

House Bill 3182

Sponsored by Representative THATCHER

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**.

Requires notification to residents of property, in addition to property owners, of proposed land use decisions, limited land use decisions and other governmental decisions affecting real property.

A BILL FOR AN ACT

1
2 Relating to notice of local government decision-making; creating new provisions; and amending ORS
3 197.195, 197.763, 197.796, 197.835, 215.416 and 227.175.

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

5 **SECTION 1.** ORS 197.195 is amended to read:

6 197.195. (1) A "limited land use decision" [*shall*] **must** be consistent with applicable provisions
7 of city or county comprehensive plans and land use regulations. [*Such*] A **limited land use** decision
8 may include conditions authorized by law. [*Within two years of September 29, 1991,*] Cities and
9 counties shall incorporate all comprehensive plan standards applicable to limited land use decisions
10 into their land use regulations. A decision to incorporate all, some, or none of the applicable com-
11 prehensive plan standards into land use regulations [*shall*] **must** be undertaken as a post-
12 acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate
13 its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions
14 [*may not be used as*] **are not** a basis for a decision by the city or county or on appeal from that
15 decision.

16 (2) A limited land use decision is not subject to the requirements of ORS 197.763.

17 (3) A limited land use decision is subject to the requirements of paragraphs (a) to (c) of this
18 subsection.

19 (a) In making a limited land use decision, the local government shall follow the applicable pro-
20 cedures contained within its acknowledged comprehensive plan and land use regulations and other
21 applicable legal requirements.

22 (b) For limited land use decisions, the local government shall provide written notice to owners
23 **and residents** of property within 100 feet of the entire contiguous site for which the application is
24 made. The list [*shall*] **of property owners must** be compiled from the most recent property tax as-
25 sessment roll, **and the list of residents of property to be notified must include residents sim-**
26 **ilarly situated to the residents described in ORS 197.763 (2)(c).** For purposes of review, this
27 requirement [*shall be deemed*] **is** met when the local government can provide an affidavit or other
28 certification that [*such*] **the** notice was given. Notice [*shall*] **must** also be provided to any neigh-
29 borhood or community organization recognized by the governing body and whose boundaries include
30 the site.

31 (c) The notice and procedures used by local government shall:

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 (A) Provide a 14-day period for submission of written comments prior to the decision;
- 2 (B) State that issues [*which may provide the*] **that are a** basis for an appeal to the Land Use
 3 Board of Appeals [*shall*] **must** be raised in writing prior to the expiration of the comment period[.
 4 *Issues shall be raised*] with sufficient specificity to enable the decision maker to respond to the is-
 5 sue;
- 6 (C) List, by commonly used citation, the applicable criteria for the decision;
- 7 (D) Set forth the street address or other easily understood geographical reference to the subject
 8 property;
- 9 (E) State the place, date and time that comments are due;
- 10 (F) State that copies of all evidence relied upon by the applicant are available for review, and
 11 that copies can be obtained at cost;
- 12 (G) Include the name and phone number of a local government contact person;
- 13 (H) Provide notice of the decision to the applicant and any person who submits comments under
 14 subparagraph (A) of this paragraph. The notice of decision must include an explanation of appeal
 15 rights; and
- 16 (I) Briefly summarize the local decision making process for the limited land use decision being
 17 made.
- 18 (4) Approval or denial of a limited land use decision shall be based upon and accompanied by
 19 a brief statement that explains the criteria and standards considered relevant to the decision, states
 20 the facts relied upon in rendering the decision and explains the justification for the decision based
 21 on the criteria, standards and facts set forth.
- 22 (5) A local government may provide for a hearing before the local government on appeal of a
 23 limited land use decision under this section. The hearing may be limited to the record developed
 24 pursuant to the initial hearing under subsection (3) of this section or may allow for the introduction
 25 of additional testimony or evidence. A hearing on appeal that allows the introduction of additional
 26 testimony or evidence shall comply with the requirements of ORS 197.763. Written notice of the
 27 decision rendered on appeal shall be given to all parties who appeared, either orally or in writing,
 28 before the hearing. The notice of decision shall include an explanation of the rights of each party
 29 to appeal the decision.
- 30 **SECTION 2.** ORS 197.763 is amended to read:
- 31 197.763. The following procedures [*shall*] govern the conduct of quasi-judicial land use hearings
 32 conducted before a local governing body, planning commission, hearings body or hearings officer on
 33 application for a land use decision and [*shall be*] **are** incorporated into the comprehensive plan and
 34 land use regulations:
- 35 (1) An issue [*which may be the*] **that is a** basis for an appeal to the Land Use Board of Appeals
 36 [*shall*] **must** be:
- 37 (a) Raised not later than the close of the record at or following the final evidentiary hearing
 38 on the proposal before the local government. [*Such issues shall be raised and*]
- 39 (b) Accompanied by statements or evidence sufficient to afford the governing body, planning
 40 commission, hearings body or hearings officer[,] and the parties an adequate opportunity to respond
 41 to [*each*] **the** issue.
- 42 [(2)(a)] (2) Notice of the hearings governed by this section [*shall*] **must** be provided to:
- 43 (a) The applicant. [*and to*]
- 44 (b) **The** owners of record of property on the most recent property tax assessment roll [*where*
 45 *such*] **when the** property is located:

1 (A) Within 100 feet of the property *[which]* **that** is the subject of the notice *[where]* **if** the subject
2 property is wholly or in part within an urban growth boundary;

3 (B) Within 250 feet of the property *[which]* **that** is the subject of the notice *[where]* **if** the subject
4 property is outside an urban growth boundary and not within a farm or forest zone; or

5 (C) Within 500 feet of the property *[which]* **that** is the subject of the notice *[where]* **if** the subject
6 property is within a farm or forest zone.

7 *[(b) Notice shall also be provided to any neighborhood or community organization recognized by*
8 *the governing body and whose boundaries include the site.]*

9 **(c) The residents of property identified in paragraph (b) of this subsection when:**

10 **(A) The property contains multifamily housing units;**

11 **(B) The property includes one or more sites for manufactured dwellings, as defined in**
12 **ORS 446.003; and**

13 **(C) The record address of the owner is different from the address of the property.**

14 **(d) A neighborhood or community organization recognized by the governing body and**
15 **whose boundaries include the site.**

16 *[(c)]* **(3)** At the discretion of the applicant, the local government also shall provide notice to the
17 Department of Land Conservation and Development.

18 *[(3)]* **(4)** The notice provided by the jurisdiction shall:

19 (a) Explain the nature of the application and the proposed use or uses *[which]* **that** could be
20 authorized;

21 (b) List the applicable criteria from the ordinance and the plan that apply to the application at
22 issue;

23 (c) Set forth the street address or other easily understood geographical reference to the subject
24 property;

25 (d) State the date, time and location of the hearing;

26 (e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to
27 provide statements or evidence sufficient to afford the decision maker an opportunity to respond to
28 the issue precludes appeal to the board based on that issue;

29 (f) Be mailed at least:

30 (A) Twenty days before the evidentiary hearing; or

31 (B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

32 (g) Include the name of a local government representative to contact and the telephone number
33 where additional information may be obtained;

34 (h) State that a copy of the application, all documents and evidence submitted by or on behalf
35 of the applicant and applicable criteria are available for inspection at no cost and will be provided
36 at reasonable cost;

37 (i) State that a copy of the staff report will be available for inspection at no cost at least seven
38 days prior to the hearing and will be provided at reasonable cost; *[and]*

39 (j) Include a general explanation of the requirements for submission of testimony and the pro-
40 cedure for conduct of hearings; **and**

41 **(k) If mailed to a resident of property as required by subsection (2)(c) of this section,**
42 **include, prominently on the outside of the envelope, the name of the local government and**
43 **the following statement: “OFFICIAL NOTICE OF PROPOSED GOVERNMENTAL ACTION**
44 **AFFECTING THE PROPERTY AT THIS ADDRESS”.**

45 *[(4)(a)]* **(5)(a)** All documents or evidence relied upon by the applicant shall be submitted to the

1 local government and be made available to the public.

2 (b) Any staff report used at the hearing shall be available at least seven days prior to the
 3 hearing. If additional documents or evidence are provided by any party, the local government may
 4 allow a continuance or leave the record open to allow the parties a reasonable opportunity to re-
 5 spond. Any continuance or extension of the record requested by an applicant shall result in a cor-
 6 responding extension of the time limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

7 [(5)] (6) At the commencement of a hearing under a comprehensive plan or land use regulation,
 8 a statement shall be made to those in attendance that:

9 (a) Lists the applicable substantive criteria;

10 (b) States that testimony, arguments and evidence must be directed toward the criteria described
 11 in paragraph (a) of this subsection or other criteria in the plan or land use regulation [*which*] **that**
 12 the person believes to apply to the decision; and

13 (c) States that failure to raise an issue accompanied by statements or evidence sufficient to af-
 14 ford the decision maker and the parties an opportunity to respond to the issue precludes appeal to
 15 the board based on that issue.

16 [(6)(a)] (7)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may re-
 17 quest an opportunity to present additional evidence, arguments or testimony regarding the applica-
 18 tion. The local hearings authority shall grant [*such*] **the** request by continuing the public hearing
 19 pursuant to paragraph (b) of this subsection or leaving the record open for additional written evi-
 20 dence, arguments or testimony pursuant to paragraph (c) of this subsection.

21 (b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time
 22 and place certain at least seven days from the date of the initial evidentiary hearing. An opportu-
 23 nity shall be provided at the continued hearing for persons to present and rebut new evidence, ar-
 24 guments or testimony. If new written evidence is submitted at the continued hearing, any person
 25 may request, prior to the conclusion of the continued hearing, that the record be left open for at
 26 least seven days to submit additional written evidence, arguments or testimony for the purpose of
 27 responding to the new written evidence.

28 (c) If the hearings authority leaves the record open for additional written evidence, arguments
 29 or testimony, the record shall be left open for at least seven days. Any participant may file a written
 30 request with the local government for an opportunity to respond to new evidence submitted during
 31 the period the record was left open. If [*such*] a request is filed, the hearings authority shall reopen
 32 the record pursuant to subsection [(7)] (8) of this section.

33 (d) A continuance or extension granted pursuant to this section shall be subject to the limita-
 34 tions of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is
 35 requested or agreed to by the applicant.

36 (e) Unless waived by the applicant, the local government shall allow the applicant at least seven
 37 days after the record is closed to all other parties to submit final written arguments in support of
 38 the application. The applicant's final submittal shall be considered part of the record, but shall not
 39 include any new evidence. This seven-day period shall not be subject to the limitations of ORS
 40 215.427 or 227.178 and ORS 215.429 or 227.179.

41 [(7)] (8) When a local governing body, planning commission, hearings body or hearings officer
 42 reopens a record to admit new evidence, arguments or testimony, any person may raise new issues
 43 [*which*] **that** relate to the new evidence, arguments, testimony or criteria for decision-making
 44 [*which*] **that** apply to the matter at issue.

45 [(8)] (9) The failure of the property owner **or a resident of property** to receive notice as pro-

1 vided in **subsection (2) of** this section [*shall*] **does** not invalidate [*such*] **the** proceedings if the local
2 government can demonstrate by affidavit that [*such*] notice was given. The notice provisions of this
3 section [*shall*] **do** not restrict the giving of notice by other means, including posting, newspaper
4 publication, radio and television.

5 [(9)] **(10)** For purposes of this section:

6 (a) “Argument” means assertions and analysis regarding the satisfaction or violation of legal
7 standards or policy believed relevant by the proponent to a decision. “Argument” does not include
8 facts.

9 (b) “Evidence” means facts, documents, data or other information offered to demonstrate com-
10 pliance or noncompliance with the standards believed by the proponent to be relevant to the deci-
11 sion.

12 **SECTION 3.** ORS 197.796 is amended to read:

13 197.796. (1) An applicant for a land use decision, limited land use decision or expedited land di-
14 vision or for a permit under ORS 215.427 or 227.178 may accept a condition of approval imposed
15 under ORS 215.416 or 227.175 and file a challenge to the condition under this section. Acceptance
16 by an applicant for a land use decision, limited land use decision, expedited land division or permit
17 under ORS 215.427 or 227.178 of a condition of approval imposed under ORS 215.416 or 227.175 does
18 not constitute a waiver of the right to challenge the condition of approval. Acceptance of a condi-
19 tion may include but is not limited to paying a fee, performing an act or providing satisfactory evi-
20 dence of arrangements to pay the fee or to ensure compliance with the condition.

21 (2) Any action for damages under this section shall be filed in the circuit court of the county
22 in which the application was submitted within 180 days of the date of the decision.

23 (3)(a) A challenge filed pursuant to this section may not be dismissed on the basis that the ap-
24 plicant did not request a variance to the condition of approval or any other available form of re-
25 consideration of the challenged condition. However, an applicant shall comply with ORS 197.763 (1)
26 prior to appealing to the Land Use Board of Appeals or bringing an action for damages in circuit
27 court and must exhaust all local appeals provided in the local comprehensive plan and land use
28 regulations before proceeding under this section.

29 (b) In addition to the requirements of ORS 197.763 [(5)] **(6)**, at the commencement of the initial
30 public hearing, a statement shall be made to the applicant that the failure of the applicant to raise
31 constitutional or other issues relating to proposed conditions of approval with sufficient specificity
32 to allow the local government or its designee to respond to the issue precludes an action for dam-
33 ages in circuit court.

34 (c) An applicant is not required to raise an issue under this subsection unless the condition of
35 approval is stated with sufficient specificity to enable the applicant to respond to the condition prior
36 to the close of the final local hearing.

37 (4) In any challenge to a condition of approval that is subject to the Takings Clause of the Fifth
38 Amendment to the United States Constitution, the local government shall have the burden of dem-
39 onstrating compliance with the constitutional requirements for imposing the condition.

40 (5) In a proceeding in circuit court under this section, the court shall award costs and reason-
41 able attorney fees to a prevailing party. Notwithstanding ORS 197.830 (15), in a proceeding before
42 the Land Use Board of Appeals under this section, the board shall award costs and reasonable at-
43 torney fees to a prevailing party.

44 (6) This section applies to appeals by the applicant of a condition of approval and claims filed
45 in state court seeking damages for the unlawful imposition of conditions of approval in a land use

1 decision, limited land use decision, expedited land division or permit under ORS 215.427 or 227.178.

2 **SECTION 4.** ORS 197.835 is amended to read:

3 197.835. (1) The Land Use Board of Appeals shall review the land use decision or limited land
4 use decision and prepare a final order affirming, reversing or remanding the land use decision or
5 limited land use decision. The board shall adopt rules defining the circumstances in which it will
6 reverse rather than remand a land use decision or limited land use decision that is not affirmed.

7 (2)(a) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record.

8 (b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte
9 contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities
10 not shown in the record that, if proved, would warrant reversal or remand, the board may take ev-
11 idence and make findings of fact on those allegations. The board shall be bound by any finding of
12 fact of the local government, special district or state agency for which there is substantial evidence
13 in the whole record.

14 (3) Issues shall be limited to those raised by any participant before the local hearings body as
15 provided by ORS 197.195 or 197.763, whichever is applicable.

16 (4) A petitioner may raise new issues to the board if:

17 (a) The local government failed to list the applicable criteria for a decision under ORS 197.195
18 (3)(c) or 197.763 [(3)(b)] **(4)(b)**, in which case a petitioner may raise new issues based upon applicable
19 criteria that were omitted from the notice. However, the board may refuse to allow new issues to
20 be raised if it finds that the issue could have been raised before the local government; or

21 (b) The local government made a land use decision or limited land use decision which is different
22 from the proposal described in the notice to such a degree that the notice of the proposed action
23 did not reasonably describe the local government's final action.

24 (5) The board shall reverse or remand a land use decision not subject to an acknowledged
25 comprehensive plan and land use regulations if the decision does not comply with the goals. The
26 board shall reverse or remand a land use decision or limited land use decision subject to an ac-
27 knowledged comprehensive plan or land use regulation if the decision does not comply with the
28 goals and the Land Conservation and Development Commission has issued an order under ORS
29 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to
30 apply the goals to the type of decision being challenged.

31 (6) The board shall reverse or remand an amendment to a comprehensive plan if the amendment
32 is not in compliance with the goals.

33 (7) The board shall reverse or remand an amendment to a land use regulation or the adoption
34 of a new land use regulation if:

35 (a) The regulation is not in compliance with the comprehensive plan; or

36 (b) The comprehensive plan does not contain specific policies or other provisions which provide
37 the basis for the regulation, and the regulation is not in compliance with the statewide planning
38 goals.

39 (8) The board shall reverse or remand a decision involving the application of a plan or land use
40 regulation provision if the decision is not in compliance with applicable provisions of the compre-
41 hensive plan or land use regulations.

42 (9) In addition to the review under subsections (1) to (8) of this section, the board shall reverse
43 or remand the land use decision under review if the board finds:

44 (a) The local government or special district:

45 (A) Exceeded its jurisdiction;

1 (B) Failed to follow the procedures applicable to the matter before it in a manner that preju-
2 diced the substantial rights of the petitioner;

3 (C) Made a decision not supported by substantial evidence in the whole record;

4 (D) Improperly construed the applicable law; or

5 (E) Made an unconstitutional decision; or

6 (b) The state agency made a decision that violated the goals.

7 (10)(a) The board shall reverse a local government decision and order the local government to
8 grant approval of an application for development denied by the local government if the board finds:

9 (A) Based on the evidence in the record, that the local government decision is outside the range
10 of discretion allowed the local government under its comprehensive plan and implementing ordi-
11 nances; or

12 (B) That the local government's action was for the purpose of avoiding the requirements of ORS
13 215.427 or 227.178.

14 (b) If the board does reverse the decision and orders the local government to grant approval of
15 the application, the board shall award attorney fees to the applicant and against the local govern-
16 ment.

17 (11)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent
18 possible consistent with the time requirements of ORS 197.830 (14), the board shall decide all issues
19 presented to it when reversing or remanding a land use decision described in subsections (2) to (9)
20 of this section or limited land use decision described in ORS 197.828 and 197.195.

21 (b) Whenever the findings are defective because of failure to recite adequate facts or legal
22 conclusions or failure to adequately identify the standards or their relation to the facts, but the
23 parties identify relevant evidence in the record which clearly supports the decision or a part of the
24 decision, the board shall affirm the decision or the part of the decision supported by the record and
25 remand the remainder to the local government, with direction indicating appropriate remedial
26 action.

27 (12) The board may reverse or remand a land use decision under review due to ex parte contacts
28 or bias resulting from ex parte contacts with a member of the decision-making body, only if the
29 member of the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever
30 is applicable.

31 (13) Subsection (12) of this section does not apply to reverse or remand of a land use decision
32 due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

33 (14) The board shall reverse or remand a land use decision or limited land use decision which
34 violates a commission order issued under ORS 197.328.

35 (15) In cases in which a local government provides a quasi-judicial land use hearing on a limited
36 land use decision, the requirements of subsections (12) and (13) of this section apply.

37 (16) The board may decide cases before it by means of memorandum decisions and shall prepare
38 full opinions only in such cases as it deems proper.

39 **SECTION 5.** ORS 215.416 is amended to read:

40 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county,
41 an owner of land may apply in writing to such persons as the governing body designates, for a
42 permit, in the manner prescribed by the governing body. The governing body shall establish fees
43 charged for processing permits at an amount no more than the actual or average cost of providing
44 that service.

45 (2) The governing body shall establish a consolidated procedure by which an applicant may ap-

1 ply at one time for all permits or zone changes needed for a development project. The consolidated
 2 procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated proce-
 3 dure shall be available for use at the option of the applicant no later than the time of the first pe-
 4 riodic review of the comprehensive plan and land use regulations.

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

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

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

14 (6) Notice of a public hearing on an application submitted under this section shall be provided
 15 to the owner of an airport defined by the Oregon Department of Aviation as a “public use airport”
 16 if:

17 (a) The name and address of the airport owner has been provided by the Oregon Department
 18 of Aviation to the county planning authority; and

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

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

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

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

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

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

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

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

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

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

3 (C) Notice under this subsection shall comply with ORS 197.763 [(3)(a)] (4)(a), (c), (g) and (h) and
 4 shall describe the nature of the decision. In addition, the notice shall state that any person who is
 5 adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this
 6 subsection may appeal the decision by filing a written appeal in the manner and within the time
 7 period provided in the county's land use regulations. A county may not establish an appeal period
 8 that is less than 12 days from the date the written notice of decision required by this subsection
 9 was mailed. The notice shall state that the decision will not become final until the period for filing
 10 a local appeal has expired. The notice also shall state that a person who is mailed written notice
 11 of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS
 12 197.830.

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

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

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

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

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

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

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

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

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

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

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

45 (C) At the discretion of the applicant, the local government also shall provide notice to the

1 Department of Land Conservation and Development.

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

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

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

5 (B) The date of the decision; and

6 (C) A description of the decision made.

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

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

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

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

16 **SECTION 6.** ORS 227.175 is amended to read:

17 227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the
18 hearings officer, or such other person as the city council designates, for a permit or zone change,
19 upon such forms and in such a manner as the city council prescribes. The governing body shall es-
20 tablish fees charged for processing permits at an amount no more than the actual or average cost
21 of providing that service.

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

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

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

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

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

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

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

40 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon
41 Department of Aviation to be a "visual airport"; or

42 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon
43 Department of Aviation to be an "instrument airport."

44 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing
45 need only be provided as set forth in subsection (6) of this section if the permit or zone change

1 would only allow a structure less than 35 feet in height and the property is located outside of the
2 runway “approach surface” as defined by the Oregon Department of Aviation.

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

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

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

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

18 (C) Notice under this subsection shall comply with ORS 197.763 [(3)(a)] (4)(a), (c), (g) and (h) and
19 shall describe the nature of the decision. In addition, the notice shall state that any person who is
20 adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this
21 subsection may appeal the decision by filing a written appeal in the manner and within the time
22 period provided in the city’s land use regulations. A city may not establish an appeal period that is
23 less than 12 days from the date the written notice of decision required by this subsection was
24 mailed. The notice shall state that the decision will not become final until the period for filing a
25 local appeal has expired. The notice also shall state that a person who is mailed written notice of
26 the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS
27 197.830.

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

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

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

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

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

42 (b) If a local government provides only a notice of the opportunity to request a hearing, the
43 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing
44 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,
45 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the

1 initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made
2 by neighborhood or community organizations recognized by the governing body and whose bounda-
3 ries include the site.

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

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

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

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

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

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

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

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

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

20 (B) The date of the decision; and

21 (C) A description of the decision made.

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

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

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

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

31 **SECTION 7. The amendments to ORS 197.195, 197.763, 197.796, 197.835, 215.416 and 227.175**
32 **by sections 1 to 6 of this 2009 Act apply to notices issued on or after the effective date of this**
33 **2009 Act.**

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