

# D R A F T

## SUMMARY

Modifies provisions related to inclusion of needed housing within urban growth boundaries.

### A BILL FOR AN ACT

Relating to needed housing in urbanizable areas; creating new provisions; and amending ORS 197.295, 197.303, 197.522 and 197.830.

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

**SECTION 1.** ORS 197.295 is amended to read:

197.295. As used in ORS 197.295 to 197.314 and 197.475 to 197.490:

(1) “Buildable lands” means lands in urban and urbanizable areas that are suitable, available and necessary for residential uses. “Buildable lands” includes both vacant land and developed land likely to be redeveloped.

(2) “Manufactured dwelling park” has the meaning given that term in ORS 446.003.

(3) “Government assisted housing” means housing that is financed in whole or part by either a federal or state housing agency or a housing authority as defined in ORS 456.005, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.

(4) “Manufactured homes” has the meaning given that term in ORS 446.003.

(5) “Mobile home park” has the meaning given that term in ORS 446.003.

**(6) “Needed housing” has the meaning given that term in ORS 197.303.**

1 [(6)] (7) “Periodic review” means the process and procedures as set forth  
2 in ORS 197.628 to 197.651.

3 [(7)] (8) “Urban growth boundary” means an urban growth boundary in-  
4 cluded or referenced in a comprehensive plan.

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

6 197.303. (1) As used in **this section and** ORS 197.307[, “*needed housing*”  
7 *means housing types determined to meet the need shown for housing within*  
8 *an urban growth boundary at particular price ranges and rent levels, includ-*  
9 *ing at least the following housing types*]:

10 (a) **“Housing types” includes:**

11 [(a)] (A) Attached and detached single-family housing and multiple family  
12 housing for both owner and renter occupancy;

13 [(b)] (B) Government assisted housing;

14 [(c)] (C) Mobile home or manufactured dwelling parks as provided in ORS  
15 197.475 to 197.490;

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

19 [(e)] (E) Housing for farmworkers.

20 (b) **“Needed housing” means housing types determined pursuant to**  
21 **the analysis required by ORS 197.296 (3)(b) to meet the need shown for**  
22 **housing within an urban growth boundary at particular price ranges**  
23 **and rent levels.**

24 (2) Subsection [(1)(a) and (d)] (1)(a)(A) and (D) of this section [shall] do  
25 not apply to **the definition of “needed housing” for:**

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

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

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

31 **SECTION 3.** ORS 197.522 is added to and made a part of ORS chapter

1 **197.**

2 **SECTION 4.** ORS 197.522 is amended to read:

3 197.522. (1) A local government shall approve an application for a permit,  
4 authorization or other approval necessary [*for the subdivision or partitioning*  
5 *of, or construction on, any*] **to subdivide, partition or construct improve-**  
6 **ments on** land that is consistent with the comprehensive plan and applicable  
7 land use regulations or shall impose reasonable conditions on the application  
8 to make the proposed activity consistent with the plan and applicable regu-  
9 lations.

10 **(2) Conditions imposed on an application approved under subsection**  
11 **(1) of this section may not:**

12 **(a) Have the effect, either in themselves or cumulatively, of dis-**  
13 **couraging the construction of needed housing, as defined in ORS**  
14 **197.303, through unreasonable cost or delay.**

15 **(b) Reduce the density proposed in the application if the density is**  
16 **consistent with the comprehensive plan and applicable land use regu-**  
17 **lations.**

18 **(3) A local government may deny an application described in subsection**  
19 **(1) of this section** that is inconsistent with the comprehensive plan and  
20 applicable land use regulations and that cannot be made consistent through  
21 the imposition of reasonable conditions of approval.

22 **SECTION 5.** ORS 197.830 is amended to read:

23 197.830. (1) Review of land use decisions or limited land use decisions  
24 under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent  
25 to appeal with the Land Use Board of Appeals.

26 (2) Except as provided in ORS 197.620, a person may petition the board  
27 for review of a land use decision or limited land use decision if the person:

28 (a) Filed a notice of intent to appeal the decision as provided in sub-  
29 section (1) of this section; and

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

1 (3) If a local government makes a land use decision without providing a  
2 hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the  
3 local government makes a land use decision that is different from the pro-  
4 posal described in the notice of hearing to such a degree that the notice of  
5 the proposed action did not reasonably describe the local government's final  
6 actions, a person adversely affected by the decision may appeal the decision  
7 to the board under this section:

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

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

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

13 (a) A person who was not provided notice of the decision as required  
14 under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the  
15 board under this section within 21 days of receiving actual notice of the  
16 decision.

17 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or  
18 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may  
19 appeal the decision to the board under this section within 21 days after the  
20 expiration of the period for filing a local appeal of the decision established  
21 by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

22 (c) A person who receives notice of a decision made without a hearing  
23 under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board  
24 under this section within 21 days of receiving actual notice of the nature of  
25 the decision, if the notice of the decision did not reasonably describe the  
26 nature of the decision.

27 (d) Except as provided in paragraph (c) of this subsection, a person who  
28 receives notice of a decision made without a hearing under ORS 215.416 (11)  
29 or 227.175 (10) may not appeal the decision to the board under this section.

30 (5) If a local government makes a limited land use decision which is dif-  
31 ferent from the proposal described in the notice to such a degree that the

1 notice of the proposed action did not reasonably describe the local  
2 government's final actions, a person adversely affected by the decision may  
3 appeal the decision to the board under this section:

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

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

7 (6) The appeal periods described in subsections (3), (4) and (5) of this  
8 section:

9 (a) May not exceed three years after the date of the decision, except as  
10 provided in paragraph (b) of this subsection.

11 (b) May not exceed 10 years after the date of the decision if notice of a  
12 hearing or an administrative decision made pursuant to ORS 197.195 or  
13 197.763 is required but has not been provided.

14 (7)(a) Within 21 days after a notice of intent to appeal has been filed with  
15 the board under subsection (1) of this section, any person described in para-  
16 graph (b) of this subsection may intervene in and be made a party to the  
17 review proceeding by filing a motion to intervene and by paying a filing fee  
18 of \$100.

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

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

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

25 (c) Failure to comply with the deadline or to pay the filing fee set forth  
26 in paragraph (a) of this subsection shall result in denial of a motion to in-  
27 tervene.

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

1 (9) A notice of intent to appeal a land use decision or limited land use  
2 decision shall be filed not later than 21 days after the date the decision  
3 sought to be reviewed becomes final. A notice of intent to appeal plan and  
4 land use regulation amendments processed pursuant to ORS 197.610 to  
5 197.625 shall be filed not later than 21 days after notice of the decision  
6 sought to be reviewed is mailed or otherwise submitted to parties entitled  
7 to notice under ORS 197.615. Failure to include a statement identifying when,  
8 how and to whom notice was provided under ORS 197.615 does not render the  
9 notice defective. Copies of the notice of intent to appeal shall be served upon  
10 the local government, special district or state agency and the applicant of  
11 record, if any, in the local government, special district or state agency pro-  
12 ceeding. The notice shall be served and filed in the form and manner pre-  
13 scribed by rule of the board and shall be accompanied by a filing fee of \$200  
14 and a deposit for costs to be established by the board. If a petition for review  
15 is not filed with the board as required in subsections (10) and (11) of this  
16 section, the filing fee and deposit shall be awarded to the local government,  
17 special district or state agency as cost of preparation of the record.

18 (10)(a) Within 21 days after service of the notice of intent to appeal, the  
19 local government, special district or state agency shall transmit to the board  
20 the original or a certified copy of the entire record of the proceeding under  
21 review. By stipulation of all parties to the review proceeding the record may  
22 be shortened. The board may require or permit subsequent corrections to the  
23 record; however, the board shall issue an order on a motion objecting to the  
24 record within 60 days of receiving the motion.

25 (b) Within 10 days after service of a notice of intent to appeal, the board  
26 shall provide notice to the petitioner and the respondent of their option to  
27 enter into mediation pursuant to ORS 197.860. Any person moving to inter-  
28 vene shall be provided such notice within seven days after a motion to in-  
29 tervene is filed. The notice required by this paragraph shall be accompanied  
30 by a statement that mediation information or assistance may be obtained  
31 from the Department of Land Conservation and Development.

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

4 (12) The petition shall include a copy of the decision sought to be re-  
5 viewed and shall state:

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

7 (b) The date of the decision.

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

9 (13)(a) The board shall adopt rules establishing deadlines for filing pe-  
10 titions and briefs and for oral argument.

11 (b) At any time subsequent to the filing of a notice of intent and prior  
12 to the date set for filing the record, or, on appeal of a decision under ORS  
13 197.610 to 197.625, prior to the filing of the respondent's brief, the local  
14 government or state agency may withdraw its decision for purposes of re-  
15 consideration. If a local government or state agency withdraws an order for  
16 purposes of reconsideration, it shall, within such time as the board may al-  
17 low, affirm, modify or reverse its decision. If the petitioner is dissatisfied  
18 with the local government or agency action after withdrawal for purposes  
19 of reconsideration, the petitioner may refile the notice of intent and the re-  
20 view shall proceed upon the revised order. An amended notice of intent shall  
21 not be required if the local government or state agency, on reconsideration,  
22 affirms the order or modifies the order with only minor changes.

23 (14) The board shall issue a final order within 77 days after the date of  
24 transmittal of the record. If the order is not issued within 77 days the ap-  
25 plicant may apply in Marion County or the circuit court of the county where  
26 the application was filed for a writ of mandamus to compel the board to issue  
27 a final order.

28 (15)(a) Upon entry of its final order the board may, in its discretion,  
29 award costs to the prevailing party including the cost of preparation of the  
30 record if the prevailing party is the local government, special district or  
31 state agency whose decision is under review. The board shall apply the de-

1 posit required by subsection (9) of this section to any costs charged against  
2 the petitioner.

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

7 **(c) The board shall also award reasonable attorney fees and ex-**  
8 **penses to the prevailing party, and to intervenors on the prevailing**  
9 **side, in a review related to needed housing under ORS 197.307 (3) or (4).**

10 (16) Orders issued under this section may be enforced in appropriate ju-  
11 dicial proceedings.

12 (17)(a) The board shall provide for the publication of its orders that are  
13 of general public interest in the form it deems best adapted for public con-  
14 venience. The publications shall constitute the official reports of the board.

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

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

20 (19) The board shall track and report on its website:

21 (a) The number of reviews commenced, as described in subsection (1) of  
22 this section, the number of reviews commenced for which a petition is filed  
23 under subsection (2) of this section and, in relation to each of those numbers,  
24 the rate at which the reviews result in a decision of the board to uphold,  
25 reverse or remand the land use decision or limited land use decision. The  
26 board shall track and report reviews under this paragraph in categories es-  
27 tablished by the board.

28 (b) A list of petitioners, the number of reviews commenced and the rate  
29 at which the petitioner's reviews have resulted in decisions of the board to  
30 uphold, reverse or remand the land use decision or limited land use decision.

31 (c) A list of respondents, the number of reviews involving each respondent



1 and the rate at which reviews involving the respondent have resulted in de-  
2 cisions of the board to uphold, reverse or remand the land use decision or  
3 limited land use decision. Additionally, when a respondent is the local gov-  
4 ernment that made the land use decision or limited land use decision, the  
5 board shall track whether the local government appears before the board.

6 (d) A list of reviews, and a brief summary of the circumstances in each  
7 review, under which the board exercises its discretion to require a losing  
8 party to pay the attorney fees of the prevailing party.

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