

# Enrolled House Bill 2131

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)

CHAPTER .....

AN ACT

Relating to land use planning for needed housing; amending ORS 197.178, 197.303, 197.307, 197.312, 197.314, 197.732, 197.831 and 307.651.

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

**SECTION 1.** ORS 197.178 is amended to read:

197.178. (1) *[A local government with a comprehensive plan or functional plan]* **Local governments with comprehensive plans or functional plans that are** identified in ORS 197.296 (1) shall compile and report annually to the Department of Land Conservation and Development the following information for all *[permit]* applications received under ORS 227.175 **for residential permits and residential zone changes:**

*[(1)]* (a) The number of applications received for residential development, including the **net** residential density proposed in the application and the maximum allowed **net** residential density for the subject zone;

*[(2)]* (b) The number of applications approved, including the approved **net** density; and

*[(3)]* (c) The date each application was received and the date it was approved or denied.

**(2) The report required by this section may be submitted electronically.**

**SECTION 2.** ORS 197.303 is amended to read:

197.303. (1) As used in ORS 197.307, *[until the beginning of the first periodic review of a local government's acknowledged comprehensive plan,]* "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. *On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means,* **including at least the following housing types:**

(a) *[Housing that includes, but is not limited to,]* Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;

(b) Government assisted housing;

(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; *[and]*

(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions[.]; **and**

**(e) Housing for farmworkers.**

(2) Subsection (1)(a) and (d) of this section shall not apply to:

(a) A city with a population of less than 2,500.

(b) A county with a population of less than 15,000.

(3) A local government may take an exception **under ORS 197.732 to the definition of “needed housing”** in subsection (1) of this section in the same manner that an exception may be taken under the goals.

**SECTION 3.** ORS 197.307 is amended to read:

197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of state-wide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

~~[(3)(a)]~~ (3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing~~[, including housing for farmworkers,]~~ shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

~~[(b)]~~ *A local government shall attach only clear and objective approval standards or special conditions regulating, in whole or in part, appearance or aesthetics to an application for development of needed housing or to a permit, as defined in ORS 215.402 or 227.160, for residential development. The standards or conditions may not be attached in a manner that will deny the application or reduce the proposed housing density provided the proposed density is otherwise allowed in the zone.*

**(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land described in subsection (3) of this section. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.**

~~[(c)]~~ (5) The provisions of ~~[paragraph (b) of this]~~ subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

~~[(d)]~~ *In addition to an approval process based on clear and objective standards as provided in paragraph (b) of this subsection, a local government may adopt an alternative approval process for residential applications and permits based on approval criteria that are not clear and objective provided the applicant retains the option of proceeding under the clear and objective standards or the alternative process and the approval criteria for the alternative process comply with all applicable land use planning goals and rules.*

~~[(e)]~~ *The provisions of this subsection shall not apply to applications or permits]*

**(b) An application or permit** for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

**(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:**

**(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;**

**(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and**

**(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.**

~~[(4)]~~ (7) ~~[Subsection (3) of this section shall not be construed as an infringement]~~ **Subject to subsection (4) of this section, this section does not infringe** on a local government’s prerogative to:

- (a) Set approval standards under which a particular housing type is permitted outright;
- (b) Impose special conditions upon approval of a specific development proposal; or
- (c) Establish approval procedures.

[5] **(8) In accordance with subsection (4) of this section and ORS 197.314**, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.

(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject.

*[(6) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.]*

**SECTION 4.** ORS 197.312 is amended to read:

197.312. (1) A city or county may not by charter prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy or manufactured homes. A city or county may not by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

*[(2) A city or county may not impose any approval standards, special conditions or procedures on farmworker housing that are not clear and objective or have the effect, either in themselves or cumulatively, of discouraging farmworker housing through unreasonable cost or delay or by discriminating against such housing.]*

[3(a)] **(2)(a)** A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

[4(a)] **(3)(a)** Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

[5] (4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

**SECTION 5.** ORS 197.314 is amended to read:

197.314. (1) Notwithstanding ORS 197.296, 197.298, 197.299, 197.301, 197.302, 197.303, 197.307, 197.312 and 197.313, within urban growth boundaries each city and county shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes as defined in ORS 446.003. A local government may only subject the siting of a manufactured home allowed under this section to regulation as set forth in ORS 197.307 [5] (8).

(2) Cities and counties shall adopt and amend comprehensive plans and land use regulations under subsection (1) of this section according to the provisions of ORS 197.610 to 197.650.

(3) Subsection (1) of this section does not apply to any area designated in an acknowledged comprehensive plan or land use regulation as a historic district or residential land immediately adjacent to a historic landmark.

(4) Manufactured homes on individual lots zoned for single-family residential use in subsection (1) of this section shall be in addition to manufactured homes on lots within designated manufactured dwelling subdivisions.

(5) Within any residential zone inside an urban growth boundary where a manufactured dwelling park is otherwise allowed, a city or county shall not adopt, by charter or ordinance, a minimum lot size for a manufactured dwelling park that is larger than one acre.

(6) A city or county may adopt the following standards for the approval of manufactured homes located in manufactured dwelling parks that are smaller than three acres:

(a) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(b) The manufactured home shall have exterior siding and roofing that, in color, material and appearance, is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or that is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(7) This section shall not be construed as abrogating a recorded restrictive covenant.

**SECTION 6.** ORS 197.732 is amended to read:

197.732. (1) As used in this section:

(a) "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(b) "Exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(A) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(B) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(C) Complies with standards under subsection (2) of this section.

(2) A local government may adopt an exception to a goal if:

(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

- (c) The following standards are met:
- (A) Reasons justify why the state policy embodied in the applicable goals should not apply;
  - (B) Areas that do not require a new exception cannot reasonably accommodate the use;
  - (C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
  - (D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.
- (3) The commission shall adopt rules establishing:
- (a) That an exception may be adopted to allow a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;
  - (b) Under what circumstances particular reasons may or may not be used to justify an exception under subsection (2)(c)(A) of this section; and
  - (c) Which uses allowed by the applicable goal must be found impracticable under subsection (2) of this section.
- (4) A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons that demonstrate that the standards of subsection (2) of this section have or have not been met.
- (5) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.
- (6) Upon review of a decision approving or denying an exception:
- (a) The Land Use Board of Appeals or the commission shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;
  - (b) The board upon petition, or the commission, shall determine whether the local government's findings and reasons demonstrate that the standards of subsection (2) of this section have or have not been met; and
  - (c) The board or commission shall adopt a clear statement of reasons that sets forth the basis for the determination that the standards of subsection (2) of this section have or have not been met.
- (7) The commission shall by rule establish the standards required to justify an exception to the definition of "needed housing" authorized by ORS 197.303 [(3)].
- (8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement Part) on or before August 9, 1983, continues to be valid and is not subject to this section.

**SECTION 7.** ORS 197.831 is amended to read:

197.831. In a proceeding before the Land Use Board of Appeals or [on judicial review from an order of the board] **an appellate court** that involves an ordinance required to contain clear and objective approval standards, **conditions and procedures** for [a permit under ORS 197.307 and 227.175] **needed housing**, the local government imposing the provisions of the ordinance shall demonstrate that the approval standards, **conditions and procedures** are capable of being imposed only in a clear and objective manner.

**SECTION 8.** ORS 307.651 is amended to read:

307.651. As used in ORS 307.651 to 307.687, unless the context requires otherwise:

(1) "Distressed area" means a primarily residential area of a city designated by a city under ORS 307.657 which, by reason of deterioration, inadequate or improper facilities, the existence of unsafe or abandoned structures, including but not limited to a significant number of vacant or abandoned single or multifamily residential units, or any combination of these or similar factors, is detrimental to the safety, health and welfare of the community.

(2) "Governing body" means the city legislative body having jurisdiction over the property for which an exemption may be applied for under ORS 307.651 to 307.687.

(3) "Qualified dwelling unit" means a dwelling unit that, upon completion, has a market value (land and improvements) of no more than 120 percent, or a lesser percentage as adopted by the governing body by resolution, of the median sales price of dwelling units located within the city.

(4) "Single-unit housing" means a newly constructed structure having one or more dwelling units that:

(a) Is, or will be, at the time that construction is completed, in conformance with all local plans and planning regulations, including special or district-wide plans developed and adopted pursuant to ORS chapters 195, 196, 197 and 227.

(b) Is constructed on or after January 1, 1990, and is completed within two years after application for exemption is approved under ORS 307.674 or before July 1, 2015, whichever is earlier.

(c) Upon completion, is designed for each dwelling unit within the structure to be purchased by and lived in by one person or one family.

(d) Upon completion, has one or more qualified dwelling units within the single-unit housing.

(e) Is not a floating home, as defined in ORS 830.700, or a manufactured structure, as defined in ORS 446.561, other than a manufactured home described in ORS 197.307 [(5)(a)] (8)(a) to (f).

(5) "Structure" does not include the land, nor any site development to the land, as both are defined under ORS 307.010.

**Passed by House April 27, 2011**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate May 31, 2011**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

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Kate Brown, Secretary of State