

Requested by Senator COURTNEY

**PROPOSED AMENDMENTS TO
SENATE BILL 8**

1 On page 1 of the printed bill, line 2, after “197.830,” insert “197.850,”.

2 Delete lines 5 through 29.

3 On page 2, delete lines 1 through 38 and insert:

4 **“SECTION 1. (1) As used in this section, ‘affordable housing’ means**
5 **residential property:**

6 **“(a) In which:**

7 **“(A) Each unit on the property is made available to own or rent to**
8 **families with incomes of 80 percent or less of the area median income**
9 **as determined by the Oregon Housing Stability Council based on in-**
10 **formation from the United States Department of Housing and Urban**
11 **Development; or**

12 **“(B) The average of all units on the property is made available to**
13 **families with incomes of 60 percent or less of the area median income;**
14 **and**

15 **“(b) Whose affordability is enforceable, including as described in**
16 **ORS 456.270 to 456.295, for a duration of no less than 40 years.**

17 **“(2) A local government shall allow affordable housing, and may**
18 **not require a zone change or conditional use permit for affordable**
19 **housing on property if:**

20 **“(a) The housing is owned by:**

21 **“(A) A public body, as defined in ORS 174.109; or**

1 **“(B) A nonprofit corporation that is organized as a religious corpo-**
2 **ration; or**

3 **“(b) The property is zoned:**

4 **“(A) For commercial uses;**

5 **“(B) To allow religious assembly; or**

6 **“(C) As public lands.**

7 **“(3) Subsection (2) of this section:**

8 **“(a) Does not apply to the development of housing not within an**
9 **urban growth boundary.**

10 **“(b) Does not trigger any requirement that a local government**
11 **consider or update an analysis as required by a statewide planning goal**
12 **relating to economic development.**

13 **“(c) Does not apply on lands where the local government determines**
14 **that:**

15 **“(A) The development on the property cannot be adequately served**
16 **by water, sewer, storm water drainage or streets, or will not be ade-**
17 **quately served at the time that development on the lot is complete;**

18 **“(B) The property contains a slope of 25 percent or greater;**

19 **“(C) The property is within a 100-year floodplain; or**

20 **“(D) The development of the property is constrained by land use**
21 **regulations based on statewide land use planning goals relating to:**

22 **“(i) Natural disasters and hazards; or**

23 **“(ii) Natural resources, including air, water, land or natural areas,**
24 **but not including open spaces or historic resources.**

25 **“(4) A local government shall approve an application at an author-**
26 **ized density level and authorized height level, as defined in ORS 227.175**
27 **(4), for the development of affordable housing, at the greater of:**

28 **“(a) Any local density bonus for affordable housing; or**

29 **“(b) Without consideration of any local density bonus for affordable**
30 **housing:**

1 “(A) For property with existing maximum density of 16 or fewer
2 units per acre, 200 percent of the existing density and 12 additional
3 feet;

4 “(B) For property with existing maximum density of 17 or more
5 units per acre and 45 or fewer units per acre, 150 percent of the exist-
6 ing density and 24 additional feet; or

7 “(C) For property with existing maximum density of 46 or more
8 units per acre, 125 percent of the existing density and 36 additional
9 feet.

10 “(5)(a) Subsection (4) of this section does not apply to housing al-
11 lowed under subsection (2) of this section in areas that are not zoned
12 for residential uses.

13 “(b) A local government may reduce the density or height of the
14 density bonus allowed under subsection (4) of this section as necessary
15 to address a health, safety or habitability issue, including fire safety,
16 or to comply with a protective measure adopted pursuant to a state-
17 wide land use planning goal. Notwithstanding ORS 197.350, the local
18 government must adopt findings supported by substantial evidence
19 demonstrating the necessity of this reduction.

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

22 “SECTION 2. (1) The Land Use Board of Appeals shall award attor-
23 ney fees to an applicant whose application is only for the development
24 of affordable housing, as defined in section 1 of this 2021 Act, or pub-
25 licly supported housing, as defined in ORS 456.250, if the board affirms
26 a quasi-judicial land use decision approving the application or reverses
27 a quasi-judicial land use decision denying the application.

28 “(2) A party who was awarded attorney fees under this section or
29 ORS 197.850 shall repay the fees plus any interest from the time of the
30 judgment if the property upon which the fees are based is developed

1 **for a use other than affordable housing.**

2 **“(3) As used in this section:**

3 **“(a) ‘Applicant’ includes:**

4 **“(A) An applicant with a funding reservation agreement with a**
5 **public funder for the purpose of developing publicly supported housing;**

6 **“(B) A housing authority, as defined in ORS 456.005;**

7 **“(C) A qualified housing sponsor, as defined in ORS 456.548;**

8 **“(D) A religious nonprofit corporation;**

9 **“(E) A public benefit nonprofit corporation whose primary purpose**
10 **is the development of affordable housing; and**

11 **“(F) A local government that approved the application of an appli-**
12 **cant described in this paragraph.**

13 **“(b) ‘Attorney fees’ includes prelitigation legal expenses, including**
14 **preparing the application and supporting the application in local land**
15 **use hearings or proceedings.**

16 **“SECTION 2a. Section 2 of this 2021 Act is added to and made a part**
17 **of ORS 197.830 to 197.845.”.**

18 On page 5, line 23, delete “(4)”.

19 On page 6, after line 5, insert:

20 **“SECTION 3a. ORS 197.850 is amended to read:**

21 **“197.850. (1) Any party to a proceeding before the Land Use Board of**
22 **Appeals under ORS 197.830 to 197.845 may seek judicial review of a final**
23 **order issued in those proceedings.**

24 **“(2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial**
25 **review of orders issued under ORS 197.830 to 197.845 is solely as provided in**
26 **this section.**

27 **“(3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830**
28 **to 197.845 is conferred upon the Court of Appeals. Proceedings for judicial**
29 **review are instituted by filing a petition in the Court of Appeals. The peti-**
30 **tion must be filed within 21 days following the date the board delivered or**

1 mailed the order upon which the petition is based.

2 “(b) Filing of the petition, as set forth in paragraph (a) of this subsection,
3 and service of a petition on all persons identified in the petition as adverse
4 parties of record in the board proceeding is jurisdictional and may not be
5 waived or extended.

6 “(4) The petition must state the nature of the order the petitioner desires
7 reviewed. Copies of the petition must be served by first class, registered or
8 certified mail on the board and all other parties of record in the board pro-
9 ceeding.

10 “(5) Within seven days after service of the petition, the board shall
11 transmit to the court the original or a certified copy of the entire record of
12 the proceeding under review, but, by stipulation of all parties to the review
13 proceeding, the record may be shortened. The court may tax a party that
14 unreasonably refuses to stipulate to limit the record for the additional costs.
15 The court may require or permit subsequent corrections or additions to the
16 record when deemed desirable. Except as specifically provided in this sub-
17 section, the court may not tax the cost of the record to the petitioner or any
18 intervening party. However, the court may tax such costs and the cost of
19 transcription of record to a party filing a frivolous petition for judicial re-
20 view.

21 “(6) Petitions and briefs must be filed within time periods and in a man-
22 ner established by the Court of Appeals by rule.

23 “(7)(a) The court shall hear oral argument within 49 days of the date of
24 transmittal of the record.

25 “(b) The court may hear oral argument more than 49 days from the date
26 of transmittal of the record provided the court determines that the ends of
27 justice served by holding oral argument on a later day outweigh the best
28 interests of the public and the parties. The court may not hold oral argument
29 more than 49 days from the date of transmittal of the record because of
30 general congestion of the court calendar or lack of diligent preparation or

1 attention to the case by any member of the court or any party.

2 “(c) The court shall set forth in writing a determination to hear oral ar-
3 gument more than 49 days from the date the record is transmitted, together
4 with the reasons for its determination, and shall provide a copy to the par-
5 ties. The court shall schedule oral argument as soon as practicable there-
6 after.

7 “(d) In making a determination under paragraph (b) of this subsection, the
8 court shall consider:

9 “(A) Whether the case is so unusual or complex, due to the number of
10 parties or the existence of novel questions of law, that 49 days is an unrea-
11 sonable amount of time for the parties to brief the case and for the court to
12 prepare for oral argument; and

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

15 “(8) Judicial review of an order issued under ORS 197.830 to 197.845 must
16 be confined to the record. The court may not substitute its judgment for that
17 of the board as to any issue of fact.

18 “(9) The court may affirm, reverse or remand the order. The court shall
19 reverse or remand the order only if it finds:

20 “(a) The order to be unlawful in substance or procedure, but error in
21 procedure is not cause for reversal or remand unless the court finds that
22 substantial rights of the petitioner were prejudiced thereby;

23 “(b) The order to be unconstitutional; or

24 “(c) The order is not supported by substantial evidence in the whole re-
25 cord as to facts found by the board under ORS 197.835 (2).

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

28 “(11) If the order of the board is remanded by the Court of Appeals or the
29 Supreme Court, the board shall respond to the court’s appellate judgment
30 within 30 days.

1 “(12) A party must file with the board an undertaking with one or more
2 sureties insuring that the party will pay all costs, disbursements and attor-
3 ney fees awarded against the party by the Court of Appeals if:

4 “(a) The party appealed a decision of the board to the Court of Appeals;
5 and

6 “(b) In making the decision being appealed to the Court of Appeals, the
7 board awarded attorney fees and expenses against that party under ORS
8 197.830 (15)(b) or (c).

9 “(13) Upon entry of its final order, the court shall award attorney fees
10 and expenses to a party who:

11 “(a) Prevails on a claim that an approval condition imposed by a local
12 government on an application for a permit pursuant to ORS 215.416 or
13 227.175 is unconstitutional under section 18, Article I, Oregon Constitution,
14 or the Fifth Amendment to the United States Constitution; or

15 “(b) Is entitled to attorney fees under [*ORS 197.830 (15)(c)*] **section 2 of**
16 **this 2021 Act.**

17 “(14) The undertaking required in subsection (12) of this section must be
18 filed with the board and served on the opposing parties within 10 days after
19 the date the petition was filed with the Court of Appeals.”.

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