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Rulemaking Advisory Committee
Dept. of Consumer and Business Services, Building Codes Division
Re: Program Delegation

Dear Members of the Committee,

The City of Lebanon appreciates the opportunity to provide further testimony on the draft rules for the Building Codes Division. In our previous testimony provided to the Committee, we highlighted the positive aspects of working with third-party service providers, the flexibility that is provided to rural communities, and the oversight that the City maintains over the third-party providers.

Upon evaluation of the latest draft rules, it is understood that these comments, and other comments provided by cities throughout the state have not made an impact. As such, we would like to provide the following comments and questions for the Committee's consideration on the current draft of the rules:

1. Building Official Employment – the latest draft of the rules provides that each municipality must directly employ a building official or combine with other municipalities in the employment of a building official.

As a rural city, the City of Lebanon would find it financially infeasible to hire a full-time building official. As such, this new rule would require the City to enter into an intergovernmental agreement with neighboring jurisdictions, if willing, to meet this requirement. This agreement would likely include a payment structure, and an allocation of time based on each city's contribution to the agreement. By its nature, there is a lack of flexibility in this system, and would be extremely difficult to account for change in demand within each city based on development activity. As the Official would be shared amongst potentially several cities, this could provide an extra cost to each city as it could likely not negate the need to continue contracting third-party providers to conduct inspections and plan checks that do not include discretionary consideration.

With the intergovernmental agreement, and the State requirement to hire a Building Official, this is rife with issues during economic downturns and revenue shortages. If there is a significant reduction in building activity experienced by smaller cities, or revenue shortages, the intergovernmental agreement may not be able to be honored by a partner city, creating a burden on the remaining cities who would also be facing revenue shortages.

In addition, as the position would now be a State required position, in difficult economic times, the cities would be required to make the difficult decision of potentially reducing essential personnel in other departments or shuttering the building program to reduce the costs associated with the Building Official position. As a result, this would put a significant strain on the County, who would be facing economic hardships as well, but hold the responsibility to provide the service.

This rule proposed may appear to be a clean solution to reflect the AG Opinion, but it provides severe implications for City's operations, budgets, regional coordination, and ability to appropriately manage operational needs during economic downturn and recessions. Senate Bill 1047 that was introduced in the 2019 regular session provided alternative methods to address concerns about municipal oversight of building programs administered by third parties. The City respectfully requests consideration of an alternative rule to address this concern, rather than mandating the City hire additional personnel.

2. Process and timing – the current draft identifies that all municipalities will apply for renewal of their programs by January 1, 2021, unless an extension is requested and received, and renewal would include initial building official registration.

The State is currently in the process of managing and responding to a global pandemic. In many rural cities, including the City of Lebanon, individuals hold a number of positions and carry a number of different responsibilities. With the focus on pandemic response and economic recovery, it would be appropriate to extend the timeframe to renew the program and building official registration.

Beyond the pandemic, the current proposal does not provide sufficient time for cities to evaluate their existing systems and budgets; coordinate with neighboring cities on a potential agreement; develop appropriate job descriptions; and conduct recruitment for the position. With recruitment, this has become increasingly difficult due to the pandemic and has taken a significant amount of time to go through the process and make an appropriate decision that would be satisfactory for all member cities in the agreement. The City would request that the timing and initiation of the rules be postponed, allowing the focus to remain on the response to health crisis and recovery efforts.

3. Fiscal Impact – It would be extremely difficult for the City of Lebanon to dedicate budget to hire a full-time building official. The City is currently experiencing significant development, however, there is still not enough activity to justify hiring for a full-time position. As such, the State's requirement would further burden the City's budget if we were not able to reach an agreement with neighboring cities to share a building official. If a shared Official is not an option, the City would potentially need to identify reductions in staffing in other positions to accommodate the full-time building official or choose to no longer participate in the building program. If the City were to no longer participate in the program, this would create a fiscal hardship on small businesses and the construction industry as there would be delays in permit issuance and inspections, and additional time away from the business to travel to the County for the permits.

4. Billing Structure – The City is confused as to why the Committee is establishing rules for how we would structure any contracted services regarding cost and billing. This requirement is excessive and not part of the Attorney General Opinion and appears to step on local rule rights.

Finally, the City of Lebanon would like to pose the question of whether an analysis has been conducted to ensure the availability of individuals with the appropriate experience as identified in the proposed rule within the State and different regions to accommodate each city?

There's no reason to rush together and implement these rules now, given the pandemic, given the concern across the entire state from Cities and Counties and the risks to cities and the overall system statewide permitting system. The evaluation of the rules, the fiscal impact, the impact on small business in our communities all need further research, discussion and a viable option for the proven Administrative Building Official position for existing city and county staff. The changes to Building Official qualifications will have a very negative impact across the state and are flawed with issues that must be resolved before the state is severely impacted.

The City of Lebanon understands that the current system would need to be amended, however, the current proposal does not appear to take into account the impact on small rural cities, and the difficult decisions that would need to be made between providing appropriate service to the community or a balanced budget. It is our hope that revisions to the rules continue to be made, and serious consideration is afforded to the comments provided.

I appreciate your consideration of our testimony and welcome any further dialogue.

Sincerely,



Ron Whitlatch
Interim City Manager