

House Bill 3401

Sponsored by Representative JOHNSON

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**.

Prohibits local government from applying standards, conditions or procedures regulating development of needed housing on buildable land that have effect of reducing development density below maximum density level authorized in comprehensive plan designation.

Requires local government that adopts alternative approval process for residential development applications to permit applicants for development of needed housing to proceed at maximum density level authorized in comprehensive plan designation.

Prohibits city or county from prohibiting building of single-family dwelling on legally established lot in area zoned for single-family dwellings located within urban growth boundary.

Establishes process for applicant for development of needed housing to file petition for writ of mandamus in circuit court if city issues preliminary or final decision on application that would reduce density below maximum authorized in comprehensive plan designation.

A BILL FOR AN ACT

1
2 Relating to development of housing; creating new provisions; and amending ORS 197.303, 197.307 and
3 197.312.

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

5 **SECTION 1.** ORS 197.303 is amended to read:

6 197.303. (1) As used in ORS 197.307, "needed housing" means **all** housing [*types*] **on land zoned**
7 **for residential use or mixed residential and commercial use that is** determined to meet the need
8 shown for housing within an urban growth boundary at particular price ranges and rent levels[, *in-*
9 *cluding*]. "**Needed housing**" **includes, but is not limited to,** [*at least*] the following housing types:

10 (a) Attached and detached single-family housing and multiple family housing for both owner and
11 renter occupancy;

12 (b) Government assisted housing;

13 (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;

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

16 (e) Housing for farmworkers.

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

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

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

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

23 **SECTION 2.** ORS 197.307 is amended to read:

24 197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for
25 persons of lower, middle and fixed income, including housing for farmworkers, is a matter of state-
26 wide concern.

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

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

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

11 (a) Discouraging needed housing through unreasonable cost or delay[.]; or

12 (b) **Reducing the development density to a level that is below the maximum density level**
 13 **authorized in the comprehensive plan designation.**

14 (5) The provisions of subsection (4) of this section do not apply to:

15 (a) An application or permit for residential development in an area identified in a formally
 16 adopted central city plan, or a regional center as defined by Metro, in a city with a population of
 17 500,000 or more.

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

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

25 (a) The applicant retains the option of proceeding **at the maximum density level authorized**
 26 **in the comprehensive plan designation** under the approval process [*that meets the requirements*
 27 *of*] **provided in** subsection (4) of this section;

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

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

33 (7) Subject to subsection (4) of this section, this section does not infringe on a local
 34 government's prerogative to:

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

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

37 (c) Establish approval procedures.

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

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

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

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

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

7 (e) The manufactured home shall be certified by the manufacturer to have an exterior thermal
8 envelope meeting performance standards which reduce levels equivalent to the performance stan-
9 dards required of single-family dwellings constructed under the state building code as defined in ORS
10 455.010.

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

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

18 **SECTION 3.** ORS 197.312 is amended to read:

19 197.312. (1) A city or county may not by charter prohibit from all residential zones attached or
20 detached single-family housing, multifamily housing for both owner and renter occupancy or manu-
21 factured homes. A city or county may not by charter prohibit government assisted housing or impose
22 additional approval standards on government assisted housing that are not applied to similar but
23 unassisted housing.

24 (2)(a) A single-family dwelling for a farmworker and the farmworker's immediate family is a
25 permitted use in any residential or commercial zone that allows single-family dwellings as a per-
26 mitted use.

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

31 (3)(a) Multifamily housing for farmworkers and farmworkers' immediate families is a permitted
32 use in any residential or commercial zone that allows multifamily housing generally as a permitted
33 use.

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

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

41 **(5) A city or a county may not prohibit the building of a single-family dwelling on any**
42 **legally established lot in an area zoned for single-family dwellings located within the urban**
43 **growth boundary.**

44 **SECTION 4.** Section 5 of this 2017 Act is added to and made a part of ORS chapter 227.

45 **SECTION 5.** (1) Except as provided in subsection (6) of this section, if the governing body

1 of a city or its designee issues a preliminary or final decision on an application for the de-
 2 velopment of needed housing, as defined in ORS 197.303, that would reduce the development
 3 density to a level that is below the maximum density level authorized in the comprehensive
 4 plan designation, the applicant may file a petition for a writ of mandamus under ORS 34.130
 5 in the circuit court of the county where the application was submitted to compel the gov-
 6 erning body or its designee to issue the approval of the development.

7 (2) The governing body shall retain jurisdiction to make a land use decision on the ap-
 8 plication until a petition for a writ of mandamus is filed. When a petition is filed under ORS
 9 34.130, jurisdiction for all decisions regarding the application, including settlement, shall be
 10 with the circuit court.

11 (3) A person who files a petition for a writ of mandamus under this section shall provide
 12 written notice of the filing to all persons who would be entitled to notice under ORS 197.763
 13 and to any person who participated orally or in writing in any evidentiary hearing on the
 14 application held prior to the filing of the petition. The notice shall be mailed or hand deliv-
 15 ered on the same day the petition is filed.

16 (4) The court shall issue a peremptory writ unless the governing body or any intervenor
 17 shows that the approval would violate a substantive provision of the local comprehensive
 18 plan or land use regulations, as those terms are defined in ORS 197.015. The writ may specify
 19 conditions of approval that would otherwise be allowed by the local comprehensive plan or
 20 land use regulations.

21 (5) An applicant that receives a preliminary decision described in subsection (1) of this
 22 section may elect to proceed according to the local plan and regulations. If the applicant
 23 elects to proceed according to the local plan and regulations, the applicant may not file a
 24 petition for a writ of mandamus within 14 days after the governing body issues the prelimi-
 25 nary decision, provided the governing body issues a final written decision within 14 days of
 26 the preliminary decision.

27 (6) An applicant for a development of needed housing that proposes a development den-
 28 sity at a level that is below the maximum density level authorized in the comprehensive plan
 29 designation may not file a petition for a writ of mandamus under this section.

30 **SECTION 6.** Section 5 of this 2017 Act applies to preliminary and final decisions issued
 31 on or after the effective date of this 2017 Act.

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