Under this statute the Division is given five options for reducing the economic impacts on small businesses. Most companies providing building department services in Oregon are small locally based businesses. Clair Company, Inc. is just one of those small businesses that will be significantly negatively impacted by the proposed rules. We have been providing Building Official, inspection, and plan review assistance to local jurisdictions since 1989. Not only would these rules result in significant economic damage to our business, if passed, they would not allow us to continue providing assistance to the many local jurisdictions large and small that need full time or overflow assistance to meet both state mandated and locally desirable service levels for their stakeholders. The result of the proposed rules would very likely result in the limitation of services we provide, and thereby extend permitting and construction timelines in many jurisdictions, large and small. Changing the current model without understanding the system as a whole could have serious ramifications for all types of development throughout Oregon I ask that you follow the direction given in ORS 183.540 (5) and let the committee work to find less intrusive and less costly alternatives for small businesses, jurisdictions, and all stakeholders in these issues.

Please feel free to reach out to me personally if I can provide clarification on any of the issues raised in my testimony.

David Flemings
Codes Services Manager