

SB 847 A STAFF MEASURE SUMMARY

Senate Committee On Housing and Development

Action Date: 04/03/23

Action: Do pass with amendments and requesting referral to Ways and Means. (Printed A-Engrossed.)

Vote: 3-2-0-0

Yeas: 3 - Jama, Patterson, Sollman

Nays: 2 - Anderson, Knopp

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Prepared By: Kevin Rancik, LPRO Analyst

Meeting Dates: 3/15, 3/29, 4/3

WHAT THE MEASURE DOES:

Residential Use of Commercial Lands: Restricts local governments from prohibiting the siting and development of residential uses on land zoned to allow only commercial use within urban growth boundaries, provided structures include affordable housing covenant making each unit affordable to households with income less than or equal to 60 percent of the area median income, or are mixed-use structures with ground floor commercial units and include residential units subject to affordable housing covenant making properties affordable to moderate-income households. Applies residential density level most comparable to level of commercial density currently allowed in zone. Specifies updates or analyses relating to economic development not required under this Act. Establishes exceptions for property that cannot be adequately served by infrastructure; contains a slope of 25 percent or greater; is within a 100-year floodplain; or is constrained by land use relating to natural disasters.

Residential Approval Procedures: Extends, by seven days, the amount of time a governing body of a city, county, or their designee, has to take final action on application for a permit, limited land use decision, or zone change, including resolution of appeals, after application is deemed complete. Allows local government or state agency to withdraw a decision under appeal with the Land Use Board of Appeals (LUBA), for reconsideration, including decisions related to the development of a residential structure.

Emergency Shelter Siting: Requires local governments to approve an application for development or use of land for emergency shelters as defined in ORS 197.782, and permits approval or denial without a hearing. Requires public benefit corporation operating emergency shelters be recognized as tax exempt for at least three years before shelter application date.

Establishes exemption from shelter approval under provisions of Act when most recent point-in-time count finds total sheltered and unsheltered homeless population is less than 0.18 percent of the state population as estimated by the Portland State University Population Research Center. Awards attorney fees to a local government and any intervening applicant that prevail on appeal of approval; awards fees to applicant that prevails on appeal of denial.

Single Exit Multifamily Dwellings: Directs Department of Consumer and Business Services to review and adopt updates to Structural Specialty Code through Building Codes Structures Board to allow residential occupancies served by a single exit. Requires updates to reduce, to extent practicable, costs and barriers to mid-sized multifamily dwelling construction while maintaining safety; and encourage less expensive housing types allowing single-exit residential dwellings consistent with adopted building codes such as those in Seattle, Washington.

Planned Community Act Exemptions: Clarifies that development established on or after January 1, 2024, in which each residential unit is subject to an affordability restriction or is owned by a public benefit or religious nonprofit corporation, is not defined in Oregon law as a “planned community.”

Regulation of Condominiums: Grants Real Estate Commissioner exclusive right to regulate submission of property to condominium provisions of Oregon statute. Prohibits restrictions or prohibitions on condominium form of ownership, including charges, taxes, fees, review or approval processes, or additional permitting requirements or

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conditions. **Subdividing for Development of Affordable Housing:** Requires city or county to accept as other assurance, as used in Act, one or more award letters from public funding sources made to subdivider to develop affordable housing that is or will be subject to affordability restriction or affordable housing covenant, provided awards total an amount greater than project cost. **Single Room Occupancies:** Defines “single room occupancy” (SRO) as residential development with at least four independently rented, lockable units with living and sleeping space for exclusive use of an occupant, but with shared sanitary or food preparation facilities. Requires local governments to allow SRO development within an urban growth boundary, with up to six units per single-family zoned parcel, and with unit counts consistent with density standards of parcels allowing five or more units. Adds SROs to definition of “needed housing.” **Siting Duplexes:** Requires cities outside metropolitan service districts, with populations of 2,500 or greater and under 25,000, to allow duplex development on lots and parcels zoned for detached single-family dwellings. Clarifies local government amending comprehensive plan or land use regulations is not required to consider whether amendments significantly affect existing or planned transportation facilities. Requires cities newly subject to provisions to adopt land use regulations or amend comprehensive plans no later than June 30, 2025. Allows, no later than June 30, 2024, cities newly subject to Act to request extension of timeline to amend land use regulations or comprehensive plans. Appropriates \$1,250,000 from General Fund, for biennium beginning July 1, 2023, to Department of Land Conservation and Development to provide grants to local governments to assist them with amending comprehensive plans. **Removing Recorded Discriminatory Provisions:** Allows amendments to planned community or condominium declaration or bylaws, without a vote of owners or board members, or approval of Real Estate Commissioner, county assessor, or other person, that are made to conform declaration or bylaws with statute and if amendment is signed by president and secretary of homeowners association. Requires that before December 31, 2024, each homeowners association or condominium including residential units, first established before September 1, 2021, must amend its declaration and bylaws to ensure these governing documents do not restrict the community, lots, or units because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, source of income, disability, or the number of individuals simultaneously occupying a dwelling unit within occupancy limits. Clarifies Act provisions do not apply to planned communities and condominiums which complied with requirements in effect prior to Act’s effective date. **Affordable Housing on Public Utility Lands:** Allows public utilities to sell, at or below market price, or gift, interest in real property for purpose of developing affordable housing. Requires such property to include affordable housing covenant. Prohibits utility from recovering costs of the property sale or gift from customers. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Provisions of measure and amendments
- Infrastructure capacity for commercial conversions
- Surplus property reporting option versus requirement
- Prevailing wage effects on development of affordable and mixed-use housing
- Special district revenue sources
- Applicability of emergency clause to revenue-related measures
- Previous amendment covering liability for camping sites serving homeless populations
- Impact of bill on housing production

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

Residential Use of Commercial Lands: Counties and local governments may institute zoning laws which restrict the type of development allowed on property. Zoning laws can focus on type, such as residential, commercial, or industrial uses and segregate uses considered incompatible from each other. Zoning can also focus on density, such as restricting development to detached housing, or requiring a parcel to include a minimum number of units

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with the intent of attracting high-density development. Zoning influences neighborhood affordability. House Bill 2001 (2019) required cities with populations over 10,000 to allow duplexes, and with populations over 25,000 to allow duplexes and other middle housing, in single-family residential zones with the intent to create more affordable residential options that had previously been illegal or difficult to get approval for. Senate Bill 8 (2021) restricted local governments from denying or limiting the approval of affordable housing applications, subject to certain zoning and property ownership conditions, and established density standards and conditions under which local governments must approve affordable housing applications.

Senate Bill 847 A prevents local governments from prohibiting the siting and development of affordable or moderate-income housing on land zoned only for commercial use within urban growth boundaries, with some exceptions relating to infrastructure, slope, floodplains, or natural disaster constraints.

Residential Approval Procedures: The Oregon Land Use Board of Appeals' (LUBA) stated mission is to simplify the appeal process, speed up resolution of land use disputes, and provide consistent interpretation of land use law. The Board consists of three Governor-appointed members serving four-year terms, confirmed by the Oregon State Senate. A local government's land use decision may be appealed to LUBA for review. Senate Bill 8 (2021) required local governments to allow development of affordable housing projects in non-residential zones within an urban growth boundary, with some exceptions, and granted affordable housing developers attorney fees in prevailing appeals before LUBA.

Senate Bill 847 A extends, by seven days, the amount of time a local governing body or their designee has to take final action on an application for a permit, limited land use decision, or zone change after the application is deemed complete. It allows local governments and state agencies to withdraw decisions under appeal with the LUBA, for reconsideration, including decisions related to residential development.

Emergency Shelter Siting: According to the 2022 Annual Homelessness Assessment Report, on a given night in 2022, 17,959 Oregonians experienced homelessness. Oregon had the third-highest per capita rate of homelessness of US states in 2022. House Bill 2006 (2021) required local governments to approve qualified applications for emergency shelters, notwithstanding local land use regulations, zoning ordinances, or comprehensive plans. The shelter siting provisions had a sunset date of July 1, 2022, which the Legislative Assembly extended to July 1, 2023, through the enactment of House Bill 4051 (2022).

Senate Bill 847 A requires local governments to approve or deny siting emergency shelters without a hearing, provided certain conditions are met. Attorney fees are awarded to local governments and intervening applicants who prevail on appeal of a shelter application approval, or an applicant who prevails on an application denial. The measure creates an exemption from these provisions if the total homeless population in the jurisdiction is below 0.18 percent of the state population.

Single Exit Multifamily Dwellings: In most of the United States, building codes often require that residential structures of four stories or greater must have two stairwells allowing exit from the building for the purpose of fire safety, and that the stairwells must be connected by hallways to ensure residents have access to one stairwell in the event the other is unusable. This limits design options for multifamily and middle-housing construction, reducing the number of units available per story and increasing costs per unit. The City of Seattle's 2018 building code allows single-stair residential construction of up to six-stories, and Washington State bill SB 5491 and California Assembly bill AB 835, both introduced in 2023, aim to permit or study similar provisions for these respective states.

Senate Bill 847 A directs the Department of Consumer and Business Services to review and adopt updates to the Structural Specialty Code through Building Codes Structures Board to allow residential occupancies served by a single exit. It requires that these updates reduce, to the extent practicable, costs and barriers to mid-sized multifamily dwelling construction while maintaining safety, and that updates encourage less expensive housing

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types allowing single-exit residential dwellings.

Planned Community Act Exemptions: Planned communities, defined by ORS 94.550, include any subdivision resulting in a pattern of ownership of real property and the buildings and improvements in which owners are collectively responsible for maintenance, operation, insurance, or other expenses relating to the property. Condominiums, exclusively commercial and industrial subdivisions, and timeshare plans are excluded from the definition. Governing documents for these communities include provisions relating to common ownership and maintenance of the community and are binding upon the community's lots. Additionally, ORS 456.270 defines "affordable housing covenant" as a nonpossessory interest in real property imposing limitations, restrictions or affirmative obligations encouraging development or ensuring continued availability of affordable rental and owner-occupied housing for low- or moderate-income individuals.

Senate Bill 847 A establishes that development on or after January 1, 2024, in which each residential unit is subject to an affordability restriction or is owned by a public benefit or religious nonprofit corporation, is not defined as a "planned community."

Regulation of Condominiums: Condominiums refer to residential units owned by an individual, but for which common areas are collectively owned in an undivided stake. They are created by recording a condominium declaration in the office of the local county's recording officer. A property plat showing boundaries of each unit, including unit designations, locations, dimensions, and common elements, along with a copy of the bylaws, must be recorded with the declaration. Oregon's Real Estate Agency reviews and approves all condominiums, and the local county also reviews and approves plats and declarations.

Senate Bill 847 A provides the Real Estate Commissioner the exclusive right to regulate submission of property to condominium provisions of Oregon statute. It prohibits restrictions on the condominium form of ownership, including financial charges and additional review and permitting processes.

Subdividing for Development of Affordable Housing: Senate Bill 8 (2021) restricted local governments' ability to deny or place conditions on affordable housing applications in certain circumstances. Senate Bill 458 (2021) also established conditions in which local governments must approve land divisions of real property for middle housing development.

Senate Bill 847 A requires local governments to accept one or more award letters from public funding sources, made to subdividers developing affordable housing with an affordability restriction or affordable housing covenant, provided the awards total an amount greater than the project cost.

Single Room Occupancies: "Single-room occupancy" (SRO) refers to structures in which residents rent an individual room for themselves but share common spaces such as kitchens and bathrooms. Historically, these rooms have rented for less than market rates of full-sized apartments, and sometimes feature social services designed to aid low-income populations. Housing availability in this category has declined over time.

Senate Bill 847 A defines an SRO in statute for the purposes of this Act and requires local governments to allow their development within an urban growth boundary, with up to six units per single-family zoned parcel. SROs are added to the definition of "needed housing."

Siting Duplexes: House Bill 2001 (2019) required cities with populations over 10,000 to allow duplexes, and with populations over 25,000 to allow duplexes and other middle housing, to be built on parcels zoned for single-family residential housing. The Land Conservation and Development Commission adopted administrative rules and model housing codes to ease the process for local governments to comply with the requirement.

Senate Bill 847 A requires all cities, regardless of size, to allow duplex development on lots and parcels zoned for detached single-family dwellings. Cities newly subject to these provisions must adopt land use regulations or amend their comprehensive plans no later than June 30, 2025, but they have until June 30, 2024, to request an

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extension of the timeline.

Removing Recorded Discriminatory Provisions: Covenants, conditions, and restrictions lay out rules for what can be done with houses and are included in a house’s title report. Such conditions also appear in the bylaws for condominiums and homeowner associations. While these typically cover aspects of homeownership such as paint color or lawn maintenance, historically they have also been used to restrict development to specific groups while excluding others, with such restrictions typically centering on race. Racially restrictive covenants remain on the books throughout the United States, including in Oregon, even though the Fair Housing Act of 1968 officially outlawed them. House Bill 4134 (2018) provided a legal procedure for allowing property owners to petition for their removal and prohibited these kinds of restrictions in planned community declarations.

Senate Bill 847 A requires residential planned communities established before September 2021, to amend their declarations and bylaws to ensure their governing documents do not contain restrictions based on race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, source of income, disability, or the number of individuals simultaneously occupying a dwelling unit within occupancy limits. They must make these changes before the end of 2024 and may do so without a vote or approval of owners, board members, or other stakeholders.

Affordable Housing on Public Utility Lands: The definition of “public utility” in Oregon covers entities engaged in the production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly to the public.

Senate Bill 847 A allows public utilities to sell or gift their interest in real property for the purpose of developing affordable housing. Resulting development must include an affordable housing covenant, and utilities may not recover the costs of the property sale or gift from their customers.