

House Bill 3629

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

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes county to approve certain property line adjustments in which one or both affected properties continue to be smaller than applicable minimum tract size.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to property line adjustments; creating new provisions; amending ORS 92.010, 92.060 and
3 92.345; and declaring an emergency.

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

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

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

9 **(2) Subject to subsection (3) of this section, a county may approve a property line ad-
10 justment in which:**

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

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

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

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

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

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

30 **SECTION 3. ORS 92.010 is amended to read:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 92.010. As used in ORS 92.010 to 92.190, unless the context requires otherwise:

2 (1) “Declarant” means the person who files a declaration under ORS 92.075.

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

5 (3)(a) “Lawfully established unit of land” means:

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

7 (B) Another unit of land created:

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

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

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

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

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

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

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

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

22 ~~[(8)]~~ **(9) “[Partition] Partitioning** land” means ~~[to divide]~~ **dividing** land to create not more than
23 three parcels of land within a calendar year, but does not include:

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

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

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

30 (c) ~~[The division of land resulting from]~~ **Dividing land as a result of** the recording of a subdivi-
31 sion or condominium plat;

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

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

1 [(9) "*Partition plat*" includes a final map and other writing containing all the descriptions, lo-
 2 cations, specifications, provisions and information concerning a partition.]

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

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

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

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

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

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

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

18 (17) "Subdivision" means either an act of subdividing land or an area or a tract of land subdivi-
 19 vided.

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

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

25 **SECTION 4.** ORS 92.060 is amended to read:

26 92.060. (1) The initial point, also known as the point of beginning, of a plat must be on the ex-
 27 terior boundary of the plat and must be marked with a monument that is either galvanized iron pipe
 28 or an iron or steel rod. If galvanized iron pipe is used, the pipe may not be less than three-quarter
 29 inch inside diameter and 30 inches long. If an iron or steel rod is used, the rod may not be less than
 30 five-eighths of an inch in least dimension and 30 inches long. The location of the monument shall
 31 be with reference by survey to a section corner, one-quarter corner, one-sixteenth corner, Donation
 32 Land Claim corner or to a monumented lot corner or boundary corner of a recorded subdivision,
 33 partition or condominium plat. When setting a required monument is impracticable under the cir-
 34 cumstances, the county surveyor may authorize the setting of another type of monument.

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

43 (a) The county surveyor may authorize the setting of another type of monument; or

44 (b) The county surveyor may waive the setting of the monument.

45 (3) All lot and parcel corners except lot corners of cemetery lots must be marked with monu-

1 ments of either galvanized iron pipe not less than one-half inch inside diameter or iron or steel rods
 2 not less than five-eighths inch in least dimension and not less than 24 inches long. When setting a
 3 required monument is impracticable under the circumstances:

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

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

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

- 14 (a) The registered professional land surveyor performing the survey work certifies that the re-
 15 maining monuments will be set, unless the county surveyor waives the setting of a particular mon-
 16 ument, on or before a specified date as provided in ORS 92.070 (2); and

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

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

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

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

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

36 **SECTION 5.** ORS 92.345 is amended to read:

37 92.345. (1) Prior to negotiating within this state for the sale or lease of subdivided lands located
 38 outside this state, or prior to the sale or lease of any subdivided or series partitioned lands located
 39 within this state, the subdivider, series partitioner or agent of the subdivider or series partitioner
 40 shall by a "Notice of Intention" notify the Real Estate Commissioner in writing of the intention to
 41 sell or lease. A notice of intention shall contain true information as follows:

- 42 (a) The name and the business and residence address of the subdivider or series partitioner;
- 43 (b) The names and the business addresses of all licensees of the commissioner and of all other
 44 persons selling or leasing, within this state, interests in the subdivision or series partition;
- 45 (c) With respect to subdivided or series partitioned lands located in this state:

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

4 (B) For [“*partitioned land*” or] a [“partition[”] as [*those terms are*] **that term is** defined by ORS
 5 92.010 [(7) and (8)], a certified copy of the plat filed for record under ORS 92.120 and a copy of any
 6 conditions imposed by the city or county governing body; and

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

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

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

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

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

20 (f) A statement of the condition of the title to the land;

21 (g) A statement of the provisions, if any, that have been made for legal access, sewage disposal
 22 and public utilities in the proposed subdivision or series partition, including water, electricity, gas
 23 and telephone facilities;

24 (h) A statement of the use or uses for which the proposed subdivision or series partition will
 25 be offered; and

26 (i) A statement of the provisions, if any, limiting the use or occupancy of the interests in the
 27 subdivision or series partition.

28 (2) The notice of intention shall be accompanied by a filing fee as follows:

29 (a) For subdivisions or series partitions containing 10 or fewer lots, parcels or interests, \$100.

30 (b) For subdivisions or series partitions containing over 10 lots, parcels or interests, \$100, and
 31 \$25 for each additional lot, parcel or interest, but in no case shall the fee be more than \$2,500.

32 (3) For lands located outside this state, the notice of intention shall include only the area shown
 33 by the plat, survey, diagram, drawing or other writing required under subsection (1)(d) of this sec-
 34 tion. The subdivision of any contiguous lands located outside this state shall be treated as a sepa-
 35 rate subdivision for which an additional complete filing must be made, even though the plat, map,
 36 survey, diagram, drawing or other writing of the contiguous lands is recorded simultaneously as part
 37 of an overall development.

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

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