

# Senate Bill 619

Sponsored by Senator KNOPP (Presession filed.)

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

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### A BILL FOR AN ACT

Relating to needed housing in urbanizable areas; 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.**

~~[(6)]~~ (7) "Periodic review" means the process and procedures as set forth in ORS 197.628 to 197.651.

~~[(7)]~~ (8) "Urban growth boundary" means an urban growth boundary included or referenced in a comprehensive plan **or regional framework plan**.

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

197.303. (1) As used in **this section and** ORS 197.307[, *"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, including at least the following housing types*]:

**(a) "Housing types" includes:**

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

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

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

~~[(d)]~~ (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

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

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

5 (2) Subsection [(1)(a) and (d)] (1)(a)(A) and (D) of this section [shall] **do** not apply to:

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

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

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

11 **SECTION 3.** ORS 197.522 is amended to read:

12 197.522. (1) As used in this section:

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

14 (b) “Partition” has the meaning given that term in ORS 92.010.

15 (c) “Permit” means a permit as defined in ORS 215.402 and a permit as defined in ORS 227.160.

16 (d) “Subdivision” has the meaning given that term in ORS 92.010.

17 (2) A local government shall approve an application for a permit, authorization or other ap-  
 18 proval necessary for the subdivision or partitioning of, or construction on, any land for needed  
 19 housing that is consistent with the comprehensive plan [and applicable land use regulations] **or re-**  
 20 **gional framework plan and land use regulations implementing the plan.**

21 (3) If an application is inconsistent with the comprehensive plan and applicable land use regu-  
 22 lations, the local government, prior to making a final decision on the application, shall allow the  
 23 applicant to **either:**

24 (a) Offer an amendment **to the application** or [to] propose conditions of approval that would  
 25 make the application consistent with the **comprehensive** plan and applicable **land use**  
 26 regulations; **or**

27 (b) **Accept reasonable conditions of approval on the application imposed by the local**  
 28 **government to make the proposed subdivision, partition or construction consistent with the**  
 29 **comprehensive plan and applicable land use regulations.**

30 (4) If an applicant seeks to amend the application or propose conditions of approval **as provided**  
 31 **under subsection (3)(a) of this section:**

32 (a) A county may extend the time limitation under ORS 215.427 for final action by the governing  
 33 body of a county on an application for needed housing and may set forth a new time limitation for  
 34 final action on the consideration of future amendments or proposals.

35 (b) A city may extend the time limitation under ORS 227.178 for final action by the governing  
 36 body of a city on an application for needed housing and may set forth a new time limitation for final  
 37 action on the consideration of future amendments or proposals.

38 (5) **Any conditions imposed by a local government under subsection (3)(b) of this section**  
 39 **may not:**

40 (a) **Have the effect, either individually or cumulatively, of discouraging needed housing**  
 41 **through unreasonable cost or delay; or**

42 (b) **Reduce the density proposed in the application, if the proposed density is consistent**  
 43 **with the comprehensive plan and applicable land use regulations.**

44 [(4)] (6) A local government shall deny an application that is inconsistent with the comprehen-  
 45 sive plan and applicable land use regulations and that cannot be made consistent through amend-

1 ments to the application or the imposition of reasonable conditions of approval.

2 **SECTION 4.** ORS 197.830 is amended to read:

3 197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to  
 4 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Ap-  
 5 peals.

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

8 (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;  
 9 and

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

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

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

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

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

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

24 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who  
 25 is adversely affected or aggrieved by the decision may appeal the decision to the board under this  
 26 section within 21 days after the expiration of the period for filing a local appeal of the decision es-  
 27 tablished by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

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

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

35 (5) If a local government makes a limited land use decision which is different from the proposal  
 36 described in the notice to such a degree that the notice of the proposed action did not reasonably  
 37 describe the local government's final actions, a person adversely affected by the decision may appeal  
 38 the decision to the board under this section:

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

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

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

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

45 (b) May not exceed 10 years after the date of the decision if notice of a hearing or an adminis-

1 trative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided.

2 (7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under  
3 subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene  
4 in and be made a party to the review proceeding by filing a motion to intervene and by paying a  
5 filing fee of \$100.

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

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

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

12 (c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this  
13 subsection shall result in denial of a motion to intervene.

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

17 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed  
18 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of  
19 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to  
20 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is  
21 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a  
22 statement identifying when, how and to whom notice was provided under ORS 197.615 does not  
23 render the notice defective. Copies of the notice of intent to appeal shall be served upon the local  
24 government, special district or state agency and the applicant of record, if any, in the local gov-  
25 ernment, special district or state agency proceeding. The notice shall be served and filed in the form  
26 and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a  
27 deposit for costs to be established by the board. If a petition for review is not filed with the board  
28 as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded  
29 to the local government, special district or state agency as cost of preparation of the record.

30 (10)(a) Within 21 days after service of the notice of intent to appeal, the local government, spe-  
31 cial district or state agency shall transmit to the board the original or a certified copy of the entire  
32 record of the proceeding under review. By stipulation of all parties to the review proceeding the  
33 record may be shortened. The board may require or permit subsequent corrections to the record;  
34 however, the board shall issue an order on a motion objecting to the record within 60 days of re-  
35 ceiving the motion.

36 (b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice  
37 to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860.  
38 Any person moving to intervene shall be provided such notice within seven days after a motion to  
39 intervene is filed. The notice required by this paragraph shall be accompanied by a statement that  
40 mediation information or assistance may be obtained from the Department of Land Conservation and  
41 Development.

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

44 (12) The petition shall include a copy of the decision sought to be reviewed and shall state:

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

1 (b) The date of the decision.

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

3 (13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for  
4 oral argument.

5 (b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing  
6 the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the  
7 respondent's brief, the local government or state agency may withdraw its decision for purposes of  
8 reconsideration. If a local government or state agency withdraws an order for purposes of recon-  
9 sideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision.  
10 If the petitioner is dissatisfied with the local government or agency action after withdrawal for  
11 purposes of reconsideration, the petitioner may refile the notice of intent and the review shall pro-  
12 ceed upon the revised order. An amended notice of intent shall not be required if the local govern-  
13 ment or state agency, on reconsideration, affirms the order or modifies the order with only minor  
14 changes.

15 (14) The board shall issue a final order within 77 days after the date of transmittal of the record.  
16 If the order is not issued within 77 days the applicant may apply in Marion County or the circuit  
17 court of the county where the application was filed for a writ of mandamus to compel the board to  
18 issue a final order.

19 (15)(a) Upon entry of its final order the board may, in its discretion, award costs to the pre-  
20 vailing party including the cost of preparation of the record if the prevailing party is the local  
21 government, special district or state agency whose decision is under review. The board shall apply  
22 the deposit required by subsection (9) of this section to any costs charged against the petitioner.

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

26 **(c) In a review related to needed housing under ORS 197.307 (3) or (4), the board shall**  
27 **also award reasonable attorney fees and expenses to the prevailing party.**

28 (16) Orders issued under this section may be enforced in appropriate judicial proceedings.

29 (17)(a) The board shall provide for the publication of its orders that are of general public in-  
30 terest in the form it deems best adapted for public convenience. The publications shall constitute  
31 the official reports of the board.

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

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

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

38 (a) The number of reviews commenced, as described in subsection (1) of this section, the number  
39 of reviews commenced for which a petition is filed under subsection (2) of this section and, in re-  
40 lation to each of those numbers, the rate at which the reviews result in a decision of the board to  
41 uphold, reverse or remand the land use decision or limited land use decision. The board shall track  
42 and report reviews under this paragraph in categories established by the board.

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

1 (c) A list of respondents, the number of reviews involving each respondent and the rate at which  
2 reviews involving the respondent have resulted in decisions of the board to uphold, reverse or re-  
3 mand the land use decision or limited land use decision. Additionally, when a respondent is the local  
4 government that made the land use decision or limited land use decision, the board shall track  
5 whether the local government appears before the board.

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

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