

House Bill 2403

Sponsored by Representative DIEHL (at the request of Colm Willis) (Pre-session 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**.

Replaces standard of review of local government's land use decisions with review for any evidence.

A BILL FOR AN ACT

1
2 Relating to review of land use decisions; amending ORS 197.308, 197.540, 197.633, 197.732, 197.828,
3 197.835, 215.416 and 227.175.

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

5 **SECTION 1.** ORS 197.308, as amended by section 4, chapter 47, Oregon Laws 2022, is amended
6 to read:

7 197.308. (1) As used in this section, "affordable housing" means residential property:

8 (a) In which:

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

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

14 (b) Whose affordability is enforceable, including as described in ORS 456.270 to 456.295, for a
15 duration of no less than 30 years.

16 (2) A local government shall allow affordable housing, and may not require a zone change or
17 conditional use permit for affordable housing, if the proposed affordable housing is on property that
18 is:

19 (a) Owned by:

20 (A) A public body, as defined in ORS 174.109; or

21 (B) A nonprofit corporation that is organized as a religious corporation; or

22 (b) Zoned:

23 (A) For commercial uses;

24 (B) To allow religious assembly; or

25 (C) As public lands.

26 (3) Subsection (2) of this section:

27 (a) Does not apply to the development of housing not within an urban growth boundary.

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

30 (c) Applies on property zoned to allow for industrial uses only if the property is:

31 (A) Publicly owned;

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 (B) Adjacent to lands zoned for residential uses or schools; and

2 (C) Not specifically designated for heavy industrial uses.

3 (d) Does not apply on lands where the local government determines that:

4 (A) The development on the property cannot be adequately served by water, sewer, storm water
5 drainage or streets, or will not be adequately served at the time that development on the lot is
6 complete;

7 (B) The property contains a slope of 25 percent or greater;

8 (C) The property is within a 100-year floodplain; or

9 (D) The development of the property is constrained by land use regulations based on statewide
10 land use planning goals relating to:

11 (i) Natural disasters and hazards; or

12 (ii) Natural resources, including air, water, land or natural areas, but not including open spaces
13 or historic resources.

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

17 (a) Any local density bonus for affordable housing; or

18 (b) Without consideration of any local density bonus for affordable housing:

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

21 (B) For property with existing maximum density of 17 or more units per acre and 45 or fewer
22 units per acre, 150 percent of the existing density and 24 additional feet; or

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

25 (5)(a) Subsection (4) of this section does not apply to housing allowed under subsection (2) of this
26 section in areas that are not zoned for residential uses.

27 (b) A local government may reduce the density or height of the density bonus allowed under
28 subsection (4) of this section as necessary to address a health, safety or habitability issue, including
29 fire safety, or to comply with a protective measure adopted pursuant to a statewide land use plan-
30 ning goal. Notwithstanding ORS 197.350, the local government must adopt findings supported by
31 *[substantial]* evidence demonstrating the necessity of this reduction.

32 **SECTION 2.** ORS 197.835 is amended to read:

33 197.835. (1) The Land Use Board of Appeals shall review the land use decision or limited land
34 use decision and prepare a final order affirming, reversing or remanding the land use decision or
35 limited land use decision. The board shall adopt rules defining the circumstances in which it will
36 reverse rather than remand a land use decision or limited land use decision that is not affirmed.

37 (2)(a) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record.

38 (b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte
39 contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities
40 not shown in the record that, if proved, would warrant reversal or remand, the board may take ev-
41 idence and make findings of fact on those allegations. The board shall be bound by any finding of
42 fact of the local government, special district or state agency for which there is *[substantial]* **any**
43 evidence in the *[whole]* record.

44 (3) Issues shall be limited to those raised by any participant before the local hearings body as
45 provided by ORS 197.195 or 197.797, whichever is applicable.

1 (4) A petitioner may raise new issues to the board if:

2 (a) The local government failed to list the applicable criteria for a decision under ORS 197.195
 3 (3)(c) or 197.797 (3)(b), in which case a petitioner may raise new issues based upon applicable crite-
 4 ria that were omitted from the notice. However, the board may refuse to allow new issues to be
 5 raised if it finds that the issue could have been raised before the local government; or

6 (b) The local government made a land use decision or limited land use decision which is different
 7 from the proposal described in the notice to such a degree that the notice of the proposed action
 8 did not reasonably describe the local government's final action.

9 (5) The board shall reverse or remand a land use decision not subject to an acknowledged
 10 comprehensive plan and land use regulations if the decision does not comply with the goals. The
 11 board shall reverse or remand a land use decision or limited land use decision subject to an ac-
 12 knowledged comprehensive plan or land use regulation if the decision does not comply with the
 13 goals and the Land Conservation and Development Commission has issued an order under ORS
 14 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to
 15 apply the goals to the type of decision being challenged.

16 (6) The board shall reverse or remand an amendment to a comprehensive plan if the amendment
 17 is not in compliance with the goals.

18 (7) The board shall reverse or remand an amendment to a land use regulation or the adoption
 19 of a new land use regulation if:

20 (a) The regulation is not in compliance with the comprehensive plan; or

21 (b) The comprehensive plan does not contain specific policies or other provisions which provide
 22 the basis for the regulation, and the regulation is not in compliance with the statewide planning
 23 goals.

24 (8) The board shall reverse or remand a decision involving the application of a plan or land use
 25 regulation provision if the decision is not in compliance with applicable provisions of the compre-
 26 hensive plan or land use regulations.

27 (9) In addition to the review under subsections (1) to (8) of this section, the board shall reverse
 28 or remand the land use decision under review if the board finds:

29 (a) The local government or special district:

30 (A) Exceeded its jurisdiction;

31 (B) Failed to follow the procedures applicable to the matter before it in a manner that preju-
 32 diced the substantial rights of the petitioner;

33 (C) Made a decision not supported by *[substantial]* **any** evidence in the *[whole]* record;

34 (D) Improperly construed the applicable law; or

35 (E) Made an unconstitutional decision; or

36 (b) The state agency made a decision that violated the goals.

37 (10)(a) The board shall reverse a local government decision and order the local government to
 38 grant approval of an application for development denied by the local government if the board finds:

39 (A) Based on the evidence in the record, that the local government decision is outside the range
 40 of discretion allowed the local government under its comprehensive plan and implementing ordi-
 41 nances; or

42 (B) That the local government's action was for the purpose of avoiding the requirements of ORS
 43 215.427 or 227.178.

44 (b) If the board does reverse the decision and orders the local government to grant approval of
 45 the application, the board shall award attorney fees to the applicant and against the local govern-

1 ment.

2 (11)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent
 3 possible consistent with the time requirements of ORS 197.830 (14), the board shall decide all issues
 4 presented to it when reversing or remanding a land use decision described in subsections (2) to (9)
 5 of this section or limited land use decision described in ORS 197.828 and 197.195.

6 (b) Whenever the findings are defective because of failure to recite adequate facts or legal
 7 conclusions or failure to adequately identify the standards or their relation to the facts, but the
 8 parties identify relevant evidence in the record which clearly supports the decision or a part of the
 9 decision, the board shall affirm the decision or the part of the decision supported by the record and
 10 remand the remainder to the local government, with direction indicating appropriate remedial
 11 action.

12 (12) The board may reverse or remand a land use decision under review due to ex parte contacts
 13 or bias resulting from ex parte contacts with a member of the decision-making body, only if the
 14 member of the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever
 15 is applicable.

16 (13) Subsection (12) of this section does not apply to reverse or remand of a land use decision
 17 due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

18 (14) The board shall reverse or remand a land use decision or limited land use decision which
 19 violates a commission order issued under ORS 197.328.

20 (15) In cases in which a local government provides a quasi-judicial land use hearing on a limited
 21 land use decision, the requirements of subsections (12) and (13) of this section apply.

22 (16) The board may decide cases before it by means of memorandum decisions and shall prepare
 23 full opinions only in such cases as it deems proper.

24 **SECTION 3.** ORS 197.540 is amended to read:

25 197.540. (1) In the manner provided in ORS 197.830 to 197.845, the Land Use Board of Appeals
 26 shall review upon petition by a county, city or special district governing body or state agency or a
 27 person or group of persons whose interests are substantially affected, any moratorium on con-
 28 struction or land development or a corrective program alleged to have been adopted in violation of
 29 the provisions of ORS 197.505 to 197.540.

30 (2) If the board determines that a moratorium or corrective program was not adopted in com-
 31 pliance with the provisions of ORS 197.505 to 197.540, the board shall issue an order invalidating
 32 the moratorium.

33 (3) All review proceedings conducted by the Land Use Board of Appeals under subsection (1)
 34 of this section shall be based on the administrative record, if any, that is the subject of the review
 35 proceeding. The board shall not substitute its judgment for a finding solely of fact for which there
 36 is [*substantial*] **any** evidence in the [*whole*] record.

37 (4) Notwithstanding any provision of ORS chapters 195, 196 and 197 to the contrary, the sole
 38 standard of review of a moratorium on construction or land development or a corrective program
 39 is under the provisions of this section, and such a moratorium shall not be reviewed for compliance
 40 with the statewide planning goals adopted under ORS chapters 195, 196 and 197.

41 (5) The review of a moratorium on construction or land development under subsection (1) of this
 42 section shall be the sole authority for review of such a moratorium, and there shall be no authority
 43 for review in the circuit courts of this state.

44 **SECTION 4.** ORS 197.633 is amended to read:

45 197.633. (1) The periodic review process is divided into two phases. Phase one is the evaluation

1 of the existing comprehensive plan, land use regulations and citizen involvement program and, if
 2 necessary, the development of a work program to make needed changes to the comprehensive plan
 3 or land use regulations. Phase two is the completion of work tasks outlined in the work program.

4 (2) The Land Conservation and Development Commission shall adopt rules for conducting peri-
 5 odic review that address:

- 6 (a) Initiating periodic review;
- 7 (b) Citizen participation;
- 8 (c) The participation of state agencies;
- 9 (d) The preparation, review and approval of a work program; and
- 10 (e) The preparation, review and approval of work tasks, including:

- 11 (A) The amendment of an urban growth boundary.
- 12 (B) The designation of, or withdrawal of territory from, urban reserves or rural reserves.

13 (3) The rules adopted by the commission under this section may include, but are not limited to,
 14 provisions concerning standing, requirements to raise issues before local government as a precon-
 15 dition to commission review and other provisions concerning the scope and standard for commission
 16 review to simplify or speed the review. The commission shall confine its review of evidence to the
 17 local record. The commission's standard of review:

18 (a) For evidentiary issues, is whether there is [*substantial*] **any** evidence in the record [*as a*
 19 *whole*] to support the local government's decision.

20 (b) For procedural issues, is whether the local government failed to follow the procedures ap-
 21 plicable to the matter before the local government in a manner that prejudiced the substantial rights
 22 of a party to the proceeding.

23 (c) For issues concerning compliance with applicable laws, is whether the local government's
 24 decision on the whole complies with applicable statutes, statewide land use planning goals, admin-
 25 istrative rules, the comprehensive plan, the regional framework plan, the functional plan and land
 26 use regulations. The commission shall defer to a local government's interpretation of the compre-
 27 hensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this
 28 paragraph, "complies" has the meaning given the term "compliance" in the phrase "compliance with
 29 the goals" in ORS 197.627.

30 (4) A decision by the Director of the Department of Land Conservation and Development to
 31 approve a work program, that no work program is necessary or that no further work is necessary
 32 is final and not subject to appeal.

33 (5) The director:

34 (a) Shall take action on a work task not later than 120 days after the local government submits
 35 the work task for review unless the local government waives the 120-day deadline or the commission
 36 grants the director an extension. If the director does not take action within the time period required
 37 by this subsection, the work task is deemed approved. The department shall provide a letter to the
 38 local government certifying that the work task is approved unless an interested party has filed a
 39 timely objection to the work task consistent with administrative rules for conducting periodic re-
 40 view.

41 (b) May approve or remand a work task or refer the work task to the commission for a decision.
 42 A decision by the director to approve or remand a work task may be appealed to the commission.

43 (6) Except as provided in this subsection, the commission shall take action on the appeal or re-
 44 ferral of a work task within 90 days of the appeal or referral. Action by the commission in response
 45 to an appeal from a decision of the director or a referral is a final order subject to judicial review

1 in the manner provided in ORS 197.650 and 197.651. The commission may extend the time for taking
 2 action on the appeal or referral if the commission finds that:

3 (a) The appeal or referral is appropriate for mediation;

4 (b) The appeal or referral raises new or complex issues of fact or law that make it unreasonable
 5 for the commission to give adequate consideration to the issues within the 90-day limit; or

6 (c) The parties to the appeal and the commission agree to an extension, not to exceed an addi-
 7 tional 90 days.

8 (7) The commission and a local government shall attempt to complete periodic review within
 9 three years after approval of a work program. To promote the timely completion of periodic review,
 10 the commission shall establish a system of incentives to encourage local government compliance
 11 with timelines in periodic review work programs.

12 **SECTION 5.** ORS 197.732 is amended to read:

13 197.732. (1) As used in this section:

14 (a) “Compatible” is not intended as an absolute term meaning no interference or adverse impacts
 15 of any type with adjacent uses.

16 (b) “Exception” means a comprehensive plan provision, including an amendment to an acknowl-
 17 edged comprehensive plan, that:

18 (A) Is applicable to specific properties or situations and does not establish a planning or zoning
 19 policy of general applicability;

20 (B) Does not comply with some or all goal requirements applicable to the subject properties or
 21 situations; and

22 (C) Complies with standards under subsection (2) of this section.

23 (2) A local government may adopt an exception to a goal if:

24 (a) The land subject to the exception is physically developed to the extent that it is no longer
 25 available for uses allowed by the applicable goal;

26 (b) The land subject to the exception is irrevocably committed as described by Land Conserva-
 27 tion and Development Commission rule to uses not allowed by the applicable goal because existing
 28 adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable;
 29 or

30 (c) The following standards are met:

31 (A) Reasons justify why the state policy embodied in the applicable goals should not apply;

32 (B) Areas that do not require a new exception cannot reasonably accommodate the use;

33 (C) The long term environmental, economic, social and energy consequences resulting from the
 34 use at the proposed site with measures designed to reduce adverse impacts are not significantly
 35 more adverse than would typically result from the same proposal being located in areas requiring
 36 a goal exception other than the proposed site; and

37 (D) The proposed uses are compatible with other adjacent uses or will be so rendered through
 38 measures designed to reduce adverse impacts.

39 (3) The commission shall adopt rules establishing:

40 (a) That an exception may be adopted to allow a use authorized by a statewide planning goal
 41 that cannot comply with the approval standards for that type of use;

42 (b) Under what circumstances particular reasons may or may not be used to justify an exception
 43 under subsection (2)(c)(A) of this section; and

44 (c) Which uses allowed by the applicable goal must be found impracticable under subsection (2)
 45 of this section.

1 (4) A local government approving or denying a proposed exception shall set forth findings of fact
 2 and a statement of reasons that demonstrate that the standards of subsection (2) of this section have
 3 or have not been met.

4 (5) Each notice of a public hearing on a proposed exception shall specifically note that a goal
 5 exception is proposed and shall summarize the issues in an understandable manner.

6 (6) Upon review of a decision approving or denying an exception:

7 (a) The Land Use Board of Appeals or the commission [*shall be*] **is** bound by any finding of fact
 8 for which there is [*substantial*] **any** evidence in the record of the local government proceedings re-
 9 sulting in approval or denial of the exception;

10 (b) The board upon petition, or the commission, shall determine whether the local government's
 11 findings and reasons demonstrate that the standards of subsection (2) of this section have or have
 12 not been met; and

13 (c) The board or commission shall adopt a clear statement of reasons that sets forth the basis
 14 for the determination that the standards of subsection (2) of this section have or have not been met.

15 (7) The commission shall by rule establish the standards required to justify an exception to the
 16 definition of "needed housing" authorized by ORS 197.303.

17 (8) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement
 18 Part) on or before August 9, 1983, continues to be valid and is not subject to this section.

19 **SECTION 6.** ORS 197.828 is amended to read:

20 197.828. (1) The Land Use Board of Appeals shall either reverse, remand or affirm a limited land
 21 use decision on review.

22 (2) The board shall reverse or remand a limited land use decision if:

23 (a) The decision is not supported by [*substantial*] **any** evidence in the record. The existence of
 24 evidence in the record supporting a different decision shall not be grounds for reversal or remand
 25 if there is evidence in the record to support the final decision;

26 (b) The decision does not comply with applicable provisions of the land use regulations;

27 (c) The decision is:

28 (A) Outside the scope of authority of the decision maker; or

29 (B) Unconstitutional; or

30 (d) The local government committed a procedural error which prejudiced the substantial rights
 31 of the petitioner.

32 **SECTION 7.** ORS 215.416 is amended to read:

33 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county,
 34 an owner of land may apply in writing to such persons as the governing body designates, for a
 35 permit, in the manner prescribed by the governing body. The governing body shall establish fees
 36 charged for processing permits at an amount no more than the actual or average cost of providing
 37 that service.

38 (2) The governing body shall establish a consolidated procedure by which an applicant may ap-
 39 ply at one time for all permits or zone changes needed for a development project. The consolidated
 40 procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated proce-
 41 dure shall be available for use at the option of the applicant no later than the time of the first pe-
 42 riodic review of the comprehensive plan and land use regulations.

43 (3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least
 44 one public hearing on the application.

45 (4)(a) A county may not approve an application if the proposed use of land is found to be in

1 conflict with the comprehensive plan of the county and other applicable land use regulation or or-
 2 dinance provisions. The approval may include such conditions as are authorized by statute or county
 3 legislation.

4 (b)(A) A county may not deny an application for a housing development located within the urban
 5 growth boundary if the development complies with clear and objective standards, including but not
 6 limited to clear and objective design standards contained in the county comprehensive plan or land
 7 use regulations.

8 (B) This paragraph does not apply to:

9 (i) Applications or permits for residential development in areas described in ORS 197.307 (5); or

10 (ii) Applications or permits reviewed under an alternative approval process adopted under ORS
 11 197.307 (6).

12 (c) A county may not condition an application for a housing development on a reduction in
 13 density if:

14 (A) The density applied for is at or below the authorized density level under the local land use
 15 regulations; and

16 (B) At least 75 percent of the floor area applied for is reserved for housing.

17 (d) A county may not condition an application for a housing development on a reduction in
 18 height if:

19 (A) The height applied for is at or below the authorized height level under the local land use
 20 regulations;

21 (B) At least 75 percent of the floor area applied for is reserved for housing; and

22 (C) Reducing the height has the effect of reducing the authorized density level under local land
 23 use regulations.

24 (e) Notwithstanding paragraphs (c) and (d) of this subsection, a county may condition an appli-
 25 cation for a housing development on a reduction in density or height only if the reduction is nec-
 26 essary to resolve a health, safety or habitability issue or to comply with a protective measure
 27 adopted pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the county
 28 must adopt findings supported by [*substantial*] evidence demonstrating the necessity of the reduction.

29 (f) As used in this subsection:

30 (A) “Authorized density level” means the maximum number of lots or dwelling units or the
 31 maximum floor area ratio that is permitted under local land use regulations.

32 (B) “Authorized height level” means the maximum height of a structure that is permitted under
 33 local land use regulations.

34 (C) “Habitability” means being in compliance with the applicable provisions of the state building
 35 code under ORS chapter 455 and the rules adopted thereunder.

36 (5) Hearings under this section shall be held only after notice to the applicant and also notice
 37 to other persons as otherwise provided by law and shall otherwise be conducted in conformance
 38 with the provisions of ORS 197.797.

39 (6) Notice of a public hearing on an application submitted under this section shall be provided
 40 to the owner of an airport defined by the Oregon Department of Aviation as a “public use airport”
 41 if:

42 (a) The name and address of the airport owner has been provided by the Oregon Department
 43 of Aviation to the county planning authority; and

44 (b) The property subject to the land use hearing is:

45 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon

1 Department of Aviation to be a “visual airport”; or

2 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon
 3 Department of Aviation to be an “instrument airport.”

4 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing
 5 need not be provided as set forth in subsection (6) of this section if the zoning permit would only
 6 allow a structure less than 35 feet in height and the property is located outside the runway “ap-
 7 proach surface” as defined by the Oregon Department of Aviation.

8 (8)(a) Approval or denial of a permit application shall be based on standards and criteria which
 9 shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county
 10 and which shall relate approval or denial of a permit application to the zoning ordinance and com-
 11 prehensive plan for the area in which the proposed use of land would occur and to the zoning or-
 12 dinance and comprehensive plan for the county as a whole.

13 (b) When an ordinance establishing approval standards is required under ORS 197.307 to provide
 14 only clear and objective standards, the standards must be clear and objective on the face of the
 15 ordinance.

16 (9) Approval or denial of a permit or expedited land division shall be based upon and accompa-
 17 nied by a brief statement that explains the criteria and standards considered relevant to the deci-
 18 sion, states the facts relied upon in rendering the decision and explains the justification for the
 19 decision based on the criteria, standards and facts set forth.

20 (10) Written notice of the approval or denial shall be given to all parties to the proceeding.

21 (11)(a)(A) The hearings officer or such other person as the governing body designates may ap-
 22 prove or deny an application for a permit without a hearing if the hearings officer or other desig-
 23 nated person gives notice of the decision and provides an opportunity for any person who is
 24 adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection,
 25 to file an appeal.

26 (B) Written notice of the decision shall be mailed to those persons described in paragraph (c)
 27 of this subsection.

28 (C) Notice under this subsection shall comply with ORS 197.797 (3)(a), (c), (g) and (h) and shall
 29 describe the nature of the decision. In addition, the notice shall state that any person who is ad-
 30 versely affected or aggrieved or who is entitled to written notice under paragraph (c) of this sub-
 31 section may appeal the decision by filing a written appeal in the manner and within the time period
 32 provided in the county’s land use regulations. A county may not establish an appeal period that is
 33 less than 12 days from the date the written notice of decision required by this subsection was
 34 mailed. The notice shall state that the decision will not become final until the period for filing a
 35 local appeal has expired. The notice also shall state that a person who is mailed written notice of
 36 the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS
 37 197.830.

38 (D) An appeal from a hearings officer’s decision made without hearing under this subsection
 39 shall be to the planning commission or governing body of the county. An appeal from such other
 40 person as the governing body designates shall be to a hearings officer, the planning commission or
 41 the governing body. In either case, the appeal shall be to a de novo hearing.

42 (E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial
 43 evidentiary hearing required under ORS 197.797 as the basis for an appeal to the Land Use Board
 44 of Appeals. At the de novo hearing:

45 (i) The applicant and other parties shall have the same opportunity to present testimony, argu-

1 ments and evidence as they would have had in a hearing under subsection (3) of this section before
 2 the decision;

3 (ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised
 4 in a notice of appeal; and

5 (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are
 6 accepted at the hearing.

7 (b) If a local government provides only a notice of the opportunity to request a hearing, the
 8 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing
 9 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,
 10 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the
 11 initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made
 12 by neighborhood or community organizations recognized by the governing body and whose bounda-
 13 ries include the site.

14 (c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the ap-
 15 plicant and to the owners of record of property on the most recent property tax assessment roll
 16 where such property is located:

17 (i) Within 100 feet of the property that is the subject of the notice when the subject property
 18 is wholly or in part within an urban growth boundary;

19 (ii) Within 250 feet of the property that is the subject of the notice when the subject property
 20 is outside an urban growth boundary and not within a farm or forest zone; or

21 (iii) Within 750 feet of the property that is the subject of the notice when the subject property
 22 is within a farm or forest zone.

23 (B) Notice shall also be provided to any neighborhood or community organization recognized by
 24 the governing body and whose boundaries include the site.

25 (C) At the discretion of the applicant, the local government also shall provide notice to the
 26 Department of Land Conservation and Development.

27 (12) A decision described in ORS 215.402 (4)(b) shall:

28 (a) Be entered in a registry available to the public setting forth:

29 (A) The street address or other easily understood geographic reference to the subject property;

30 (B) The date of the decision; and

31 (C) A description of the decision made.

32 (b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a
 33 limited land use decision.

34 (c) Be subject to the appeal period described in ORS 197.830 (5)(b).

35 (13) At the option of the applicant, the local government shall provide notice of the decision
 36 described in ORS 215.402 (4)(b) in the manner required by ORS 197.797 (2), in which case an appeal
 37 to the board shall be filed within 21 days of the decision. The notice shall include an explanation
 38 of appeal rights.

39 (14) Notwithstanding the requirements of this section, a limited land use decision shall be sub-
 40 ject to the requirements set forth in ORS 197.195 and 197.828.

41 **SECTION 8.** ORS 227.175 is amended to read:

42 227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the
 43 hearings officer, or such other person as the city council designates, for a permit or zone change,
 44 upon such forms and in such a manner as the city council prescribes. The governing body shall es-
 45 tablish fees charged for processing permits at an amount no more than the actual or average cost

1 of providing that service.

2 (2) The governing body of the city shall establish a consolidated procedure by which an appli-
3 cant may apply at one time for all permits or zone changes needed for a development project. The
4 consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consol-
5 idated procedure shall be available for use at the option of the applicant no later than the time of
6 the first periodic review of the comprehensive plan and land use regulations.

7 (3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least
8 one public hearing on the application.

9 (4)(a) A city may not approve an application unless the proposed development of land would be
10 in compliance with the comprehensive plan for the city and other applicable land use regulation or
11 ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215
12 or any city legislation.

13 (b)(A) A city may not deny an application for a housing development located within the urban
14 growth boundary if the development complies with clear and objective standards, including clear and
15 objective design standards contained in the city comprehensive plan or land use regulations.

16 (B) This paragraph does not apply to:

17 (i) Applications or permits for residential development in areas described in ORS 197.307 (5); or

18 (ii) Applications or permits reviewed under an alternative approval process adopted under ORS
19 197.307 (6).

20 (c) A city may not condition an application for a housing development on a reduction in density
21 if:

22 (A) The density applied for is at or below the authorized density level under the local land use
23 regulations; and

24 (B) At least 75 percent of the floor area applied for is reserved for housing.

25 (d) A city may not condition an application for a housing development on a reduction in height
26 if:

27 (A) The height applied for is at or below the authorized height level under the local land use
28 regulations;

29 (B) At least 75 percent of the floor area applied for is reserved for housing; and

30 (C) Reducing the height has the effect of reducing the authorized density level under local land
31 use regulations.

32 (e) Notwithstanding paragraphs (c) and (d) of this subsection, a city may condition an applica-
33 tion for a housing development on a reduction in density or height only if the reduction is necessary
34 to resolve a health, safety or habitability issue or to comply with a protective measure adopted
35 pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the city must adopt
36 findings supported by [*substantial*] evidence demonstrating the necessity of the reduction.

37 (f) As used in this subsection:

38 (A) "Authorized density level" means the maximum number of lots or dwelling units or the
39 maximum floor area ratio that is permitted under local land use regulations.

40 (B) "Authorized height level" means the maximum height of a structure that is permitted under
41 local land use regulations.

42 (C) "Habitability" means being in compliance with the applicable provisions of the state building
43 code under ORS chapter 455 and the rules adopted thereunder.

44 (5) Hearings under this section may be held only after notice to the applicant and other inter-
45 ested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.797.

1 (6) Notice of a public hearing on a zone use application shall be provided to the owner of an
 2 airport, defined by the Oregon Department of Aviation as a “public use airport” if:

3 (a) The name and address of the airport owner has been provided by the Oregon Department
 4 of Aviation to the city planning authority; and

5 (b) The property subject to the zone use hearing is:

6 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon
 7 Department of Aviation to be a “visual airport”; or

8 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon
 9 Department of Aviation to be an “instrument airport.”

10 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing
 11 need only be provided as set forth in subsection (6) of this section if the permit or zone change
 12 would only allow a structure less than 35 feet in height and the property is located outside of the
 13 runway “approach surface” as defined by the Oregon Department of Aviation.

14 (8) If an application would change the zone of property that includes all or part of a mobile
 15 home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give
 16 written notice by first class mail to each existing mailing address for tenants of the mobile home
 17 or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first
 18 hearing on the application. The governing body may require an applicant for such a zone change to
 19 pay the costs of such notice.

20 (9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not
 21 invalidate any zone change.

22 (10)(a)(A) The hearings officer or such other person as the governing body designates may ap-
 23 prove or deny an application for a permit without a hearing if the hearings officer or other desig-
 24 nated person gives notice of the decision and provides an opportunity for any person who is
 25 adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection,
 26 to file an appeal.

27 (B) Written notice of the decision shall be mailed to those persons described in paragraph (c)
 28 of this subsection.

29 (C) Notice under this subsection shall comply with ORS 197.797 (3)(a), (c), (g) and (h) and shall
 30 describe the nature of the decision. In addition, the notice shall state that any person who is ad-
 31 versely affected or aggrieved or who is entitled to written notice under paragraph (c) of this sub-
 32 section may appeal the decision by filing a written appeal in the manner and within the time period
 33 provided in the city’s land use regulations. A city may not establish an appeal period that is less
 34 than 12 days from the date the written notice of decision required by this subsection was mailed.
 35 The notice shall state that the decision will not become final until the period for filing a local appeal
 36 has expired. The notice also shall state that a person who is mailed written notice of the decision
 37 cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

38 (D) An appeal from a hearings officer’s decision made without hearing under this subsection
 39 shall be to the planning commission or governing body of the city. An appeal from such other person
 40 as the governing body designates shall be to a hearings officer, the planning commission or the
 41 governing body. In either case, the appeal shall be to a de novo hearing.

42 (E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial
 43 evidentiary hearing required under ORS 197.797 as the basis for an appeal to the Land Use Board
 44 of Appeals. At the de novo hearing:

45 (i) The applicant and other parties shall have the same opportunity to present testimony, argu-

1 ments and evidence as they would have had in a hearing under subsection (3) of this section before
 2 the decision;

3 (ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised
 4 in a notice of appeal; and

5 (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are
 6 accepted at the hearing.

7 (b) If a local government provides only a notice of the opportunity to request a hearing, the
 8 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing
 9 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,
 10 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the
 11 initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made
 12 by neighborhood or community organizations recognized by the governing body and whose bounda-
 13 ries include the site.

14 (c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the ap-
 15 plicant and to the owners of record of property on the most recent property tax assessment roll
 16 where such property is located:

17 (i) Within 100 feet of the property that is the subject of the notice when the subject property
 18 is wholly or in part within an urban growth boundary;

19 (ii) Within 250 feet of the property that is the subject of the notice when the subject property
 20 is outside an urban growth boundary and not within a farm or forest zone; or

21 (iii) Within 750 feet of the property that is the subject of the notice when the subject property
 22 is within a farm or forest zone.

23 (B) Notice shall also be provided to any neighborhood or community organization recognized by
 24 the governing body and whose boundaries include the site.

25 (C) At the discretion of the applicant, the local government also shall provide notice to the
 26 Department of Land Conservation and Development.

27 (11) A decision described in ORS 227.160 (2)(b) shall:

28 (a) Be entered in a registry available to the public setting forth:

29 (A) The street address or other easily understood geographic reference to the subject property;

30 (B) The date of the decision; and

31 (C) A description of the decision made.

32 (b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a
 33 limited land use decision.

34 (c) Be subject to the appeal period described in ORS 197.830 (5)(b).

35 (12) At the option of the applicant, the local government shall provide notice of the decision
 36 described in ORS 227.160 (2)(b) in the manner required by ORS 197.797 (2), in which case an appeal
 37 to the board shall be filed within 21 days of the decision. The notice shall include an explanation
 38 of appeal rights.

39 (13) Notwithstanding other requirements of this section, limited land use decisions shall be
 40 subject to the requirements set forth in ORS 197.195 and 197.828.