

Enrolled
House Bill 3629

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of House Interim Committee on Agriculture and Natural Resources)

CHAPTER

AN ACT

Relating to property line adjustments; creating new provisions; amending ORS 92.010, 92.060 and 92.345; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2008 Act is added to and made a part of ORS 92.010 to 92.190.

SECTION 2. (1) Except as provided in this section, a unit of land that is reduced in size by a property line adjustment approved by a city or county must comply with applicable zoning ordinances after the adjustment.

(2) Subject to subsection (3) of this section, for properties located entirely outside the corporate limits of a city, a county may approve a property line adjustment in which:

(a) One or both of the abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large as or larger than the minimum lot or parcel size for the applicable zone; or

(b) Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment.

(3) On land zoned for exclusive farm use, forest use or mixed farm and forest use, a property line adjustment under subsection (2) of this section may not be used to:

(a) Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;

(b) Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or

(c) Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.

SECTION 3. ORS 92.010 is amended to read:

92.010. As used in ORS 92.010 to 92.190, unless the context requires otherwise:

(1) "Declarant" means the person who files a declaration under ORS 92.075.

(2) "Declaration" means the instrument described in ORS 92.075 by which the subdivision or partition plat was created.

(3)(a) "Lawfully established unit of land" means:

(A) A lot or parcel created pursuant to ORS 92.010 to 92.190; or

(B) Another unit of land created:

(i) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or

(ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations.

(b) "Lawfully established unit of land" does not mean a unit of land created solely to establish a separate tax account.

(4) "Lot" means a single unit of land that is created by a subdivision of land.

(5) "Negotiate" means any activity preliminary to the execution of a binding agreement for the sale of land in a subdivision or partition, including but not limited to advertising, solicitation and promotion of the sale of such land.

(6) "Parcel" means a single unit of land that is created by a partition of land.

(7) "Partition" means either an act of partitioning land or an area or tract of land partitioned.

(8) "Partition plat" includes a final map and other writing containing all the descriptions, locations, specifications, provisions and information concerning a partition.

[8] **(9) "[Partition] Partitioning land"** means *[to divide]* **dividing** land to create not more than three parcels of land within a calendar year, but does not include:

(a) *[A division of land resulting from]* **Dividing land as a result of** a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots;

[(b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance;]

(b) Adjusting a property line as property line adjustment is defined in this section;

(c) *[The division of land resulting from]* **Dividing land as a result of** the recording of a subdivision or condominium plat;

(d) *[A sale or grant]* **Selling or granting** by a person to a public agency or public body of **property** for state highway, county road, city street or other right of way purposes *[provided that such]* **if the** road or right of way complies with the applicable comprehensive plan and ORS 215.213 (2)(p) to (r) and 215.283 (2)(q) to (s). However, any property *[divided by the sale or grant of property]* **sold or granted** for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until *[such time as]* the property is further subdivided or partitioned; or

(e) *[A sale or grant]* **Selling or granting** by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets or other right of way purposes when the sale or grant is part of a property line adjustment incorporating the excess right of way into adjacent property. The property line adjustment shall be approved or disapproved by the applicable local government. If the property line adjustment is approved, it shall be recorded in the deed records of the county where the property is located.

[9] *"Partition plat" includes a final map and other writing containing all the descriptions, locations, specifications, provisions and information concerning a partition.*

(10) "Plat" includes a final subdivision plat, replat or partition plat.

(11) "Property line" means the division line between two units of land.

(12) "Property line adjustment" means *[the]* **a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel.**

(13) "Replat" means the act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision.

(14) "Road" or "street" means a public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.

(15) "Sale" or "sell" includes every disposition or transfer of land or an interest or estate therein.

(16) "Subdivide land" means to divide land to create four or more lots within a calendar year.

(17) "Subdivision" means either an act of subdividing land or an area or a tract of land subdivided.

(18) "Subdivision plat" includes a final map and other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

(19) "Utility easement" means an easement noted on a subdivision plat or partition plat for the purpose of installing or maintaining public or private utility infrastructure for the provision of water, power, heat or telecommunications to the public.

SECTION 4. ORS 92.060 is amended to read:

92.060. (1) The initial point, also known as the point of beginning, of a plat must be on the exterior boundary of the plat and must be marked with a monument that is either galvanized iron pipe or an iron or steel rod. If galvanized iron pipe is used, the pipe may not be less than three-quarter inch inside diameter and 30 inches long. If an iron or steel rod is used, the rod may not be less than five-eighths of an inch in least dimension and 30 inches long. The location of the monument shall be with reference by survey to a section corner, one-quarter corner, one-sixteenth corner, Donation Land Claim corner or to a monumented lot corner or boundary corner of a recorded subdivision, partition or condominium plat. When setting a required monument is impracticable under the circumstances, the county surveyor may authorize the setting of another type of monument.

(2) In subdivision plats, the intersections, the initial point, also known as the point of beginning, the point of ending, points of curves and points of tangents, or the point of intersection of the curve if the point is within the pavement area of the road, of the centerlines of all streets and roads and all points on the exterior boundary where the boundary line changes direction, must be marked with monuments either of galvanized iron pipe or iron or steel rods. If galvanized iron pipe is used, the pipe may not be less than three-quarter inch inside diameter and 30 inches long. If iron or steel rods are used, the rod may not be less than five-eighths of an inch in least dimension and 30 inches long. When setting a required monument is impracticable under the circumstances:

- (a) The county surveyor may authorize the setting of another type of monument; or
- (b) The county surveyor may waive the setting of the monument.

(3) All lot and parcel corners except lot corners of cemetery lots must be marked with monuments of either galvanized iron pipe not less than one-half inch inside diameter or iron or steel rods not less than five-eighths inch in least dimension and not less than 24 inches long. When setting a required monument is impracticable under the circumstances:

- (a) The surveyor may set another type of monument; or
- (b) The county surveyor may waive the setting of the monument.

(4) A surveyor shall set monuments with sufficient accuracy that measurements may be taken between monuments within one-tenth of a foot or within one ten-thousandth of the distance shown on the subdivision or partition plat, whichever is greater.

(5) A surveyor shall set monuments on the exterior boundary of a subdivision, unless the county surveyor waives the setting of a particular monument, where changes in the direction of the boundary occur and shall reference the monuments on the plat of the subdivision before the plat of the subdivision is offered for recording. However, the surveyor need not set the remaining monuments for the subdivision prior to the recording of the plat of the subdivision if:

(a) The registered professional land surveyor performing the survey work certifies that the remaining monuments will be set, unless the county surveyor waives the setting of a particular monument, on or before a specified date as provided in ORS 92.070 (2); and

(b) The person subdividing the land furnishes to the county or city by which the subdivision was approved a bond, cash deposit, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or other security as required by the county or city guaranteeing the payment of the cost of setting the remaining monuments for the subdivision as provided in ORS 92.065.

(6) A surveyor shall set all monuments on the exterior boundary and all parcel corner monuments of partitions, unless the county surveyor waives the setting of a particular monument, before the partition plat is offered for recording. Unless the governing body provides otherwise, any parcels created outside an urban growth boundary that are greater than 10 acres need not be surveyed or monumented.

(7) Except as provided in subsections (8) and (9) of this section, *[an adjusted property line created by the relocation of a common boundary as described in ORS 92.010 (8)(b)]* a **property line adjustment** must be surveyed and monumented in accordance with subsection (3) of this section and a survey, complying with ORS 209.250, must be filed with the county surveyor.

(8) Unless the governing body of a city or county has otherwise provided by ordinance, a survey or monument is not required for a property line adjustment when the abutting properties are each greater than 10 acres. Nothing in this subsection exempts a local government from minimum area requirements established in acknowledged comprehensive plans and land use regulations.

(9) The requirements of subsection (7) of this section do not apply to property transferred through a property line adjustment as *[provided]* **described** in ORS 92.010 [(8)(e)] **(9)(e)**.

SECTION 5. ORS 92.345 is amended to read:

92.345. (1) Prior to negotiating within this state for the sale or lease of subdivided lands located outside this state, or prior to the sale or lease of any subdivided or series partitioned lands located within this state, the subdivider, series partitioner or agent of the subdivider or series partitioner shall by a "Notice of Intention" notify the Real Estate Commissioner in writing of the intention to sell or lease. A notice of intention shall contain true information as follows:

(a) The name and the business and residence address of the subdivider or series partitioner;

(b) The names and the business addresses of all licensees of the commissioner and of all other persons selling or leasing, within this state, interests in the subdivision or series partition;

(c) With respect to subdivided or series partitioned lands located in this state:

(A) For ["subdivided land"] or a ["subdivision"] as those terms are defined, *respectively,* by ORS 92.010 [(16) and (17)], a certified copy of the plat filed for record under ORS 92.120 and a copy of any conditions imposed by the city or county governing body;

(B) For ["partitioned land" or] a ["partition"] as *[those terms are]* **that term is** defined by ORS 92.010 [(7) and (8)], a certified copy of the plat filed for record under ORS 92.120 and a copy of any conditions imposed by the city or county governing body; and

(C) For all other land subject to ORS 92.305 to 92.495, a survey, diagram, drawing or other writing designating and describing, including location and boundaries when applicable, the interests to be sold and a statement from the city or county governing body that the proposal as depicted on the survey, diagram, drawing or other writing has received all necessary local approvals or that no local approval is required;

(d) With respect to subdivided lands located outside this state:

(A) A copy of the plat, map, survey, diagram, drawing or other writing designating and describing, including location and boundaries when applicable, the interests to be sold, in the final recorded form required by the governing body having jurisdiction over the property; and

(B) A written statement from the appropriate governing body that the plat, map, survey, diagram, drawing or other writing is in compliance with all applicable laws, ordinances and regulations;

(e) A brief but comprehensive statement describing the land on and the locality in which the subdivision or series partition is located;

- (f) A statement of the condition of the title to the land;
 - (g) A statement of the provisions, if any, that have been made for legal access, sewage disposal and public utilities in the proposed subdivision or series partition, including water, electricity, gas and telephone facilities;
 - (h) A statement of the use or uses for which the proposed subdivision or series partition will be offered; and
 - (i) A statement of the provisions, if any, limiting the use or occupancy of the interests in the subdivision or series partition.
- (2) The notice of intention shall be accompanied by a filing fee as follows:
 - (a) For subdivisions or series partitions containing 10 or fewer lots, parcels or interests, \$100.
 - (b) For subdivisions or series partitions containing over 10 lots, parcels or interests, \$100, and \$25 for each additional lot, parcel or interest, but in no case shall the fee be more than \$2,500.
 - (3) For lands located outside this state, the notice of intention shall include only the area shown by the plat, survey, diagram, drawing or other writing required under subsection (1)(d) of this section. The subdivision of any contiguous lands located outside this state shall be treated as a separate subdivision for which an additional complete filing must be made, even though the plat, map, survey, diagram, drawing or other writing of the contiguous lands is recorded simultaneously as part of an overall development.

SECTION 6. Section 2 of this 2008 Act and the amendments to ORS 92.010 and 92.060 by sections 3 and 4 of this 2008 Act apply to property line adjustments approved before, on or after the effective date of this 2008 Act.

SECTION 7. This 2008 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect on its passage.

Passed by House February 8, 2008

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 Chief Clerk of House

 Speaker of House

Received by Governor:

.....M,....., 2008

Approved:

.....M,....., 2008

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 Governor

Passed by Senate February 19, 2008

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 President of Senate

Filed in Office of Secretary of State:

.....M,....., 2008

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 Secretary of State