

# House Bill 2131

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## 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 criteria for establishment and review of needed housing within urban growth boundaries.

## A BILL FOR AN ACT

1  
2 Relating to land use planning for needed housing; creating new provisions; and amending ORS  
3 197.178, 197.303, 197.307, 197.312, 197.314, 197.732, 197.831, 307.651 and 446.200.

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

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

6 197.178. (1) *[A local government with a comprehensive plan or functional plan]* **Local govern-**  
7 **ments with comprehensive plans or functional plans that are** identified in ORS 197.296 (1) **and**  
8 **cities with a population of 2,500 or more** shall compile and report annually to the Department of  
9 Land Conservation and Development the following information for all *[permit]* applications received  
10 under ORS 227.175 **for residential zone amendments, expedited land divisions and permits:**

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

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

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

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

17 **(3) A local government that fails to provide the report required by this section is not el-**  
18 **igible to receive grants and technical assistance funding allocated by the Land Conservation**  
19 **and Development Commission under ORS 197.639 during the one-year period following the**  
20 **annual period for which the local government failed to report under this section.**

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

22 197.303. (1) As used in ORS 197.307, *[until the beginning of the first periodic review of a local*  
23 *government's acknowledged comprehensive plan,]* "needed housing" means housing types determined  
24 to meet the need shown for housing within an urban growth boundary at particular price ranges and  
25 rent levels. *On and after the beginning of the first periodic review of a local government's acknowl-*  
26 *edged comprehensive plan, "needed housing" also means*, **including the following housing types:**

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

29 (b) Government assisted housing;

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

31 (d) Manufactured homes on individual lots planned and zoned for single-family residential use

**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 that are in addition to lots within designated manufactured dwelling subdivisions[.]; **and**

2 **(e) Housing for farmworkers.**

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

4 *[(a) A city with a population of less than 2,500.]*

5 *[(b) A county with a population of less than 15,000.]*

6 *[(3)]* **(2)** A local government may take an exception **under ORS 197.732 to the definition of**  
 7 **“needed housing”** in subsection (1) of this section in the same manner that an exception may be  
 8 taken under the goals.

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

10 197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for  
 11 persons of lower, middle and fixed income, including housing for farmworkers, is a matter of state-  
 12 wide concern.

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

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

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

24 **(4) A local government may adopt and apply only clear and objective standards, condi-**  
 25 **tions and procedures in decisions regarding needed housing. The standards, conditions and**  
 26 **procedures may not have the effect, either in themselves or cumulatively, of discouraging**  
 27 **needed housing through unreasonable cost or delay.**

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

29 **(a)** An application or permit for residential development in an area identified in a formally  
 30 adopted central city plan, or a regional center as defined by Metro, in a city with a population of  
 31 500,000 or more.

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

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

39 **(b) An application or permit** for residential development in historic areas designated for pro-  
 40 tection under a land use planning goal protecting historic areas.

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

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

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

5 (c) The approval criteria for the alternative approval process authorize a density at or  
 6 above the density level authorized in the zone under the approval process provided in sub-  
 7 section (4) of this section.

8 [(4)] (7) [Subsection (3) of this section shall not be construed as an infringement] Subject to  
 9 subsection (4) of this section, this section does not infringe on a local government's prerogative  
 10 to:

11 (a) Set approval standards under which a particular housing type is permitted outright;

12 (b) Impose special conditions upon approval of a specific development proposal; or

13 (c) Establish approval procedures.

14 [(5)] (8) In accordance with subsection (4) of this section and ORS 197.314, a jurisdiction  
 15 may adopt any or all of the following placement standards, or any less restrictive standard, for the  
 16 approval of manufactured homes located outside mobile home parks:

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

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

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

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

28 (e) The manufactured home shall be certified by the manufacturer to have an exterior thermal  
 29 envelope meeting performance standards which reduce levels equivalent to the performance stan-  
 30 dards required of single-family dwellings constructed under the state building code as defined in ORS  
 31 455.010.

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

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

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

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

43 197.312. (1) A city or county may not by charter prohibit from all residential zones attached or  
 44 detached single-family housing, multifamily housing for both owner and renter occupancy or manu-  
 45 factured homes. A city or county may not by charter prohibit government assisted housing or impose

1 additional approval standards on government assisted housing that are not applied to similar but  
2 unassisted housing.

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

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

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

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

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

21 *[(5)]* **(4)** A city or county may not prohibit a property owner or developer from maintaining a  
22 real estate sales office in a subdivision or planned community containing more than 50 lots or  
23 dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

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

25 197.314. (1) Notwithstanding ORS 197.296, 197.298, 197.299, 197.301, 197.302, 197.303, 197.307,  
26 197.312 and 197.313, within urban growth boundaries each city and county shall amend its compre-  
27 hensive plan and land use regulations for all land zoned for single-family residential uses to allow  
28 for siting of manufactured homes as defined in ORS 446.003. A local government may only subject  
29 the siting of a manufactured home allowed under this section to regulation as set forth in ORS  
30 197.307 *[(5)]* **(8)**.

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

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

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

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

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

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

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

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

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

7 197.732. (1) As used in this section:

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

10 (b) "Exception" means a comprehensive plan provision, including an amendment to an acknowl-  
11 edged comprehensive plan, that:

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

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

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

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

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

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

24 (c) The following standards are met:

25 (A) Reasons justify why the state policy embodied in the applicable goals should not apply;

26 (B) Areas that do not require a new exception cannot reasonably accommodate the use;

27 (C) The long term environmental, economic, social and energy consequences resulting from the  
28 use at the proposed site with measures designed to reduce adverse impacts are not significantly  
29 more adverse than would typically result from the same proposal being located in areas requiring  
30 a goal exception other than the proposed site; and

31 (D) The proposed uses are compatible with other adjacent uses or will be so rendered through  
32 measures designed to reduce adverse impacts.

33 (3) The commission shall adopt rules establishing:

34 (a) That an exception may be adopted to allow a use authorized by a statewide planning goal  
35 that cannot comply with the approval standards for that type of use;

36 (b) Under what circumstances particular reasons may or may not be used to justify an exception  
37 under subsection (2)(c)(A) of this section; and

38 (c) Which uses allowed by the applicable goal must be found impracticable under subsection (2)  
39 of this section.

40 (4) A local government approving or denying a proposed exception shall set forth findings of fact  
41 and a statement of reasons that demonstrate that the standards of subsection (2) of this section have  
42 or have not been met.

43 (5) Each notice of a public hearing on a proposed exception shall specifically note that a goal  
44 exception is proposed and shall summarize the issues in an understandable manner.

45 (6) Upon review of a decision approving or denying an exception:

1 (a) The Land Use Board of Appeals or the commission shall be bound by any finding of fact for  
 2 which there is substantial evidence in the record of the local government proceedings resulting in  
 3 approval or denial of the exception;

4 (b) The board upon petition, or the commission, shall determine whether the local government's  
 5 findings and reasons demonstrate that the standards of subsection (2) of this section have or have  
 6 not been met; and

7 (c) The board or commission shall adopt a clear statement of reasons that sets forth the basis  
 8 for the determination that the standards of subsection (2) of this section have or have not been met.

9 (7) The commission shall by rule establish the standards required to justify an exception to the  
 10 definition of "needed housing" authorized by ORS 197.303 [(3)].

11 (8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement  
 12 Part) on or before August 9, 1983, continues to be valid and is not subject to this section.

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

14 197.831. In a proceeding before the Land Use Board of Appeals or [on judicial review from an  
 15 order of the board] **an appellate court** that involves an ordinance required to contain clear and  
 16 objective approval standards, **conditions and procedures** for [a permit under ORS 197.307 and  
 17 227.175] **needed housing**, the local government imposing the provisions of the ordinance shall dem-  
 18 onstrate that the approval standards, **conditions and procedures** are capable of being imposed only  
 19 in a clear and objective manner.

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

21 307.651. As used in ORS 307.651 to 307.687, unless the context requires otherwise:

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

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

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

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

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

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

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

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

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

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

1        **SECTION 9.** ORS 446.200 is amended to read:

2        446.200. (1) Any manufactured structure that meets the requirements prescribed under ORS  
3 446.003, 446.155 to 446.200 and 446.225 to 446.285:

4        (a) Is not required, **except as provided in ORS 197.307 (8) or 197.314 (6)**, to comply with any  
5 ordinances of a city or county prescribing requirements for plumbing, heating, illuminating, me-  
6 chanical, structural, transportation, thermal, fire and life safety, cooking or electrical equipment and  
7 material installed in manufactured structures.

8        (b) Is required to comply with this chapter and the administrative rules adopted thereunder  
9 regulating plumbing, heating, illuminating, mechanical, structural, transportation, thermal, fire and  
10 life safety, cooking and electrical equipment and material installed in manufactured structures.

11        (2) A manufactured dwelling that is constructed in conformity with the minimum safety stan-  
12 dards provided by ORS 446.185 and which bears an insignia of compliance is not required to comply  
13 with any additional regulations if it is thereafter placed upon a permanent foundation and affixed  
14 to real property.

15        **SECTION 10.** The Land Conservation and Development Commission shall adopt adminis-  
16 trative rules defining the term “clear and objective” for the purposes of ORS 197.307, 215.416  
17 (8) and 227.173 (2) on or before June 30, 2012.

18