

Enrolled Senate Bill 1564

Sponsored by Senators ANDERSON, KNOPP, Representative BREESE-IVERSON; Senator SMITH DB, Representative WRIGHT (Presession filed.)

CHAPTER

AN ACT

Relating to housing; creating new provisions; amending ORS 197A.400 and 227.175; and declaring an emergency.

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

SECTION 1. Section 2 of this 2024 Act is added to and made a part of ORS chapter 197A.

SECTION 2. (1)(a) On or before January 1, 2026, the Land Conservation and Development Commission shall adopt three model ordinances providing clear and objective standards for the development of various housing types within an urban growth boundary, including single-family detached housing, middle housing, as defined in ORS 197A.420, accessory dwelling units, as defined in ORS 197A.425, and multifamily housing, that may be readily adopted by a local government in compliance with the requirements of ORS 197.610.

(b) Among the three model ordinances adopted under this section:

(A) One must be targeted toward cities with a population of less than 2,500;

(B) One must be targeted toward cities with a population of 2,500 or greater and less than 25,000; and

(C) One must be targeted toward cities with a population of 25,000 or greater.

(c) In adopting model ordinances under this section, the commission:

(A) May consider geographic location and other regional factors; and

(B) May allow a city to adopt, in whole or in part, a model ordinance targeted toward a larger city.

(2) A model ordinance adopted under this section is presumed to have clear and objective standards.

(3) In adopting model ordinances under this section, the commission shall prioritize the principles and considerations under section 9 (2), chapter 13, Oregon Laws 2023.

SECTION 3. ORS 197A.400 is amended to read:

197A.400. (1) Except as provided in subsection (3) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing, on land within an urban growth boundary. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(c) May be contained in a comprehensive plan, land use regulation or an ordinance relating to housing adopted by a city that adopts, including by reference, a model ordinance adopted by the Land Conservation and Development Commission that comports with any qualifications, conditions or applicability of the model ordinance.

(2) The provisions of subsection (1) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or greater.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(3) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (1) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (1) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (1) of this section.

(4) Subject to subsection (1) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

SECTION 4. ORS 197A.400, as amended by section 2, chapter 533, Oregon Laws 2023, is amended to read:

197A.400. (1) Except as provided in subsection (3) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing, on land within an urban growth boundary, unincorporated communities designated in a county's acknowledged comprehensive plan after December 5, 1994, nonresource lands and areas zoned for rural residential use as defined in ORS 215.501. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(c) May be contained in a comprehensive plan, land use regulation or an ordinance relating to housing adopted by a city that adopts, including by reference, a model ordinance adopted by the Land Conservation and Development Commission that comports with any qualifications, conditions or applicability of the model ordinance.

(2) The provisions of subsection (1) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or greater.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(3) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (1) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (1) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (1) of this section.

(4) Subject to subsection (1) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

SECTION 5. ORS 227.175 is amended to read:

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

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

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

(4)(a) A city may not approve an application unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions, **including an ordinance described in ORS 197A.400 (1)(c)**. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

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

(B) This paragraph does not apply to:

(i) Applications or permits for residential development in areas described in ORS 197A.400 (2); or

(ii) Applications or permits reviewed under an alternative approval process adopted under ORS 197A.400 (3).

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

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

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

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

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

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

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

(e) Notwithstanding paragraphs (c) and (d) of this subsection, a city may condition an application for a housing development on a reduction in density or height only if the reduction is necessary to resolve a health, safety or habitability issue or to comply with a protective measure adopted

pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the city must adopt findings supported by substantial evidence demonstrating the necessity of the reduction.

(f) As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence [shall] **may** not be limited to issues raised in a notice of appeal; and

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

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

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

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

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

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

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

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

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

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

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

(B) The date of the decision; and

(C) A description of the decision made.

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

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

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

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

SECTION 6. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Land Conservation and Development by section 1 (1), chapter 455, Oregon Laws 2023, for the biennium ending June 30, 2025, for the planning program, is increased by \$550,000 for the purpose of adopting model ordinances.

SECTION 7. This 2024 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2024 Act takes effect on its passage.

Passed by Senate March 6, 2024

.....
Obadiah Rutledge, Secretary of Senate

.....
Rob Wagner, President of Senate

Passed by House March 7, 2024

.....
Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2024

Approved:

.....M,....., 2024

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2024

.....
LaVonne Griffin-Valade, Secretary of State