

Enrolled
House Bill 3155

Sponsored by COMMITTEE ON HOUSING (at the request of Representative Julie Fahey)

CHAPTER

AN ACT

Relating to residential land use planning by local governments within urban growth boundaries; creating new provisions; amending ORS 197.290, 197.296 and 197.299; and declaring an emergency.

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

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 197.286 to 197.314.

SECTION 2. (1) At least once every six years, by a date scheduled by the Land Conservation and Development Commission, a city that is within a metropolitan service district and has a population greater than 10,000 shall:

(a) Inventory the supply of buildable lands within the city and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of the city's existing and projected needed housing under state-wide planning goals and rules related to housing by type, mix, affordability and density range to determine the number of units and amount of land needed for each needed housing type for the next 20 years.

(2) The housing capacity and needed housing analysis conducted under this section must be adopted as part of the city's comprehensive plan no later than one year after completion of the needed housing analysis.

(3) If the housing capacity and needed housing analysis conducted under this section demonstrates a housing need, the city shall amend its comprehensive plan or land use regulations to include new measures that demonstrably increase the likelihood that development of needed housing will occur for the type, mix, affordability and densities sufficient to accommodate needed housing for the next 20 years.

SECTION 3. ORS 197.290 is amended to read:

197.290. (1) A city with a population greater than 10,000 shall develop and adopt a housing production strategy under this section no later than one year after[.]

~~[(a)]~~ the city's deadline for completing a housing capacity analysis under ORS 197.296 (2)(a)[,] **or (10)(b) or section 2 of this 2021 Act.**

~~[(b) The city's deadline for completing a housing capacity analysis under ORS 197.296 (10)(b); or]~~

~~[(c) A date scheduled by the Land Conservation and Development Commission following the allocation of housing capacity to the city by a metropolitan service district under ORS 197.299 (2)(d).]~~

(2) A housing production strategy must include a list of specific actions, including the adoption of measures and policies, that the city shall undertake to promote development within the city to address a housing need identified under ORS 197.296 (6)(b) *[for the most recent 20-year period de-*

scribed in ORS 197.296 (2)(b)] or (10)(b) or section 2 of this 2021 Act. Actions under this subsection may include:

(a) The reduction of financial and regulatory impediments to developing needed housing, including removing or easing approval standards or procedures for needed housing at higher densities or that is affordable;

(b) The creation of financial and regulatory incentives for development of needed housing, including creating incentives for needed housing at higher densities or that is affordable; and

(c) The development of a plan to access resources available at local, regional, state and national levels to increase the availability and affordability of needed housing.

(3) In creating a housing production strategy, a city shall review and consider:

(a) Socioeconomic and demographic characteristics of households living in existing needed housing;

(b) Market conditions affecting the provision of needed housing;

(c) Measures already adopted by the city to promote the development of needed housing;

(d) Existing and expected barriers to the development of needed housing; and

(e) For each action the city includes in its housing production strategy:

(A) The schedule for its adoption;

(B) The schedule for its implementation;

(C) Its expected magnitude of impact on the development of needed housing; and

(D) The time frame over which it is expected to impact needed housing.

(4) The housing production strategy must include within its index a copy of the city's most recently completed survey under ORS 456.586 (2).

(5) The adoption of a housing production strategy is not a land use decision and is not subject to appeal or review except as provided in ORS 197.291.

(6) A city with a population of 10,000 or less may develop a housing production strategy as provided in this section.

SECTION 3a. ORS 197.296 is amended to read:

197.296. (1)(a) The provisions of subsections (2) to (9) of this section apply to metropolitan service district regional framework plans and local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of 25,000 or more.

(b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section. In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.

(2)(a) A local government shall demonstrate that its comprehensive plan or regional framework plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years:

(A) At periodic review under ORS 197.628 to 197.651;

(B) As scheduled by the commission:

(i) At least once each eight years for local governments that are not within a metropolitan service district; or

(ii) At least once each six years for a metropolitan service district; or

(C) At any other legislative review of the comprehensive plan or regional framework plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use.

(b) The 20-year period shall commence on the date initially scheduled for completion of the review under paragraph (a) of this subsection.

(3) In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of existing and projected housing need by type and density range, in accordance with all factors under ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.

(4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, “buildable lands” includes:

(A) Vacant lands planned or zoned for residential use;

(B) Partially vacant lands planned or zoned for residential use;

(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and

(D) Lands that may be used for residential infill or redevelopment.

(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:

(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;

(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and

(C) The presence of a single family dwelling or other structure on a lot or parcel.

(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.

(5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity pursuant to subsection (3)(a) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last review under subsection (2)(a)(B) of this section. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

(C) Market factors that may substantially impact future urban residential development; and

(D) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.

(6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, the local government shall take one or both of the following actions to accommodate the additional housing need:

(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary.

(b) Amend its comprehensive plan, regional framework plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall adopt findings regarding the density expectations assumed to result from measures adopted under this paragraph based upon the factors listed in ORS 197.303 (2) and data in subsection (5)(a) of this section. The density expectations may not project an increase in residential capacity above achieved density by more than three percent without quantifiable validation of such departures. For a local government located outside of a metropolitan service district, a quantifiable validation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local jurisdiction or a jurisdiction in the same region. For a metropolitan service district, a quantifiable validation must demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the metropolitan service district.

(c) As used in this subsection, “authorized density level” has the meaning given that term in ORS 227.175.

(7) Using the housing need analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.

(8)(a) A local government outside a metropolitan service district that takes any actions under subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.286 to 197.314.

(b) A local government shall determine the density and mix of housing types anticipated as a result of actions taken under subsections (6) and (7) of this section and monitor and record the actual density and mix of housing types achieved following the adoption of these actions. The local government shall compare actual and anticipated density and mix. The local government shall submit its comparison to the commission at the next review of its urban growth boundary under subsection (2)(a) of this section.

(9) In establishing that actions and measures adopted under subsections (6) and (7) of this section demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under subsection (3) of this section, is zoned at density ranges that are likely to be achieved by the housing market using the analysis in subsection (3) of this section and is in areas where sufficient urban services are planned to enable the higher density development to occur over the 20-year period. Actions or measures, or both, may include but are not limited to:

- (a) Increases in the permitted density on existing residential land;
- (b) Financial incentives for higher density housing;
- (c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;
- (d) Removal or easing of approval standards or procedures;
- (e) Minimum density ranges;
- (f) Redevelopment and infill strategies;
- (g) Authorization of housing types not previously allowed by the plan or regulations;
- (h) Adoption of an average residential density standard; and

(i) Rezoning or redesignation of nonresidential land.

(10)(a) The provisions of this subsection apply to local government comprehensive plans for lands within the urban growth boundary of a city that is located outside of a metropolitan service district and has a population of less than 25,000.

(b) As required under paragraph (c) of this subsection, a city shall, according to rules of the commission:

(A) Determine the estimated housing needs within the jurisdiction for the next 20 years;

(B) Inventory the supply of buildable lands available within the urban growth boundary to accommodate the estimated housing needs determined under this subsection; and

(C) Adopt measures necessary to accommodate the estimated housing needs determined under this subsection.

(c) The actions required under paragraph (b) of this subsection shall be undertaken:

(A) At periodic review pursuant to ORS 197.628 to 197.651;

(B) On a schedule established by the commission for cities with a population greater than 10,000, not to exceed once each eight years; or

(C) At any other legislative review of the comprehensive plan that requires the application of a statewide planning goal relating to buildable lands for residential use.

(d) For the purpose of the inventory described in this subsection, "buildable lands" includes those lands described in subsection (4)(a) of this section.

(11) If a city with a population of 10,000 or less conducts an inventory of the supply of buildable lands or an estimate of housing need, it must satisfy the requirements of subsection (10) of this section.

SECTION 4. ORS 197.299 is amended to read:

197.299. (1) A metropolitan service district organized under ORS chapter 268 shall complete the inventory, determination and analysis required under ORS 197.296 (3) not later than six years after completion of the previous inventory, determination and analysis.

(2)(a) The metropolitan service district shall take such action as necessary under ORS 197.296 (6)(a) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3) within one year of completing the analysis.

(b) The metropolitan service district shall take all final action under ORS 197.296 (6)(a) necessary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two years of completing the analysis.

(c) The metropolitan service district shall take action under ORS 197.296 (6)(b), within one year after the analysis required under ORS 197.296 (3)(b) is completed, to provide sufficient buildable land within the urban growth boundary to accommodate the estimated housing needs for 20 years from the time the actions are completed.

(d) The metropolitan service district shall consider and adopt new measures that the governing body deems appropriate under ORS 197.296 (6)(b). *[and shall allocate any housing capacity that is not accommodated under this section to be accommodated by the application of ORS 197.296 (6)(b) by cities within the metropolitan service district with a population greater than 10,000.]*

[(e) Cities to which housing capacity is allocated under paragraph (d) of this subsection shall take steps, at least once every six years as scheduled by the Land Conservation and Development Commission, to demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years as required by ORS 197.296 (6)(b).]

(3) The commission may grant an extension to the time limits of subsection (2) of this section if the Director of the Department of Land Conservation and Development determines that the metropolitan service district has provided good cause for failing to meet the time limits.

(4)(a) The metropolitan service district shall establish a process to expand the urban growth boundary to accommodate a need for land for a public school that cannot reasonably be accommodated within the existing urban growth boundary. The metropolitan service district shall design the process to:

(A) Accommodate a need that must be accommodated between periodic analyses of urban growth boundary capacity required by subsection (1) of this section; and

(B) Provide for a final decision on a proposal to expand the urban growth boundary within four months after submission of a complete application by a large school district as defined in ORS 195.110.

(b) At the request of a large school district, the metropolitan service district shall assist the large school district to identify school sites required by the school facility planning process described in ORS 195.110. A need for a public school is a specific type of identified land need under ORS 197.298 (3).

(5) Three years after completing its most recent demonstration of sufficient buildable lands under ORS 197.296, a metropolitan service district may, on a single occasion, revise the determination and analysis required as part of the demonstration for the purpose of considering an amendment to the metropolitan service district's urban growth boundary, provided:

(a) The metropolitan service district has entered into an intergovernmental agreement and has designated rural reserves and urban reserves under ORS 195.141 and 195.145 with each county located within the district;

(b) The commission has acknowledged the rural reserve and urban reserve designations described in paragraph (a) of this subsection;

(c) One or more cities within the metropolitan service district have proposed a development that would require expansion of the urban growth boundary;

(d) The city or cities proposing the development have provided evidence to the metropolitan service district that the proposed development would provide additional needed housing to the needed housing included in the most recent determination and analysis;

(e) The location chosen for the proposed development is adjacent to the city proposing the development; and

(f) The location chosen for the proposed development is located within an area designated and acknowledged as an urban reserve.

(6)(a) If a metropolitan service district, after revising its most recent determination and analysis pursuant to subsection (5) of this section, concludes that an expansion of its urban growth boundary is warranted, the metropolitan service district may take action to expand its urban growth boundary in one or more locations to accommodate the proposed development, provided the urban growth boundary expansion does not exceed a total of 1,000 acres.

(b) A metropolitan service district that expands its urban growth boundary under this subsection:

(A) Must adopt the urban growth boundary expansion not more than four years after completing its most recent demonstration of sufficient buildable lands under ORS 197.296; and

(B) Is exempt from the boundary location requirements described in the statewide land use planning goals relating to urbanization.

SECTION 5. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House April 10, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 25, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State