

A-Engrossed
House Bill 2129

Ordered by the House April 20
Including House Amendments dated April 20

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Land Conservation and Development)

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.

Modifies process for local government to make post-acknowledgment changes to comprehensive plans and land use regulations.

A BILL FOR AN ACT

1
2 Relating to procedure for post-acknowledgment change to local land use plans; creating new pro-
3 visions; and amending ORS 197.254, 197.610, 197.615, 197.620, 197.625, 197.830, 215.427, 215.435,
4 227.178 and 227.181.

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

6 **SECTION 1.** ORS 197.610 is amended to read:

7 197.610. *[(1) A proposal to amend a local government acknowledged comprehensive plan or land*
8 *use regulation or to adopt a new land use regulation shall be forwarded to the Director of the De-*
9 *partment of Land Conservation and Development at least 45 days before the first evidentiary hearing*
10 *on adoption. The proposal forwarded shall contain the text and any supplemental information that the*
11 *local government believes is necessary to inform the director as to the effect of the proposal. The notice*
12 *shall include the date set for the first evidentiary hearing. The director shall notify persons who have*
13 *requested notice that the proposal is pending.]*

14 *[(2) When a local government determines that the goals do not apply to a particular proposed*
15 *amendment or new regulation, notice under subsection (1) of this section is not required. In addition,*
16 *a local government may submit an amendment or new regulation with less than 45 days' notice if the*
17 *local government determines that there are emergency circumstances requiring expedited review. In*
18 *both cases:]*

19 *[(a) The amendment or new regulation shall be submitted after adoption as provided in ORS*
20 *197.615 (1) and (2); and]*

21 *[(b) Notwithstanding the requirements of ORS 197.830 (2), the director or any other person may*
22 *appeal the decision to the board under ORS 197.830 to 197.845.]*

23 *[(3) When the Department of Land Conservation and Development participates in a local govern-*
24 *ment proceeding, at least 15 days before the final hearing on the proposed amendment to the compre-*
25 *hensive plan or land use regulation or the new land use regulation, the department shall notify the*
26 *local government of:]*

27 *[(a) Any concerns the department has concerning the proposal; and]*

28 *[(b) Advisory recommendations on actions the department considers necessary to address the con-*

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 *cerns, including, but not limited to, suggested corrections to achieve compliance with the goals.]*

2 *[(4) The director shall report to the Land Conservation and Development Commission on whether*
3 *the director:]*

4 *[(a) Believes the local government's proposal violates the goals; and]*

5 *[(b) Is participating in the local government proceeding.]*

6 **(1) Before a local government adopts a change, including additions and deletions, to an**
7 **acknowledged comprehensive plan or a land use regulation, the local government shall sub-**
8 **mit the proposed change to the Director of the Department of Land Conservation and De-**
9 **velopment. The Land Conservation and Development Commission shall specify, by rule, the**
10 **deadline for submitting proposed changes, but in all cases the proposed change must be**
11 **submitted at least 20 days before the local government holds the first evidentiary hearing**
12 **on adoption of the proposed change. The commission may not require a local government to**
13 **submit the proposed change more than 35 days before the first evidentiary hearing.**

14 **(2) If a local government determines that emergency circumstances beyond the control**
15 **of the local government require expedited review, the local government shall submit the**
16 **proposed changes as soon as practicable, but may submit the proposed changes after the**
17 **applicable deadline.**

18 **(3) Submission of the proposed change must include all of the following materials:**

19 **(a) The text of the proposed change to the comprehensive plan or land use regulation**
20 **implementing the plan;**

21 **(b) If a comprehensive plan map or zoning map is created or altered by the proposed**
22 **change, a copy of the map that is created or altered;**

23 **(c) A brief narrative summary of the proposed change and any supplemental information**
24 **that the local government believes may be useful to inform the director or members of the**
25 **public of the effect of the proposed change;**

26 **(d) The date set for the first evidentiary hearing;**

27 **(e) The form of notice or a draft of the notice to be provided under ORS 197.763, if ap-**
28 **licable; and**

29 **(f) Any staff report on the proposed change or information describing when the staff re-**
30 **port will be available, and how a copy of the staff report can be obtained.**

31 **(4) The director shall cause notice of the proposed change to the acknowledged compre-**
32 **hensive plan or the land use regulation to be provided to:**

33 **(a) Persons that have requested notice of changes to the acknowledged comprehensive**
34 **plan of the particular local government, using electronic mail, electronic bulletin board,**
35 **electronic mailing list server or similar electronic method; and**

36 **(b) Persons that are generally interested in changes to acknowledged comprehensive**
37 **plans, by posting notices periodically on a public website using the Internet or a similar**
38 **electronic method.**

39 **(5) When a local government determines that the land use statutes, statewide land use**
40 **planning goals and administrative rules of the commission that implement either the stat-**
41 **utes or the goals do not apply to a proposed change to the acknowledged comprehensive plan**
42 **and the land use regulations, submission of the proposed change under this section is not**
43 **required.**

44 **(6) If, after submitting the materials described in subsection (3) of this section, the pro-**
45 **posed change is altered to such an extent that the materials submitted no longer reasonably**

1 describe the proposed change, the local government must notify the Department of Land
2 Conservation and Development of the alterations to the proposed change and provide a
3 summary of the alterations along with any alterations to the proposed text or map to the
4 director at least 10 days before the final evidentiary hearing on the proposal. The director
5 shall cause notice of the alterations to be given in the manner described in subsection (4)
6 of this section. Circumstances requiring resubmission of a proposed change may include, but
7 are not limited to, a change in the principal uses allowed under the proposed change or a
8 significant change in the location at which the principal uses would be allowed, limited or
9 prohibited.

10 (7) When the director determines that a proposed change to an acknowledged compre-
11 hensive plan or a land use regulation may not be in compliance with land use statutes or the
12 statewide land use planning goals, including administrative rules implementing either the
13 statutes or the goals, the department shall notify the local government of the concerns at
14 least 15 days before the final evidentiary hearing, unless there is only one hearing or the
15 proposed change has been modified to the extent that resubmission is required under sub-
16 section (6) of this section.

17 (8) Notwithstanding subsection (7) of this section, the department may provide advisory
18 recommendations to the local government concerning the proposed change to the acknowl-
19 edged comprehensive plan or land use regulation.

20 **SECTION 2.** ORS 197.615 is amended to read:

21 197.615. *[(1) A local government that amends an acknowledged comprehensive plan or land use*
22 *regulation or adopts a new land use regulation shall mail or otherwise submit to the Director of the*
23 *Department of Land Conservation and Development a copy of the adopted text of the comprehensive*
24 *plan provision or land use regulation together with the findings adopted by the local government. The*
25 *text and findings must be mailed or otherwise submitted not later than five working days after the final*
26 *decision by the governing body. If the proposed amendment or new regulation that the director received*
27 *under ORS 197.610 has been substantially amended, the local government shall specify the changes that*
28 *have been made in the notice provided to the director. If the text and findings are mailed, they shall*
29 *include a signed statement by the person mailing them indicating the date of deposit in the mail.]*

30 *[(2)(a) On the same day that the text and findings are mailed or delivered, the local government*
31 *also shall mail or otherwise submit notice to persons who:]*

32 *[(A) Participated in the proceedings leading to the adoption of the amendment to the comprehensive*
33 *plan or land use regulation or the new land use regulation; and]*

34 *[(B) Requested of the local government in writing that they be given such notice.]*

35 *[(b) The notice required by this subsection shall:]*

36 *[(A) Describe briefly the action taken by the local government;]*

37 *[(B) State the date of the decision;]*

38 *[(C) If delivered by mail, include a certificate of mailing containing a statement signed by the per-*
39 *son mailing it indicating the date the notice was deposited in the mail;]*

40 *[(D) List the place where and the time when the amendment to the acknowledged comprehensive*
41 *plan or land use regulation or the new land use regulation, and findings, may be reviewed; and]*

42 *[(E) Explain the requirements for appealing the action of the local government under ORS 197.830*
43 *to 197.845.]*

44 *[(3) Not later than five working days after receipt of an amendment to an acknowledged compre-*
45 *hensive plan or land use regulation or a new land use regulation submitted under subsection (1) of this*

1 *section, the director shall notify by mail or other submission any persons who have requested notifica-*
2 *tion. The notice shall:]*

3 *[(a) Explain the requirements for appealing the action of the local government under ORS 197.830*
4 *to 197.845; and]*

5 *[(b) List the locations where the comprehensive plan or land use regulation amendment or new land*
6 *use regulation may be reviewed.]*

7 **(1) When a local government adopts a proposed change to an acknowledged comprehen-**
8 **sive plan or a land use regulation, the local government shall submit the decision to the Di-**
9 **rector of the Department of Land Conservation and Development within 20 days after making**
10 **the decision.**

11 **(2) The submission must contain the following materials:**

12 **(a) A copy of the signed decision, the findings and the text of the change to the com-**
13 **prehensive plan or land use regulation;**

14 **(b) If a comprehensive plan map or zoning map is created or altered by the proposed**
15 **change, a copy of the map that is created or altered;**

16 **(c) A brief narrative summary of the decision, including a summary of substantive dif-**
17 **ferences from the proposed change submitted under ORS 197.610 and any supplemental in-**
18 **formation that the local government believes may be useful to inform the director or**
19 **members of the public of the effect of the actual change; and**

20 **(d) A statement by the individual transmitting the submission, identifying the date of the**
21 **decision and the date of the submission.**

22 **(3) The director shall cause notice of the decision and an explanation of the requirements**
23 **for appealing the land use decision under ORS 197.830 to 197.845 to be provided to:**

24 **(a) Persons that have requested notice of changes to the acknowledged comprehensive**
25 **plan of the particular local government, using electronic mail, electronic bulletin board,**
26 **electronic mailing list server or similar electronic method; and**

27 **(b) Persons that are generally interested in changes to acknowledged comprehensive**
28 **plans, by posting notices periodically on a public website using the Internet or a similar**
29 **electronic method.**

30 **(4) On the same day the local government submits the decision to the director, the local**
31 **government shall mail, or otherwise deliver, notice to persons that:**

32 **(a) Participated in the local government proceedings that led to the decision to adopt the**
33 **change to the acknowledged comprehensive plan or the land use regulation; and**

34 **(b) Requested in writing that the local government give notice of the change to the ac-**
35 **knowledged comprehensive plan or the land use regulation.**

36 **(5) The notice required by subsection (4) of this section must state how and where the**
37 **materials described in subsection (2) of this section may be obtained and must:**

38 **(a) Include a statement by the individual delivering the notice that identifies the date on**
39 **which the notice was delivered and the individual delivering the notice;**

40 **(b) List the locations and times at which the public may review the decision and findings;**
41 **and**

42 **(c) Explain the requirements for appealing the land use decision under ORS 197.830 to**
43 **197.845.**

44 **SECTION 3.** ORS 197.620 is amended to read:

45 197.620. (1) *[Notwithstanding the requirements of ORS 197.830 (2), persons who participated either*

1 orally or in writing in the local government proceedings leading to the adoption of an amendment to
2 an acknowledged comprehensive plan or land use regulation or a new land use regulation may appeal
3 the decision to the Land Use Board of Appeals under ORS 197.830 to 197.845.] A decision to not adopt
4 a legislative amendment or a new land use regulation is not appealable [except where] **unless** the
5 amendment is necessary to address the requirements of a new or amended goal, rule or statute.

6 (2) Notwithstanding the requirements of ORS 197.830 (2)[, *the Director of the Department of Land*
7 *Conservation and Development or any other person may file an appeal of the local government's deci-*
8 *sion under ORS 197.830 to 197.845, if an amendment to an acknowledged comprehensive plan or land*
9 *use regulation or a new land use regulation differs from the proposal submitted under ORS 197.610 to*
10 *such a degree that the notice under ORS 197.610 did not reasonably describe the nature of the local*
11 *government final action.*] **that a person have appeared before the local government orally or in**
12 **writing to seek review of a land use decision, the Director of the Department of Land Con-**
13 **servation and Development or any other person may appeal the decision to the Land Use**
14 **Board of Appeals if:**

15 (a) **The local government failed to submit all of the materials described in ORS 197.610**
16 **(3) or, if applicable, ORS 197.610 (6), and the failure to submit the materials prejudiced sub-**
17 **stantial rights of the Department of Land Conservation and Development or the person;**

18 (b) **Except as provided in subsection (3) of this section, the local government submitted**
19 **the materials described in ORS 197.610 (3) or, if applicable, ORS 197.610 (6), after the deadline**
20 **specified in ORS 197.610 (1) or (6) or rules of the Land Conservation and Development Com-**
21 **mission, whichever is applicable; or**

22 (c) **The decision differs from the proposed changes submitted under ORS 197.610 to such**
23 **an extent that the materials submitted under ORS 197.610 do not reasonably describe the**
24 **decision.**

25 (3) **Subsection (2)(b) of this section does not authorize an appeal if the local government**
26 **cures an untimely submission of materials as provided in this subsection. A local government**
27 **may cure the untimely submission of materials by either:**

28 (a) **Postponing the date for the final evidentiary hearing by the greater of 10 days or the**
29 **number of days by which the submission was late; or**

30 (b) **Holding the evidentiary record open for an additional period of time equal to 10 days**
31 **or the number of days by which the submission was late, whichever is greater. Additionally,**
32 **the local government shall provide notice of the postponement or record extension to the**
33 **Department of Land Conservation and Development.**

34 **SECTION 4.** ORS 197.625 is amended to read:

35 197.625. [(1) *If a notice of intent to appeal is not filed within the 21-day period set out in ORS*
36 *197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new*
37 *land use regulation shall be considered acknowledged upon the expiration of the 21-day period. An*
38 *amendment to an acknowledged comprehensive plan or land use regulation is not considered acknowl-*
39 *edged unless the notices required under ORS 197.610 and 197.615 have been submitted to the Director*
40 *of the Department of Land Conservation and Development and:]*

41 [(a) *The 21-day appeal period has expired; or]*

42 [(b) *If an appeal is timely filed, the board affirms the decision or the appellate courts affirm the*
43 *decision.*]

44 [(2) *If the decision adopting an amendment to an acknowledged comprehensive plan or land use*
45 *regulation or a new land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the*

1 *amendment or new regulation shall be considered acknowledged upon the date the appellate decision*
2 *becomes final.]*

3 *[(3)(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land*
4 *use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time*
5 *specified by local government charter or ordinance and is applicable to land use decisions, expedited*
6 *land divisions and limited land use decisions if the amendment was adopted in substantial compliance*
7 *with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.]*

8 *[(b) Any approval of a land use decision, expedited land division or limited land use decision*
9 *subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include*
10 *findings of compliance with those land use goals applicable to the amendment.]*

11 *[(c) The issuance of a permit under an effective but unacknowledged comprehensive plan or land*
12 *use regulation shall not be relied upon to justify retention of improvements so permitted if the compre-*
13 *hensive plan provision or land use regulation does not gain acknowledgment.]*

14 *[(d) The provisions of this subsection apply to applications for land use decisions, expedited land*
15 *divisions and limited land use decisions submitted after February 17, 1993, and to comprehensive plan*
16 *and land use regulation amendments adopted:]*

17 *[(A) After June 1, 1991, pursuant to periodic review requirements under ORS 197.628, 197.633 and*
18 *197.636;]*

19 *[(B) After June 1, 1991, to meet the requirements of ORS 197.646; and]*

20 *[(C) After November 4, 1993.]*

21 *[(4) The director shall issue certification of the acknowledgment upon receipt of an affidavit from*
22 *the board stating either:]*

23 *[(a) That no appeal was filed within the 21 days allowed under ORS 197.830 (9); or]*

24 *[(b) The date the appellate decision affirming the adoption of the amendment or new regulation*
25 *became final.]*

26 *[(5) The board shall issue an affidavit for the purposes of subsection (4) of this section within five*
27 *days of receiving a valid request from the local government.]*

28 *[(6) After issuance of the notice provided in ORS 197.633, nothing in this section shall prevent the*
29 *Land Conservation and Development Commission from entering an order pursuant to ORS 197.633,*
30 *197.636 or 197.644 to require a local government to respond to the standards of ORS 197.628.]*

31 **(1) A local decision adopting a change to an acknowledged comprehensive plan or a land**
32 **use regulation is deemed to be acknowledged when the local government has complied with**
33 **the requirements of ORS 197.610 and 197.615 and either:**

34 **(a) The 21-day appeal period set out in ORS 197.830 (9) has expired and a notice of intent**
35 **to appeal has not been filed; or**

36 **(b) If an appeal has been timely filed, the Land Use Board of Appeals affirms the local**
37 **decision or, if an appeal of the decision of the board is timely filed, an appellate court affirms**
38 **the decision.**

39 **(2) If the local decision adopting a change to an acknowledged comprehensive plan or a**
40 **land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the comprehensive**
41 **plan or the land use regulation, as modified, is deemed to be acknowledged upon the date the**
42 **decision of the board or the decision of an appellate court becomes final.**

43 **(3) Prior to acknowledgment of a change to an acknowledged comprehensive plan or a**
44 **land use regulation:**

45 **(a) The change is effective at the time specified by local government charter or ordi-**

1 nance; and

2 (b) If the change was adopted in substantial compliance with ORS 197.610 and 197.615, the
3 local government shall apply the change to land use decisions, expedited land divisions and
4 limited land use decisions unless a stay is granted under ORS 197.845.

5 (4) Approval of a land use decision, expedited land division or limited land use decision
6 that is subject to an effective but unacknowledged provision of a comprehensive plan or a
7 land use regulation must include findings of compliance with land use statutes, statewide
8 land use planning goals and administrative rules of the Land Conservation and Development
9 Commission implementing the statutes or goals that apply to the decision and that the un-
10 acknowledged provision implements.

11 (5) If an effective but unacknowledged provision of a comprehensive plan or a land use
12 regulation fails to gain acknowledgment, a permit or zone change approved, in whole or in
13 part, on the basis of the change does not justify retention of the improvements that were
14 authorized by the permit or zone change.

15 (6) If requested by a local government, the Director of the Department of Land Conser-
16 vation and Development shall issue certification of the acknowledgment upon receipt of an
17 affidavit from:

18 (a) The local government, attesting that the change to the acknowledged comprehensive
19 plan or the land use regulation was accomplished in compliance with ORS 197.610 and 197.615;
20 and

21 (b) The Land Use Board of Appeals, stating either:

22 (A) That no notice of appeal was filed within the 21 days allowed under ORS 197.830 (9);
23 or

24 (B) The date the decision of the board or the decision of an appellate court affirming the
25 change to the acknowledged comprehensive plan or the land use regulation became final.

26 (7) The board shall issue an affidavit for the purposes of subsection (6) of this section
27 within five days after receiving a valid request from the local government.

28 **SECTION 5.** Section 6 of this 2011 Act is added to and made a part of ORS 197.610 to
29 197.625.

30 **SECTION 6.** (1) Notwithstanding contrary provisions of state and local law, a local gov-
31 ernment that proposes a change to an acknowledged comprehensive plan or a land use reg-
32 ulation solely for the purpose of conforming the plan and regulations to new requirements
33 in a land use statute, statewide land use planning goal or rule of the Land Conservation and
34 Development Commission implementing the statutes or goals may take action to change the
35 comprehensive plan or the land use regulation without holding a public hearing if:

36 (a) The local government gives notice to the Department of Land Conservation and De-
37 velopment of the proposed change in the manner provided by ORS 197.610 and 197.615; and

38 (b) The department confirms in writing that the only effect of the proposed change is to
39 conform the comprehensive plan or the land use regulations to the new requirements.

40 (2) Notwithstanding the requirement under ORS 197.830 (2) that a person must have ap-
41 peared before the local government orally or in writing, a person that has not appeared may
42 petition for review of the decision under subsection (1) of this section solely to determine
43 whether the only effect of the local decision is to conform the comprehensive plan or the
44 land use regulation to the new requirements.

45 **SECTION 7.** ORS 197.254 is amended to read:

1 197.254. (1) A state agency *[shall be]* is barred, after the date set for submission of programs by
2 the Land Conservation and Development Commission as provided in ORS 197.180 (4), from contesting
3 a request for acknowledgment submitted by a local government under ORS 197.251 or from filing
4 an appeal *[under ORS 197.620 (1) or (2)]* of a **post-acknowledgement change under ORS 197.610**
5 **to 197.625 to a comprehensive plan or a land use regulation**, if the commission finds that:

6 (a) The state agency has not complied with ORS 197.180; or

7 (b) The state agency has not coordinated its plans, programs or rules affecting land use with the
8 comprehensive plan or land use regulations of the city or county pursuant to a coordination program
9 approved by the commission under ORS 197.180.

10 (2) A state agency *[shall be]* is barred from seeking a commission order under ORS 197.644 re-
11 quiring amendment of a local government comprehensive plan or a land use regulation in order to
12 comply with the agency's plan or program unless the agency has first requested the amendment from
13 the local government and has had its request denied.

14 (3) A special district *[shall be]* is barred from contesting a request for initial compliance ac-
15 knowledgment submitted by a local government under ORS 197.251 or from filing an appeal *[under*
16 *ORS 197.620 (1) or (2)]* of a **post-acknowledgement change under ORS 197.610 to 197.625 to a**
17 **comprehensive plan or a land use regulation**, if the county or metropolitan service district as-
18 signed coordinative functions under ORS 195.025 (1) finds that:

19 (a) The special district has not entered into a cooperative agreement under ORS 195.020; or

20 (b) The special district has not coordinated its plans, programs or regulations affecting land use
21 with the comprehensive plan or land use regulations of the local government pursuant to its coop-
22 erative agreement made under ORS 195.020.

23 (4) A special district *[shall be]* is barred from seeking a commission order under ORS 197.644
24 requiring amendment of a local government comprehensive plan or a land use regulation in order
25 to comply with the special district's plan or program unless the special district has first requested
26 the amendment from the local government and has had its request denied.

27 **SECTION 8. ORS 197.651 is added to and made a part of ORS 197.628 to 197.650.**

28 **SECTION 9.** ORS 197.830 is amended to read:

29 197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to
30 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Ap-
31 peals.

32 (2) Except as provided in ORS 197.620 *[(1) and (2)]*, a person may petition the board for review
33 of a land use decision or limited land use decision if the person:

34 (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;
35 and

36 (b) Appeared before the local government, special district or state agency orally or in writing.

37 (3) If a local government makes a land use decision without providing a hearing, except as
38 provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision
39 that is different from the proposal described in the notice of hearing to such a degree that the notice
40 of the proposed action did not reasonably describe the local government's final actions, a person
41 adversely affected by the decision may appeal the decision to the board under this section:

42 (a) Within 21 days of actual notice where notice is required; or

43 (b) Within 21 days of the date a person knew or should have known of the decision where no
44 notice is required.

45 (4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416

1 (11) or 227.175 (10):

2 (a) A person who was not provided [*mailed*] notice of the decision as required under ORS 215.416
3 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of
4 receiving actual notice of the decision.

5 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who
6 is adversely affected or aggrieved by the decision may appeal the decision to the board under this
7 section within 21 days after the expiration of the period for filing a local appeal of the decision es-
8 tablished by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

9 (c) A person who receives [*mailed*] notice of a decision made without a hearing under ORS
10 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days
11 of receiving actual notice of the nature of the decision, if the [*mailed*] notice of the decision did not
12 reasonably describe the nature of the decision.

13 (d) Except as provided in paragraph (c) of this subsection, a person who receives [*mailed*] notice
14 of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the
15 decision to the board under this section.

16 (5) If a local government makes a limited land use decision which is different from the proposal
17 described in the notice to such a degree that the notice of the proposed action did not reasonably
18 describe the local government's final actions, a person adversely affected by the decision may appeal
19 the decision to the board under this section:

20 (a) Within 21 days of actual notice where notice is required; or

21 (b) Within 21 days of the date a person knew or should have known of the decision where no
22 notice is required.

23 (6)(a) Except as provided in paragraph (b) of this subsection, the appeal periods described in
24 subsections (3), (4) and (5) of this section shall not exceed three years after the date of the decision.

25 (b) If notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763
26 is required but has not been provided, the provisions of paragraph (a) of this subsection do not ap-
27 ply.

28 (7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under
29 subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene
30 in and be made a party to the review proceeding by filing a motion to intervene and by paying a
31 filing fee of \$100.

32 (b) Persons who may intervene in and be made a party to the review proceedings, as set forth
33 in subsection (1) of this section, are:

34 (A) The applicant who initiated the action before the local government, special district or state
35 agency; or

36 (B) Persons who appeared before the local government, special district or state agency, orally
37 or in writing.

38 (c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this
39 subsection shall result in denial of a motion to intervene.

40 (8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party
41 to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on
42 the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

43 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed
44 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of
45 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to

1 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is
2 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a
3 *[certificate of mailing with the notice mailed]* **statement identifying when, how and to whom no-**
4 **notice was provided** under ORS 197.615 *[shall]* **does** not render the notice defective. Copies of the
5 notice of intent to appeal shall be served upon the local government, special district or state agency
6 and the applicant of record, if any, in the local government, special district or state agency pro-
7 ceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board
8 and shall be accompanied by a filing fee of \$200 and a deposit for costs to be established by the
9 board. If a petition for review is not filed with the board as required in subsections (10) and (11) of
10 this section, the filing fee and deposit shall be awarded to the local government, special district or
11 state agency as cost of preparation of the record.

12 (10)(a) Within 21 days after service of the notice of intent to appeal, the local government, spe-
13 cial district or state agency shall transmit to the board the original or a certified copy of the entire
14 record of the proceeding under review. By stipulation of all parties to the review proceeding the
15 record may be shortened. The board may require or permit subsequent corrections to the record;
16 however, the board shall issue an order on a motion objecting to the record within 60 days of re-
17 ceiving the motion.

18 (b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice
19 to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860.
20 Any person moving to intervene shall be provided such notice within seven days after a motion to
21 intervene is filed. The notice required by this paragraph shall be accompanied by a statement that
22 mediation information or assistance may be obtained from the Department of Land Conservation and
23 Development.

24 (11) A petition for review of the land use decision or limited land use decision and supporting
25 brief shall be filed with the board as required by the board under subsection (13) of this section.

26 (12) The petition shall include a copy of the decision sought to be reviewed and shall state:

27 (a) The facts that establish that the petitioner has standing.

28 (b) The date of the decision.

29 (c) The issues the petitioner seeks to have reviewed.

30 (13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for
31 oral argument.

32 (b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing
33 the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the
34 respondent's brief, the local government or state agency may withdraw its decision for purposes of
35 reconsideration. If a local government or state agency withdraws an order for purposes of recon-
36 sideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision.
37 If the petitioner is dissatisfied with the local government or agency action after withdrawal for
38 purposes of reconsideration, the petitioner may refile the notice of intent and the review shall pro-
39 ceed upon the revised order. An amended notice of intent shall not be required if the local govern-
40 ment or state agency, on reconsideration, affirms the order or modifies the order with only minor
41 changes.

42 (14) The board shall issue a final order within 77 days after the date of transmittal of the record.
43 If the order is not issued within 77 days the applicant may apply in Marion County or the circuit
44 court of the county where the application was filed for a writ of mandamus to compel the board to
45 issue a final order.

1 (15)(a) Upon entry of its final order the board may, in its discretion, award costs to the pre-
2 vailing party including the cost of preparation of the record if the prevailing party is the local
3 government, special district or state agency whose decision is under review. The deposit required
4 by subsection (9) of this section shall be applied to any costs charged against the petitioner.

5 (b) The board shall also award reasonable attorney fees and expenses to the prevailing party
6 against any other party who the board finds presented a position without probable cause to believe
7 the position was well-founded in law or on factually supported information.

8 (16) Orders issued under this section may be enforced in appropriate judicial proceedings.

9 (17)(a) The board shall provide for the publication of its orders that are of general public in-
10 terest in the form it deems best adapted for public convenience. The publications shall constitute
11 the official reports of the board.

12 (b) Any moneys collected or received from sales by the board shall be paid into the Board
13 Publications Account established by ORS 197.832.

14 (18) Except for any sums collected for publication of board opinions, all fees collected by the
15 board under this section that are not awarded as costs shall be paid over to the State Treasurer to
16 be credited to the General Fund.

17 **SECTION 10.** ORS 215.427 is amended to read:

18 215.427. (1) Except as provided in subsections (3), (5) and (10) of this section, for land within an
19 urban growth boundary and applications for mineral aggregate extraction, the governing body of a
20 county or its designee shall take final action on an application for a permit, limited land use deci-
21 sion or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the
22 application is deemed complete. The governing body of a county or its designee shall take final
23 action on all other applications for a permit, limited land use decision or zone change, including
24 resolution of all appeals under ORS 215.422, within 150 days after the application is deemed com-
25 plete, except as provided in subsections (3), (5) and (10) of this section.

26 (2) If an application for a permit, limited land use decision or zone change is incomplete, the
27 governing body or its designee shall notify the applicant in writing of exactly what information is
28 missing within 30 days of receipt of the application and allow the applicant to submit the missing
29 information. The application shall be deemed complete for the purpose of subsection (1) of this sec-
30 tion upon receipt by the governing body or its designee of:

31 (a) All of the missing information;

32 (b) Some of the missing information and written notice from the applicant that no other infor-
33 mation will be provided; or

34 (c) Written notice from the applicant that none of the missing information will be provided.

35 (3)(a) If the application was complete when first submitted or the applicant submits additional
36 information, as described in subsection (2) of this section, within 180 days of the date the application
37 was first submitted and the county has a comprehensive plan and land use regulations acknowledged
38 under ORS 197.251, approval or denial of the application shall be based upon the standards and
39 criteria that were applicable at the time the application was first submitted.

40 (b) If the application is for industrial or traded sector development of a site identified under
41 section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan,
42 approval or denial of the application must be based upon the standards and criteria that were ap-
43 plicable at the time the application was first submitted, provided the application complies with
44 paragraph (a) of this subsection.

45 (4) On the 181st day after first being submitted, the application is void if the applicant has been

1 notified of the missing information as required under subsection (2) of this section and has not sub-
2 mitted:

3 (a) All of the missing information;

4 (b) Some of the missing information and written notice that no other information will be pro-
5 vided; or

6 (c) Written notice that none of the missing information will be provided.

7 (5) The period set in subsection (1) of this section may be extended for a specified period of time
8 at the written request of the applicant. The total of all extensions, except as provided in subsection
9 (10) of this section for mediation, may not exceed 215 days.

10 (6) The period set in subsection (1) of this section applies:

11 (a) Only to decisions wholly within the authority and control of the governing body of the
12 county; and

13 (b) Unless the parties have agreed to mediation as described in subsection (10) of this section
14 or ORS 197.319 (2)(b).

15 (7) Notwithstanding subsection (6) of this section, the period set in subsection (1) of this section
16 does not apply to [*an amendment to an acknowledged comprehensive plan or land use regulation or*
17 *adoption of a new land use regulation that was forwarded to the Director of the Department of Land*
18 *Conservation and Development under ORS 197.610 (1)] **a decision of the county making a change**
19 **to an acknowledged comprehensive plan or a land use regulation that is submitted to the**
20 **Director of the Department of Land Conservation and Development under ORS 197.610.***

21 (8) Except when an applicant requests an extension under subsection (5) of this section, if the
22 governing body of the county or its designee does not take final action on an application for a
23 permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after
24 the application is deemed complete, the county shall refund to the applicant either the unexpended
25 portion of any application fees or deposits previously paid or 50 percent of the total amount of such
26 fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees
27 incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible
28 for the costs of providing sufficient additional information to address relevant issues identified in
29 the consideration of the application.

30 (9) A county may not compel an applicant to waive the period set in subsection (1) of this sec-
31 tion or to waive the provisions of subsection (8) of this section or ORS 215.429 as a condition for
32 taking any action on an application for a permit, limited land use decision or zone change except
33 when such applications are filed concurrently and considered jointly with a plan amendment.

34 (10) The periods set forth in subsection (1) of this section and the period set forth in subsection
35 (5) of this section may be extended by up to 90 additional days, if the applicant and the county agree
36 that a dispute concerning the application will be mediated.

37 **SECTION 11.** ORS 215.435 is amended to read:

38 215.435. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 re-
39 manding a decision to a county, the governing body of the county or its designee shall take final
40 action on an application for a permit, limited land use decision or zone change within 90 days of the
41 effective date of the final order issued by the board. For purposes of this subsection, the effective
42 date of the final order is the last day for filing a petition for judicial review of a final order of the
43 board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS
44 197.830, the 90-day period established under this subsection shall not begin until final resolution of
45 the judicial review.

1 (2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period estab-
2 lished under subsection (1) of this section shall not begin until the applicant requests in writing that
3 the county proceed with the application on remand.

4 (b) The 90-day period may be extended for a reasonable period of time at the request of the
5 applicant.

6 (3) The 90-day period established under subsection (1) of this section applies only to decisions
7 wholly within the authority and control of the governing body of the county.

8 (4) Subsection (1) of this section does not apply to a remand proceeding concerning [*an amend-*
9 *ment to an acknowledged comprehensive plan or land use regulation or the adoption of a new land use*
10 *regulation that was forwarded to the Director of the Department of Land Conservation and Develop-*
11 *ment under ORS 197.610*] **a decision of the county making a change to an acknowledged com-**
12 **prehensive plan or a land use regulation that is submitted to the Director of the Department**
13 **of Land Conservation and Development under ORS 197.610.**

14 **SECTION 12.** ORS 227.178 is amended to read:

15 227.178. (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body
16 of a city or its designee shall take final action on an application for a permit, limited land use de-
17 cision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after
18 the application is deemed complete.

19 (2) If an application for a permit, limited land use decision or zone change is incomplete, the
20 governing body or its designee shall notify the applicant in writing of exactly what information is
21 missing within 30 days of receipt of the application and allow the applicant to submit the missing
22 information. The application shall be deemed complete for the purpose of subsection (1) of this sec-
23 tion upon receipt by the governing body or its designee of:

24 (a) All of the missing information;

25 (b) Some of the missing information and written notice from the applicant that no other infor-
26 mation will be provided; or

27 (c) Written notice from the applicant that none of the missing information will be provided.

28 (3)(a) If the application was complete when first submitted or the applicant submits the re-
29 quested additional information within 180 days of the date the application was first submitted and
30 the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, ap-
31 proval or denial of the application shall be based upon the standards and criteria that were appli-
32 cable at the time the application was first submitted.

33 (b) If the application is for industrial or traded sector development of a site identified under
34 section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan,
35 approval or denial of the application must be based upon the standards and criteria that were ap-
36 plicable at the time the application was first submitted, provided the application complies with
37 paragraph (a) of this subsection.

38 (4) On the 181st day after first being submitted, the application is void if the applicant has been
39 notified of the missing information as required under subsection (2) of this section and has not sub-
40 mitted:

41 (a) All of the missing information;

42 (b) Some of the missing information and written notice that no other information will be pro-
43 vided; or

44 (c) Written notice that none of the missing information will be provided.

45 (5) The 120-day period set in subsection (1) of this section may be extended for a specified period

1 of time at the written request of the applicant. The total of all extensions, except as provided in
2 subsection (11) of this section for mediation, may not exceed 245 days.

3 (6) The 120-day period set in subsection (1) of this section applies:

4 (a) Only to decisions wholly within the authority and control of the governing body of the city;
5 and

6 (b) Unless the parties have agreed to mediation as described in subsection (11) of this section
7 or ORS 197.319 (2)(b).

8 (7) Notwithstanding subsection (6) of this section, the 120-day period set in subsection (1) of this
9 section does not apply to [*an amendment to an acknowledged comprehensive plan or land use regu-*
10 *lation or adoption of a new land use regulation that was forwarded to the Director of the Department*
11 *of Land Conservation and Development under ORS 197.610 (1)] **a decision of the city making a**
12 **change to an acknowledged comprehensive plan or a land use regulation that is submitted**
13 **to the Director of the Department of Land Conservation and Development under ORS**
14 **197.610.***

15 (8) Except when an applicant requests an extension under subsection (5) of this section, if the
16 governing body of the city or its designee does not take final action on an application for a permit,
17 limited land use decision or zone change within 120 days after the application is deemed complete,
18 the city shall refund to the applicant, subject to the provisions of subsection (9) of this section, ei-
19 ther the unexpended portion of any application fees or deposits previously paid or 50 percent of the
20 total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional
21 governmental fees incurred subsequent to the payment of such fees or deposits. However, the ap-
22 plicant is responsible for the costs of providing sufficient additional information to address relevant
23 issues identified in the consideration of the application.

24 (9)(a) To obtain a refund under subsection (8) of this section, the applicant may either:

25 (A) Submit a written request for payment, either by mail or in person, to the city or its designee;
26 or

27 (B) Include the amount claimed in a mandamus petition filed under ORS 227.179. The court shall
28 award an amount owed under this section in its final order on the petition.

29 (b) Within seven calendar days of receiving a request for a refund, the city or its designee shall
30 determine the amount of any refund owed. Payment, or notice that no payment is due, shall be made
31 to the applicant within 30 calendar days of receiving the request. Any amount due and not paid
32 within 30 calendar days of receipt of the request shall be subject to interest charges at the rate of
33 one percent per month, or a portion thereof.

34 (c) If payment due under paragraph (b) of this subsection is not paid within 120 days after the
35 city or its designee receives the refund request, the applicant may file an action for recovery of the
36 unpaid refund. In an action brought by a person under this paragraph, the court shall award to a
37 prevailing applicant, in addition to the relief provided in this section, reasonable attorney fees and
38 costs at trial and on appeal. If the city or its designee prevails, the court shall award reasonable
39 attorney fees and costs at trial and on appeal if the court finds the petition to be frivolous.

40 (10) A city may not compel an applicant to waive the 120-day period set in subsection (1) of this
41 section or to waive the provisions of subsection (8) of this section or ORS 227.179 as a condition for
42 taking any action on an application for a permit, limited land use decision or zone change except
43 when such applications are filed concurrently and considered jointly with a plan amendment.

44 (11) The period set forth in subsection (1) of this section and the period set forth in subsection
45 (5) of this section may be extended by up to 90 additional days, if the applicant and the city agree

1 that a dispute concerning the application will be mediated.

2 **SECTION 13.** ORS 227.181 is amended to read:

3 227.181. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 re-
4 manding a decision to a city, the governing body of the city or its designee shall take final action
5 on an application for a permit, limited land use decision or zone change within 90 days of the ef-
6 fective date of the final order issued by the board. For purposes of this subsection, the effective date
7 of the final order is the last day for filing a petition for judicial review of a final order of the board
8 under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS 197.830,
9 the 90-day period established under this subsection shall not begin until final resolution of the ju-
10 dicial review.

11 (2)(a) In addition to the requirements of subsection (1) of this section, the 90-day period estab-
12 lished under subsection (1) of this section shall not begin until the applicant requests in writing that
13 the city proceed with the application on remand.

14 (b) The 90-day period may be extended for a reasonable period of time at the request of the
15 applicant.

16 (3) The 90-day period established under subsection (1) of this section applies only to decisions
17 wholly within the authority and control of the governing body of the city.

18 (4) Subsection (1) of this section does not apply to a remand proceeding concerning [*an amend-*
19 *ment to an acknowledged comprehensive plan or land use regulation or the adoption of a new land use*
20 *regulation that was forwarded to the Director of the Department of Land Conservation and Develop-*
21 *ment under ORS 197.610*] **a decision of the city making a change to an acknowledged compre-**
22 **hensive plan or a land use regulation that is submitted to the Director of the Department**
23 **of Land Conservation and Development under ORS 197.610.**

24 **SECTION 14.** Section 6 of this 2011 Act and the amendments to ORS 197.254, 197.610,
25 197.615, 197.620, 197.625, 197.830, 215.427, 215.435, 227.178 and 227.181 by sections 1 to 4, 7 and
26 9 to 13 of this 2011 Act apply to proposed changes to an acknowledged comprehensive plan
27 or a land use regulation that is first submitted to the Director of the Department of Land
28 Conservation and Development on or after the effective date of this 2011 Act.

29