

D R A F T

SUMMARY

Modifies review process for post-acknowledgment land use decisions of city outside Metro that uses simplified method for amending urban growth boundary.

A BILL FOR AN ACT

Relating to review of land use decisions; amending ORS 197.633 and 197.651.

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

SECTION 1. ORS 197.633 is amended to read:

197.633. (1) The periodic review process is divided into two phases. Phase one is the evaluation of the existing comprehensive plan, land use regulations and citizen involvement program and, if necessary, the development of a work program to make needed changes to the comprehensive plan or land use regulations. Phase two is the completion of work tasks outlined in the work program.

(2) The Land Conservation and Development Commission shall adopt rules for conducting periodic review that address:

(a) Initiating periodic review;

(b) Citizen participation;

(c) The participation of state agencies;

(d) The preparation, review and approval of a work program; and

(e) The preparation, review and approval of work tasks, including:

(A) The amendment of an urban growth boundary.

(B) The designation of, or withdrawal of territory from, urban reserves or rural reserves.

1 **(3) Except as provided in subsection (4) of this section,** the rules
2 adopted by the commission under this section may include, but are not lim-
3 ited to, provisions concerning standing, requirements to raise issues before
4 local government as a precondition to commission review and other pro-
5 visions concerning the scope and standard for commission review to simplify
6 or speed the review. The commission shall confine its review of evidence to
7 the local record. The commission's standard of review:

8 (a) For evidentiary issues, is whether there is substantial evidence in the
9 record as a whole to support the local government's decision.

10 (b) For procedural issues, is whether the local government failed to follow
11 the procedures applicable to the matter before the local government in a
12 manner that prejudiced the substantial rights of a party to the proceeding.

13 (c) For issues concerning compliance with applicable laws, is whether the
14 local government's decision on the whole complies with applicable statutes,
15 statewide land use planning goals, administrative rules, the comprehensive
16 plan, the regional framework plan, the functional plan and land use regu-
17 lations. The commission shall defer to a local government's interpretation
18 of the comprehensive plan or land use regulations in the manner provided
19 in ORS 197.829. [*For purposes of this paragraph, "complies" has the meaning*
20 *given the term "compliance" in the phrase "compliance with the goals" in ORS*
21 *197.747.*]

22 **(4) For a city that amends its urban growth boundary under ORS**
23 **197A.300 to 197A.325, the commission's standard of review:**

24 **(a) For evidentiary issues raised under ORS 197.626 (1)(b), (c) or (e),**
25 **is whether there is evidence in the record to support the local**
26 **government's decision.**

27 **(b) For all other evidentiary issues, is whether there is substantial**
28 **evidence in the record as a whole to support the local government's**
29 **decision.**

30 **(c) For procedural issues, is whether the local government failed to**
31 **follow the procedures applicable to the matter before the local gov-**

1 **ernment in a manner that prejudiced the substantial rights of a party**
2 **to the proceeding.**

3 **(d) For issues concerning compliance with applicable laws, is**
4 **whether the local government's decision on the whole complies with**
5 **applicable statutes, statewide land use planning goals, administrative**
6 **rules, the comprehensive plan, the regional framework plan, the**
7 **functional plan and land use regulations. The commission shall defer**
8 **to a local government's interpretation of the comprehensive plan or**
9 **land use regulations in the manner provided in ORS 197.829.**

10 ~~[(4)]~~ **(5)** A decision by the Director of the Department of Land Conserva-
11 tion and Development to approve a work program, that no work program is
12 necessary or that no further work is necessary is final and not subject to
13 appeal.

14 ~~[(5)]~~ **(6)** The director:

15 (a) Shall take action on a work task not later than 120 days after the
16 local government submits the work task for review unless the local govern-
17 ment waives the 120-day deadline or the commission grants the director an
18 extension. If the director does not take action within the time period re-
19 quired by this subsection, the work task is deemed approved. The department
20 shall provide a letter to the local government certifying that the work task
21 is approved unless an interested party has filed a timely objection to the
22 work task consistent with administrative rules for conducting periodic re-
23 view.

24 (b) May approve or remand a work task or refer the work task to the
25 commission for a decision. A decision by the director to approve or remand
26 a work task may be appealed to the commission.

27 ~~[(6)]~~ **(7)** Except as provided in this subsection, the commission shall take
28 action on the appeal or referral of a work task within 90 days of the appeal
29 or referral. Action by the commission in response to an appeal from a deci-
30 sion of the director or a referral is a final order subject to judicial review
31 in the manner provided in ORS 197.650 and 197.651. The commission may

1 extend the time for taking action on the appeal or referral if the commission
2 finds that:

3 (a) The appeal or referral is appropriate for mediation;

4 (b) The appeal or referral raises new or complex issues of fact or law that
5 make it unreasonable for the commission to give adequate consideration to
6 the issues within the 90-day limit; or

7 (c) The parties to the appeal and the commission agree to an extension,
8 not to exceed an additional 90 days.

9 [(7)] **(8)** The commission and a local government shall attempt to complete
10 periodic review within three years after approval of a work program. To
11 promote the timely completion of periodic review, the commission shall es-
12 tablish a system of incentives to encourage local government compliance
13 with timelines in periodic review work programs.

14 **(9) As used in this section, “complies” has the meaning given the**
15 **term “compliance” in the phrase “compliance with the goals” in ORS**
16 **197.747.**

17 **SECTION 2.** ORS 197.651 is amended to read:

18 197.651. (1) Judicial review of a final order of the Land Conservation and
19 Development Commission under ORS 197.626 [*concerning the designation of*
20 *urban reserves under ORS 195.145 (1)(b) or rural reserves under ORS*
21 *195.141*] is as provided in subsections (3) to (12) of this section.

22 (2) Judicial review of [*any other*] a final order of the commission [*under*
23 *ORS 197.626 or of a final order of the commission*] under 197.180, 197.251,
24 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794 is
25 as provided in subsections (3) to (7), (9), (10) and (12) of this section.

26 (3) A proceeding for judicial review under this section may be instituted
27 by filing a petition in the Court of Appeals. The petition must be filed within
28 21 days after the date the commission delivered or mailed the order upon
29 which the petition is based.

30 (4) The filing of the petition, as set forth in subsection (3) of this section,
31 and service of a petition on the persons who submitted oral or written tes-

1 timony in the proceeding before the commission are jurisdictional and may
2 not be waived or extended.

3 (5) The petition must state the nature of the order the petitioner seeks
4 to have reviewed. Copies of the petition must be served by registered or
5 certified mail upon the commission and the persons who submitted oral or
6 written testimony in the proceeding before the commission.

7 (6) Within 21 days after service of the petition, the commission shall
8 transmit to the Court of Appeals the original or a certified copy of the entire
9 record of the proceeding under review. However, by stipulation of the parties
10 to the review proceeding, the record may be shortened. The Court of Appeals
11 may tax a party that unreasonably refuses to stipulate to limit the record for
12 the additional costs. The Court of Appeals may require or permit subsequent
13 corrections or additions to the record. Except as specifically provided in this
14 subsection, the Court of Appeals may not tax the cost of the record to the
15 petitioner or an intervening party. However, the Court of Appeals may tax
16 the costs to a party that files a frivolous petition for judicial review.

17 (7) Petitions and briefs must be filed within time periods and in a manner
18 established by the Court of Appeals by rule.

19 (8) The Court of Appeals shall:

20 (a) Hear oral argument within 49 days of the date of transmittal of the
21 record unless the Court of Appeals determines that the ends of justice served
22 by holding oral argument on a later day outweigh the best interests of the
23 public and the parties. However, the Court of Appeals may not hold oral
24 argument more than 49 days after the date of transmittal of the record be-
25 cause of general congestion of the court calendar or lack of diligent prepa-
26 ration or attention to the case by a member of the court or a party.

27 (b) Set forth in writing and provide to the parties a determination to hear
28 oral argument more than 49 days from the date the record is transmitted,
29 together with the reasons for the determination. The Court of Appeals shall
30 schedule oral argument as soon as is practicable.

31 (c) Consider, in making a determination under paragraph (b) of this sub-

1 section:

2 (A) Whether the case is so unusual or complex, due to the number of
3 parties or the existence of novel questions of law, that 49 days is an unrea-
4 sonable amount of time for the parties to brief the case and for the Court
5 of Appeals to prepare for oral argument; and

6 (B) Whether the failure to hold oral argument at a later date likely would
7 result in a miscarriage of justice.

8 (9) The court:

9 (a) Shall limit judicial review of an order reviewed under this section to
10 the record.

11 (b) May not substitute its judgment for that of the Land Conservation and
12 Development Commission as to an issue of fact.

13 (10)(a) The Court of Appeals may affirm, reverse or remand an order re-
14 viewed under this section. The Court of Appeals shall reverse or remand the
15 order only if the court finds the order is:

16 [(a)] (A) Unlawful in substance or procedure. However, error in procedure
17 is not cause for reversal or remand unless the Court of Appeals determines
18 that substantial rights of the petitioner were prejudiced.

19 [(b)] (B) Unconstitutional.

20 [(c)] (C) Not supported by substantial evidence in the whole record as to
21 facts found by the commission.

22 (b) **When the record contains substantial evidence to support the**
23 **final decision, the existence of evidence in the record that supports a**
24 **different decision is not cause for reversal or remand of the order.**

25 (11) The Court of Appeals shall issue a final order on the petition for
26 judicial review with the greatest possible expediency.

27 (12) If the order of the commission is remanded by the Court of Appeals
28 or the Supreme Court, the commission shall respond to the court's appellate
29 judgment within 30 days.

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