

# House Bill 2129

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). 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 **as introduced**.

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, 197.649, 197.830, 215.427,  
4 215.435, 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-*  
29 *cerns, including, but not limited to, suggested corrections to achieve compliance with the goals.]*

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

**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) Believes the local government's proposal violates the goals; and]*

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

3        **(1) Before the governing body of a local government adopts a change, including additions**  
 4 **and deletions, under ORS 197.610 to 197.625 to an acknowledged comprehensive plan or a land**  
 5 **use regulation, the local government shall submit the proposed change to the Director of the**  
 6 **Department of Land Conservation and Development. The Land Conservation and Develop-**  
 7 **ment Commission shall specify, by rule, the deadline for submitting particular types of pro-**  
 8 **posed changes, but in all cases the proposed change must be submitted at least 20 days**  
 9 **before and not more than 35 days before the local government holds the first evidentiary**  
 10 **hearing on adoption of the proposed change.**

11        **(2) Submission of the proposed change must include all of the following materials, if ap-**  
 12 **plicable:**

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

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

17        **(c) A brief narrative summary of the proposed change and all supplemental information**  
 18 **that the local government determines may be useful to inform the director and members of**  
 19 **the public of the effect of the proposed change;**

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

21        **(e) The notice provided under ORS 197.763; and**

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

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

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

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

32        **(4) When land use statutes, statewide land use planning goals and administrative rules**  
 33 **of the commission that implement either the statutes or the goals do not apply to a proposed**  
 34 **change to the acknowledged comprehensive plan and the land use regulations, submission**  
 35 **of the proposed change under this section is not required.**

36        **(5) If, after submitting the materials described in subsection (2) of this section, the pro-**  
 37 **posed change is altered to such an extent that the materials submitted no longer reasonably**  
 38 **describe the proposed change, the local government must resubmit the proposed change and**  
 39 **the materials described in subsection (2) of this section to the director at least 10 days before**  
 40 **the final evidentiary hearing on the proposal. The director shall cause notice of the resub-**  
 41 **mitted proposed change to be given in the manner described in subsection (3) of this section.**  
 42 **Circumstances requiring resubmission of a proposed change include, but are not limited to,**  
 43 **a change in the principal uses allowed under the proposed change or a significant change in**  
 44 **the location at which the principal uses would be allowed, limited or prohibited.**

45        **(6) If a local government does not submit all of the applicable materials described in**

1 subsection (2) of this section or submits the materials after the deadline specified in sub-  
 2 section (1) or (5) of this section or in rules of the commission:

3 (a) The local government shall submit the materials as soon as practicable, but not later  
 4 than the deadline specified in ORS 197.615 (1); and

5 (b) Notwithstanding the requirements of ORS 197.830 (2) that a person have appeared  
 6 before the local government to seek review by the Land Use Board of Appeals of the decision,  
 7 the director or any other person may appeal the land use decision under ORS 197.830 to  
 8 197.845.

9 (7) When the Department of Land Conservation and Development determines that a  
 10 proposed change to an acknowledged comprehensive plan or a land use regulation may not  
 11 be in compliance with land use statutes or the statewide land use planning goals, including  
 12 administrative rules implementing either the statutes or the goals, the department shall  
 13 notify the local government of the concerns within 15 days after the date on which the local  
 14 government submitted the materials described in subsection (2) of this section, unless the  
 15 proposed change has been modified to the extent that resubmission is required under sub-  
 16 section (5) of this section.

17 (8) Notwithstanding subsection (7) of this section, the department may provide advisory  
 18 recommendations that the department considers desirable on a proposed change to the ac-  
 19 knowledged comprehensive plan or a 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 the governing body of a local government adopts a proposed change under ORS**  
 8 **197.610 to 197.625 to an acknowledged comprehensive plan or a land use regulation, the local**  
 9 **government shall submit the decision of the governing body to the Director of the Depart-**  
 10 **ment of Land Conservation and Development within 20 days after the governing body makes**  
 11 **the decision.**

12 **(2) The submission must contain the following materials, if applicable:**

13 **(a) A copy of the signed decision and the findings of the governing body, and the text of**  
 14 **the change to the comprehensive plan or land use regulation implementing the plan;**

15 **(b) A copy of a comprehensive plan map or zoning map that is created or altered by the**  
 16 **change;**

17 **(c) A brief narrative summary of the decision of the governing body, including a sum-**  
 18 **mary of substantive differences from the proposed change submitted under ORS 197.610 and**  
 19 **the supplemental information that the local government determines may be useful to inform**  
 20 **the director or members of the public of the effect of the actual changes; and**

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

23 **(3) The director shall cause notice of the decision of the governing body and an explana-**  
 24 **tion of the requirements for appealing the land use decision under ORS 197.830 to 197.845 to**  
 25 **be provided to:**

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

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

32 **(4) On the same day the local government submits the decision of the governing body to**  
 33 **the director, the local government shall mail, or otherwise deliver, notice to persons that:**

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

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

38 **(5) The notice required by subsection (4) of this section must contain the materials de-**  
 39 **scribed in subsection (2) of this section and must:**

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

42 **(b) List the locations and times at which the public may review the decision and findings**  
 43 **of the governing body; and**

44 **(c) Explain the requirements for appealing the land use decision under ORS 197.830 to**  
 45 **197.845.**

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

2       197.620. *[(1) Notwithstanding the requirements of ORS 197.830 (2), persons who participated either*  
 3 *orally or in writing in the local government proceedings leading to the adoption of an amendment to*  
 4 *an acknowledged comprehensive plan or land use regulation or a new land use regulation may appeal*  
 5 *the decision to the Land Use Board of Appeals under ORS 197.830 to 197.845. A decision to not adopt*  
 6 *a legislative amendment or a new land use regulation is not appealable except where the amendment*  
 7 *is necessary to address the requirements of a new or amended goal, rule or statute.]*

8       *[(2) Notwithstanding the requirements of ORS 197.830 (2), the Director of the Department of Land*  
 9 *Conservation and Development or any other person may file an appeal of the local government's deci-*  
 10 *sion under ORS 197.830 to 197.845, if an amendment to an acknowledged comprehensive plan or land*  
 11 *use regulation or a new land use regulation differs from the proposal submitted under ORS 197.610 to*  
 12 *such a degree that the notice under ORS 197.610 did not reasonably describe the nature of the local*  
 13 *government final action.]*

14       **(1) A decision by a governing body of a local government not to take action on a proposal**  
 15 **to adopt a legislative amendment to the acknowledged comprehensive plan or a land use**  
 16 **regulation is not subject to appeal unless the legislative amendment is necessary to address**  
 17 **a new requirement in a land use statute, statewide land use planning goal or rule of the Land**  
 18 **Conservation and Development Commission that implements the statutes or goals.**

19       **(2) Notwithstanding the requirement in ORS 197.830 (2) that a person have appeared be-**  
 20 **fore the local government to seek review of a land use decision, the Director of the Depart-**  
 21 **ment of Land Conservation and Development or any other person may appeal the decision**  
 22 **of the governing body to the Land Use Board of Appeals if:**

23       **(a) The local government failed to submit all of the materials described in ORS 197.610**  
 24 **(2);**

25       **(b) The local government submitted the materials described in ORS 197.610 (2) after the**  
 26 **deadline specified in ORS 197.610 (1) or (5) or rules of the commission, whichever is applica-**  
 27 **ble; or**

28       **(c) The decision of the governing body differs from the proposed changes submitted under**  
 29 **ORS 197.610 to such an extent that the materials submitted under ORS 197.610 did not rea-**  
 30 **sonably describe the decision.**

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

32       197.625. *[(1) If a notice of intent to appeal is not filed within the 21-day period set out in ORS*  
 33 *197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new*  
 34 *land use regulation shall be considered acknowledged upon the expiration of the 21-day period. An*  
 35 *amendment to an acknowledged comprehensive plan or land use regulation is not considered acknowl-*  
 36 *edged unless the notices required under ORS 197.610 and 197.615 have been submitted to the Director*  
 37 *of the Department of Land Conservation and Development and:]*

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

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

41       *[(2) If the decision adopting an amendment to an acknowledged comprehensive plan or land use*  
 42 *regulation or a new land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the*  
 43 *amendment or new regulation shall be considered acknowledged upon the date the appellate decision*  
 44 *becomes final.]*

45       *[(3)(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land*

1 use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time  
 2 specified by local government charter or ordinance and is applicable to land use decisions, expedited  
 3 land divisions and limited land use decisions if the amendment was adopted in substantial compliance  
 4 with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.]

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

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

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

14 [(A) After June 1, 1991, pursuant to periodic review requirements under ORS 197.628, 197.633 and  
 15 197.636;]

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

17 [(C) After November 4, 1993.]

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

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

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

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

25 [(6) After issuance of the notice provided in ORS 197.633, nothing in this section shall prevent the  
 26 Land Conservation and Development Commission from entering an order pursuant to ORS 197.633,  
 27 197.636 or 197.644 to require a local government to respond to the standards of ORS 197.628.]

28 **(1) A decision adopting a change to an acknowledged comprehensive plan or a land use**  
 29 **regulation is deemed to be acknowledged if the local government has complied with the re-**  
 30 **quirements of ORS 197.610 and 197.615 and either:**

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

33 **(b) If an appeal has been timely filed, the Land Use Board of Appeals or an appellate**  
 34 **court affirms the decision.**

35 **(2) If the decision adopting a change to an acknowledged comprehensive plan or a land**  
 36 **use regulation is affirmed on appeal under ORS 197.830 to 197.855, the comprehensive plan**  
 37 **or the land use regulation, as modified, is deemed to be acknowledged upon the date the de-**  
 38 **cision of the board or the decision of an appellate court becomes final.**

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

41 **(a) The change is effective at the time specified by local government charter or ordi-**  
 42 **nance; and**

43 **(b) If the change was adopted in compliance with ORS 197.610 and 197.615, the local gov-**  
 44 **ernment shall apply the change to land use decisions, expedited land divisions and limited**  
 45 **land use decisions unless a stay is granted under ORS 197.845.**

1 (4) Approval of a land use decision, expedited land division or limited land use decision  
 2 that is subject to an effective but unacknowledged provision of a comprehensive plan or a  
 3 land use regulation must include findings of compliance with the applicable provisions of land  
 4 use statutes, statewide land use planning goals and administrative rules of the Land Con-  
 5 servation and Development Commission implementing the statutes or goals.

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

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

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

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

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

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

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

23 **SECTION 5.** Section 6 of this 2011 Act is added to and made a part of ORS 197.610 to  
 24 197.625.

25 **SECTION 6.** (1) Notwithstanding contrary provisions of state and local law, the governing  
 26 body of a local government that proposes a change to an acknowledged comprehensive plan  
 27 or a land use regulation solely for the purpose of conforming the plan and regulations to new  
 28 requirements in a land use statute, statewide land use planning goal or rule of the Land  
 29 Conservation and Development Commission implementing the statutes or goals may take  
 30 action to change the comprehensive plan or the land use regulation without holding a public  
 31 hearing if:

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

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

36 (2) Notwithstanding the requirement under ORS 197.830 (2) that a person must have ap-  
 37 peared before the local government, a person that has not appeared may petition for review  
 38 of the decision by which a change to a comprehensive plan or a land use regulation was made  
 39 under this section solely to determine whether the only effect of the decision was to conform  
 40 the comprehensive plan or the land use regulation to the new requirements.

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

42 197.254. (1) A state agency [shall be] is barred, after the date set for submission of programs by  
 43 the Land Conservation and Development Commission as provided in ORS 197.180 (4), from contesting  
 44 a request for acknowledgment submitted by a local government under ORS 197.251 or from filing  
 45 an appeal [under ORS 197.620 (1) or (2)] of a post-acknowledgement change under ORS 197.610

1 **to 197.625 to a comprehensive plan or a land use regulation**, if the commission finds that:

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

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

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

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

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

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

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

23 **SECTION 8.** ORS 197.649 is amended to read:

24 197.649. The Land Conservation and Development Commission may establish by rule fees to  
25 cover the cost of notice given to persons by the Director of the Department of Land Conservation  
26 and Development under ORS 197.610 *[(1)]* and 197.615 *[(3)]* **and to cover the cost of the**  
27 **department’s review authorized by section 6 (1) of this 2011 Act.**

28 **SECTION 9. ORS 197.651 is added to and made a part of ORS 197.628 to 197.650.**

29 **SECTION 10.** ORS 197.830 is amended to read:

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

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

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

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

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

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

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



1 (4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416  
 2 (11) or 227.175 (10):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed  
 45 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of

1 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to  
2 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is  
3 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a  
4 *[certificate of mailing with the notice mailed]* **statement identifying when, how and to whom no-**  
5 **tice was provided** under ORS 197.615 *[shall]* **does** not render the notice defective. Copies of the  
6 notice of intent to appeal shall be served upon the local government, special district or state agency  
7 and the applicant of record, if any, in the local government, special district or state agency pro-  
8 ceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board  
9 and shall be accompanied by a filing fee of \$200 and a deposit for costs to be established by the  
10 board. If a petition for review is not filed with the board as required in subsections (10) and (11) of  
11 this section, the filing fee and deposit shall be awarded to the local government, special district or  
12 state agency as cost of preparation of the record.

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

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

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

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

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

29 (b) The date of the decision.

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

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

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

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

1 issue a final order.

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

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

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

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

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

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

18 **SECTION 11.** ORS 215.427 is amended to read:

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

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

32 (a) All of the missing information;

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

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

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

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

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

4 (a) All of the missing information;

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

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

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

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

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

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

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

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

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

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

39 **SECTION 12.** ORS 215.435 is amended to read:

40 215.435. (1) Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 re-  
 41 manding a decision to a county, the governing body of the county or its designee shall take final  
 42 action on an application for a permit, limited land use decision or zone change within 90 days of the  
 43 effective date of the final order issued by the board. For purposes of this subsection, the effective  
 44 date of the final order is the last day for filing a petition for judicial review of a final order of the  
 45 board under ORS 197.850 (3). If judicial review of a final order of the board is sought under ORS

1 197.830, the 90-day period established under this subsection shall not begin until final resolution of  
 2 the judicial review.

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

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

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

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

16 **SECTION 13.** ORS 227.178 is amended to read:

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

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

26 (a) All of the missing information;

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

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

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

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

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

43 (a) All of the missing information;

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

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

2 (5) The 120-day period set in subsection (1) of this section may be extended for a specified period  
 3 of time at the written request of the applicant. The total of all extensions, except as provided in  
 4 subsection (11) of this section for mediation, may not exceed 245 days.

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

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

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

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

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

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

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

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

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

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

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

1 (11) The period set forth in subsection (1) of this section and the period set forth in subsection  
 2 (5) of this section may be extended by up to 90 additional days, if the applicant and the city agree  
 3 that a dispute concerning the application will be mediated.

4 **SECTION 14.** ORS 227.181 is amended to read:

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

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

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

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

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

26 **SECTION 15.** Section 6 of this 2011 Act and the amendments to ORS 197.254, 197.610,  
 27 197.615, 197.620, 197.625, 197.649, 197.830, 215.427, 215.435, 227.178 and 227.181 by sections 1 to  
 28 4, 7, 8 and 10 to 13 of this 2011 Act apply to proposed changes to an acknowledged compre-  
 29 hensive plan or a land use regulation that is first submitted to the Director of the Depart-  
 30 ment of Land Conservation and Development on or after the effective date of this 2011 Act.

31