

House Bill 2747

Sponsored by Representative ESQUIVEL; Representatives GARRARD, GILMAN, HUFFMAN, JENSON, G SMITH, SPRENGER, THATCHER, WHISNANT

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**.

Limits fees governing bodies may charge for conducting reviews of proposed changes to property in historic districts.

A BILL FOR AN ACT

1
2 Relating to review fees for properties in historic districts; amending ORS 215.416 and 227.175.

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

4 **SECTION 1.** ORS 215.416 is amended to read:

5 215.416. (1)(a) When required or authorized by the ordinances, rules and regulations of a county,
6 an owner of land may apply in writing to such persons as the governing body designates, for a
7 permit, in the manner prescribed by the governing body. The governing body shall establish fees
8 charged for processing permits at an amount no more than the actual or average cost of providing
9 that service.

10 **(b) When a requirement in a comprehensive plan, or in a land use regulation imple-**
11 **menting the plan, imposes an extraordinary level of review upon property within a historic**
12 **district, the fee established under paragraph (a) of this subsection for conducting the review**
13 **may not exceed \$100.**

14 (2) The governing body shall establish a consolidated procedure by which an applicant may ap-
15 ply at one time for all permits or zone changes needed for a development project. The consolidated
16 procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated proce-
17 dure shall be available for use at the option of the applicant no later than the time of the first pe-
18 riodic review of the comprehensive plan and land use regulations.

19 (3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least
20 one public hearing on the application.

21 (4) The application shall not be approved if the proposed use of land is found to be in conflict
22 with the comprehensive plan of the county and other applicable land use regulation or ordinance
23 provisions. The approval may include such conditions as are authorized by statute or county legis-
24 lation.

25 (5) Hearings under this section shall be held only after notice to the applicant and also notice
26 to other persons as otherwise provided by law and shall otherwise be conducted in conformance
27 with the provisions of ORS 197.763.

28 (6) Notice of a public hearing on an application submitted under this section shall be provided
29 to the owner of an airport defined by the Oregon Department of Aviation as a "public use airport"
30 if:

31 (a) The name and address of the airport owner has been provided by the Oregon Department

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 of Aviation to the county planning authority; and

2 (b) The property subject to the land use hearing is:

3 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon
4 Department of Aviation to be a “visual airport”; or

5 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon
6 Department of Aviation to be an “instrument airport.”

7 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing
8 need not be provided as set forth in subsection (6) of this section if the zoning permit would only
9 allow a structure less than 35 feet in height and the property is located outside the runway “ap-
10 proach surface” as defined by the Oregon Department of Aviation.

11 (8)(a) Approval or denial of a permit application shall be based on standards and criteria which
12 shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county
13 and which shall relate approval or denial of a permit application to the zoning ordinance and com-
14 prehensive plan for the area in which the proposed use of land would occur and to the zoning or-
15 dinance and comprehensive plan for the county as a whole.

16 (b) When an ordinance establishing approval standards is required under ORS 197.307 to provide
17 only clear and objective standards, the standards must be clear and objective on the face of the
18 ordinance.

19 (9) Approval or denial of a permit or expedited land division shall be based upon and accompa-
20 nied by a brief statement that explains the criteria and standards considered relevant to the deci-
21 sion, states the facts relied upon in rendering the decision and explains the justification for the
22 decision based on the criteria, standards and facts set forth.

23 (10) Written notice of the approval or denial shall be given to all parties to the proceeding.

24 (11)(a)(A) The hearings officer or such other person as the governing body designates may ap-
25 prove or deny an application for a permit without a hearing if the hearings officer or other desig-
26 nated person gives notice of the decision and provides an opportunity for any person who is
27 adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection,
28 to file an appeal.

29 (B) Written notice of the decision shall be mailed to those persons described in paragraph (c)
30 of this subsection.

31 (C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall
32 describe the nature of the decision. In addition, the notice shall state that any person who is ad-
33 versely affected or aggrieved or who is entitled to written notice under paragraph (c) of this sub-
34 section may appeal the decision by filing a written appeal in the manner and within the time period
35 provided in the county’s land use regulations. A county may not establish an appeal period that is
36 less than 12 days from the date the written notice of decision required by this subsection was
37 mailed. The notice shall state that the decision will not become final until the period for filing a
38 local appeal has expired. The notice also shall state that a person who is mailed written notice of
39 the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS
40 197.830.

41 (D) An appeal from a hearings officer’s decision made without hearing under this subsection
42 shall be to the planning commission or governing body of the county. An appeal from such other
43 person as the governing body designates shall be to a hearings officer, the planning commission or
44 the governing body. In either case, the appeal shall be to a de novo hearing.

45 (E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial

1 evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board
 2 of Appeals. At the de novo hearing:

3 (i) The applicant and other parties shall have the same opportunity to present testimony, argu-
 4 ments and evidence as they would have had in a hearing under subsection (3) of this section before
 5 the decision;

6 (ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised
 7 in a notice of appeal; and

8 (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are
 9 accepted at the hearing.

10 (b) If a local government provides only a notice of the opportunity to request a hearing, the
 11 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing
 12 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,
 13 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the
 14 initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made
 15 by neighborhood or community organizations recognized by the governing body and whose bounda-
 16 ries include the site.

17 (c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the ap-
 18 plicant and to the owners of record of property on the most recent property tax assessment roll
 19 where such property is located:

20 (i) Within 100 feet of the property that is the subject of the notice when the subject property
 21 is wholly or in part within an urban growth boundary;

22 (ii) Within 250 feet of the property that is the subject of the notice when the subject property
 23 is outside an urban growth boundary and not within a farm or forest zone; or

24 (iii) Within 750 feet of the property that is the subject of the notice when the subject property
 25 is within a farm or forest zone.

26 (B) Notice shall also be provided to any neighborhood or community organization recognized by
 27 the governing body and whose boundaries include the site.

28 (C) At the discretion of the applicant, the local government also shall provide notice to the
 29 Department of Land Conservation and Development.

30 (12) A decision described in ORS 215.402 (4)(b) shall:

31 (a) Be entered in a registry available to the public setting forth:

32 (A) The street address or other easily understood geographic reference to the subject property;

33 (B) The date of the decision; and

34 (C) A description of the decision made.

35 (b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a
 36 limited land use decision.

37 (c) Be subject to the appeal period described in ORS 197.830 (5)(b).

38 (13) At the option of the applicant, the local government shall provide notice of the decision
 39 described in ORS 215.402 (4)(b) in the manner required by ORS 197.763 (2), in which case an appeal
 40 to the board shall be filed within 21 days of the decision. The notice shall include an explanation
 41 of appeal rights.

42 (14) Notwithstanding the requirements of this section, a limited land use decision shall be sub-
 43 ject to the requirements set forth in ORS 197.195 and 197.828.

44 **SECTION 2.** ORS 227.175 is amended to read:

45 227.175. (1)(a) When required or authorized by a city, an owner of land may apply in writing to

1 the hearings officer, or such other person as the city council designates, for a permit or zone
 2 change, upon such forms and in such a manner as the city council prescribes. The governing body
 3 shall establish fees charged for processing permits at an amount no more than the actual or average
 4 cost of providing that service.

5 **(b) When a requirement in a comprehensive plan, or in a land use regulation imple-**
 6 **menting the plan, imposes an extraordinary level of review upon property within a historic**
 7 **district, the fee established under paragraph (a) of this subsection for conducting the review**
 8 **may not exceed \$100.**

9 (2) The governing body of the city shall establish a consolidated procedure by which an appli-
 10 cant may apply at one time for all permits or zone changes needed for a development project. The
 11 consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consol-
 12 idated procedure shall be available for use at the option of the applicant no later than the time of
 13 the first periodic review of the comprehensive plan and land use regulations.

14 (3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least
 15 one public hearing on the application.

16 (4) The application shall not be approved unless the proposed development of land would be in
 17 compliance with the comprehensive plan for the city and other applicable land use regulation or
 18 ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215
 19 or any city legislation.

20 (5) Hearings under this section may be held only after notice to the applicant and other inter-
 21 ested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763.

22 (6) Notice of a public hearing on a zone use application shall be provided to the owner of an
 23 airport, defined by the Oregon Department of Aviation as a “public use airport” if:

24 (a) The name and address of the airport owner has been provided by the Oregon Department
 25 of Aviation to the city planning authority; and

26 (b) The property subject to the zone use hearing is:

27 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon
 28 Department of Aviation to be a “visual airport”; or

29 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon
 30 Department of Aviation to be an “instrument airport.”

31 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing
 32 need only be provided as set forth in subsection (6) of this section if the permit or zone change
 33 would only allow a structure less than 35 feet in height and the property is located outside of the
 34 runway “approach surface” as defined by the Oregon Department of Aviation.

35 (8) If an application would change the zone of property that includes all or part of a mobile
 36 home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give
 37 written notice by first class mail to each existing mailing address for tenants of the mobile home
 38 or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first
 39 hearing on the application. The governing body may require an applicant for such a zone change to
 40 pay the costs of such notice.

41 (9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not
 42 invalidate any zone change.

43 (10)(a)(A) The hearings officer or such other person as the governing body designates may ap-
 44 prove or deny an application for a permit without a hearing if the hearings officer or other desig-
 45 nated person gives notice of the decision and provides an opportunity for any person who is

1 adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection,
 2 to file an appeal.

3 (B) Written notice of the decision shall be mailed to those persons described in paragraph (c)
 4 of this subsection.

5 (C) Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall
 6 describe the nature of the decision. In addition, the notice shall state that any person who is ad-
 7 versely affected or aggrieved or who is entitled to written notice under paragraph (c) of this sub-
 8 section may appeal the decision by filing a written appeal in the manner and within the time period
 9 provided in the city's land use regulations. A city may not establish an appeal period that is less
 10 than 12 days from the date the written notice of decision required by this subsection was mailed.
 11 The notice shall state that the decision will not become final until the period for filing a local appeal
 12 has expired. The notice also shall state that a person who is mailed written notice of the decision
 13 cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

14 (D) An appeal from a hearings officer's decision made without hearing under this subsection
 15 shall be to the planning commission or governing body of the city. An appeal from such other person
 16 as the governing body designates shall be to a hearings officer, the planning commission or the
 17 governing body. In either case, the appeal shall be to a de novo hearing.

18 (E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial
 19 evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board
 20 of Appeals. At the de novo hearing:

21 (i) The applicant and other parties shall have the same opportunity to present testimony, argu-
 22 ments and evidence as they would have had in a hearing under subsection (3) of this section before
 23 the decision;

24 (ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised
 25 in a notice of appeal; and

26 (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are
 27 accepted at the hearing.

28 (b) If a local government provides only a notice of the opportunity to request a hearing, the
 29 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing
 30 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,
 31 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the
 32 initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made
 33 by neighborhood or community organizations recognized by the governing body and whose bounda-
 34 ries include the site.

35 (c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the ap-
 36 plicant and to the owners of record of property on the most recent property tax assessment roll
 37 where such property is located:

38 (i) Within 100 feet of the property that is the subject of the notice when the subject property
 39 is wholly or in part within an urban growth boundary;

40 (ii) Within 250 feet of the property that is the subject of the notice when the subject property
 41 is outside an urban growth boundary and not within a farm or forest zone; or

42 (iii) Within 750 feet of the property that is the subject of the notice when the subject property
 43 is within a farm or forest zone.

44 (B) Notice shall also be provided to any neighborhood or community organization recognized by
 45 the governing body and whose boundaries include the site.

1 (C) At the discretion of the applicant, the local government also shall provide notice to the
2 Department of Land Conservation and Development.

3 (11) A decision described in ORS 227.160 (2)(b) shall:

4 (a) Be entered in a registry available to the public setting forth:

5 (A) The street address or other easily understood geographic reference to the subject property;

6 (B) The date of the decision; and

7 (C) A description of the decision made.

8 (b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a
9 limited land use decision.

10 (c) Be subject to the appeal period described in ORS 197.830 (5)(b).

11 (12) At the option of the applicant, the local government shall provide notice of the decision
12 described in ORS 227.160 (2)(b) in the manner required by ORS 197.763 (2), in which case an appeal
13 to the board shall be filed within 21 days of the decision. The notice shall include an explanation
14 of appeal rights.

15 (13) Notwithstanding other requirements of this section, limited land use decisions shall be
16 subject to the requirements set forth in ORS 197.195 and 197.828.

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