

B-Engrossed Senate Bill 8

Ordered by the House May 26
Including Senate Amendments dated April 15 and House Amendments
dated May 26

Sponsored by Senator COURTNEY; Senator MANNING JR, Representatives FAHEY, ZIKA

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.

Requires local governments to allow development of certain affordable housing on lands not zoned for residential uses. Allows establishment of certain affordable housing at increased density.

Expands availability of attorney fees for applicants developing affordable housing and local governments prevailing at Land Use Board of Appeals or on appeal from board.

A BILL FOR AN ACT

1
2 Relating to land use planning for housing; creating new provisions; amending ORS 197.830, 197.850,
3 215.441 and 227.500; and repealing ORS 197.779.

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

5 **SECTION 1. (1) As used in this section, "affordable housing" means residential property:**

6 **(a) In which:**

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

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

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

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

17 **(a) The housing is owned by:**

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

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

20 **(b) The property is zoned:**

21 **(A) For commercial uses;**

22 **(B) To allow religious assembly; or**

23 **(C) As public lands.**

24 **(3) Subsection (2) of this section:**

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

26 **(b) Does not trigger any requirement that a local government consider or update an**

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 analysis as required by a statewide planning goal relating to economic development.

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

3 (A) Publicly owned;

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

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

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

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

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

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

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

14 (i) Natural disasters and hazards; or

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

17 (4) A local government shall approve an application at an authorized density level and
18 authorized height level, as defined in ORS 227.175 (4), for the development of affordable
19 housing, at the greater of:

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

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

22 (A) For property with existing maximum density of 16 or fewer units per acre, 200 per-
23 cent of the existing density and 12 additional feet;

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

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

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

30 (b) A local government may reduce the density or height of the density bonus allowed
31 under subsection (4) of this section as necessary to address a health, safety or habitability
32 issue, including fire safety, or to comply with a protective measure adopted pursuant to a
33 statewide land use planning goal. Notwithstanding ORS 197.350, the local government must
34 adopt findings supported by substantial evidence demonstrating the necessity of this re-
35 duction.

36 **SECTION 1a.** Section 1 of this 2021 Act is added to and made a part of ORS 197.286 to
37 197.314.

38 **SECTION 2.** (1) The Land Use Board of Appeals shall award attorney fees to an applicant
39 whose application is only for the development of affordable housing, as defined in section 1
40 of this 2021 Act, or publicly supported housing, as defined in ORS 456.250, if the board affirms
41 a quasi-judicial land use decision approving the application or reverses a quasi-judicial land
42 use decision denying the application.

43 (2) A party who was awarded attorney fees under this section or ORS 197.850 shall repay
44 the fees plus any interest from the time of the judgment if the property upon which the fees
45 are based is developed for a use other than affordable housing.

1 **(3) As used in this section:**

2 **(a) “Applicant” includes:**

3 **(A) An applicant with a funding reservation agreement with a public funder for the pur-**
4 **pose of developing publicly supported housing;**

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

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

7 **(D) A religious nonprofit corporation;**

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

10 **(F) A local government that approved the application of an applicant described in this**
11 **paragraph.**

12 **(b) “Attorney fees” includes prelitigation legal expenses, including preparing the applica-**
13 **tion and supporting the application in local land use hearings or proceedings.**

14 **SECTION 2a.** **Section 2 of this 2021 Act is added to and made a part of ORS 197.830 to**
15 **197.845.**

16 **SECTION 3.** **ORS 197.830 is amended to read:**

17 197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to
18 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Ap-
19 peals.

20 (2) Except as provided in ORS 197.620, a person may petition the board for review of a land use
21 decision or limited land use decision if the person:

22 (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;
23 and

24 (b) Appeared before the local government, special district or state agency orally or in writing.

25 (3) If a local government makes a land use decision without providing a hearing, except as
26 provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision
27 that is different from the proposal described in the notice of hearing to such a degree that the notice
28 of the proposed action did not reasonably describe the local government’s final actions, a person
29 adversely affected by the decision may appeal the decision to the board under this section:

30 (a) Within 21 days of actual notice where notice is required; or

31 (b) Within 21 days of the date a person knew or should have known of the decision where no
32 notice is required.

33 (4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416
34 (11) or 227.175 (10):

35 (a) A person who was not provided notice of the decision as required under ORS 215.416 (11)(c)
36 or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving
37 actual notice of the decision.

38 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who
39 is adversely affected or aggrieved by the decision may appeal the decision to the board under this
40 section within 21 days after the expiration of the period for filing a local appeal of the decision es-
41 tablished by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

42 (c) A person who receives notice of a decision made without a hearing under ORS 215.416 (11)
43 or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving
44 actual notice of the nature of the decision, if the notice of the decision did not reasonably describe
45 the nature of the decision.

1 (d) Except as provided in paragraph (c) of this subsection, a person who receives notice of a
2 decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision
3 to the board under this section.

4 (5) If a local government makes a limited land use decision which is different from the proposal
5 described in the notice to such a degree that the notice of the proposed action did not reasonably
6 describe the local government's final actions, a person adversely affected by the decision may appeal
7 the decision to the board under this section:

8 (a) Within 21 days of actual notice where notice is required; or

9 (b) Within 21 days of the date a person knew or should have known of the decision where no
10 notice is required.

11 (6) The appeal periods described in subsections (3), (4) and (5) of this section:

12 (a) May not exceed three years after the date of the decision, except as provided in paragraph
13 (b) of this subsection.

14 (b) May not exceed 10 years after the date of the decision if notice of a hearing or an adminis-
15 trative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided.

16 (7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under
17 subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene
18 in and be made a party to the review proceeding by filing a motion to intervene and by paying a
19 filing fee of \$100.

20 (b) Persons who may intervene in and be made a party to the review proceedings, as set forth
21 in subsection (1) of this section, are:

22 (A) The applicant who initiated the action before the local government, special district or state
23 agency; or

24 (B) Persons who appeared before the local government, special district or state agency, orally
25 or in writing.

26 (c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this
27 subsection shall result in denial of a motion to intervene.

28 (8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party
29 to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on
30 the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

31 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed
32 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of
33 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to
34 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is
35 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a
36 statement identifying when, how and to whom notice was provided under ORS 197.615 does not
37 render the notice defective. Copies of the notice of intent to appeal shall be served upon the local
38 government, special district or state agency and the applicant of record, if any, in the local gov-
39 ernment, special district or state agency proceeding. The notice shall be served and filed in the form
40 and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a
41 deposit for costs to be established by the board. If a petition for review is not filed with the board
42 as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded
43 to the local government, special district or state agency as cost of preparation of the record.

44 (10)(a) Within 21 days after service of the notice of intent to appeal, the local government, spe-
45 cial district or state agency shall transmit to the board the original or a certified copy of the entire

1 record of the proceeding under review. By stipulation of all parties to the review proceeding the
 2 record may be shortened. The board may require or permit subsequent corrections to the record;
 3 however, the board shall issue an order on a motion objecting to the record within 60 days of re-
 4 ceiving the motion. If the board denies a petitioner's objection to the record, the board may establish
 5 a new deadline for the petition for review to be filed that may not be less than 14 days from the
 6 later of the original deadline for the brief or the date of denial of the petitioner's record objection.

7 (b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice
 8 to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860.
 9 Any person moving to intervene shall be provided such notice within seven days after a motion to
 10 intervene is filed. The notice required by this paragraph shall be accompanied by a statement that
 11 mediation information or assistance may be obtained from the Department of Land Conservation and
 12 Development.

13 (11) A petition for review of the land use decision or limited land use decision and supporting
 14 brief shall be filed with the board as required by the board under subsection (13) of this section.

15 (12) The petition shall include a copy of the decision sought to be reviewed and shall state:

16 (a) The facts that establish that the petitioner has standing.

17 (b) The date of the decision.

18 (c) The issues the petitioner seeks to have reviewed.

19 (13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for
 20 oral argument.

21 (b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing
 22 the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the
 23 respondent's brief, the local government or state agency may withdraw its decision for purposes of
 24 reconsideration. If a local government or state agency withdraws an order for purposes of recon-
 25 sideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision.
 26 If the petitioner is dissatisfied with the local government or agency action after withdrawal for
 27 purposes of reconsideration, the petitioner may refile the notice of intent and the review shall pro-
 28 ceed upon the revised order. An amended notice of intent is not required if the local government
 29 or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

30 (14) The board shall issue a final order within 77 days after the date of transmittal of the record.
 31 If the order is not issued within 77 days the applicant may apply in Marion County or the circuit
 32 court of the county where the application was filed for a writ of mandamus to compel the board to
 33 issue a final order.

34 (15) Upon entry of its final order, the board:

35 (a) May, in its discretion, award costs to the prevailing party including the cost of preparation
 36 of the record if the prevailing party is the local government, special district or state agency whose
 37 decision is under review. The board shall apply the deposit required by subsection (9) of this section
 38 to any costs charged against the petitioner.

39 (b) Shall award reasonable attorney fees and expenses to the prevailing party against any other
 40 party who the board finds presented a position or filed any motion without probable cause to believe
 41 the position or motion was well-founded in law or on factually supported information.

42 *[(c) Upon affirming a quasi-judicial land use decision approving an application that is only for the*
 43 *development of publicly supported housing, as defined in ORS 456.250, shall award reasonable attorney*
 44 *fees and expenses to a prevailing respondent that is the applicant or local government.]*

45 **(c) Shall award costs and attorney fees to a party as provided in section 2 of this 2021**

1 **Act.**

2 (16) Orders issued under this section may be enforced in appropriate judicial proceedings.

3 (17)(a) The board shall provide for the publication of its orders that are of general public in-
4 terest in the form it deems best adapted for public convenience. The publications shall constitute
5 the official reports of the board.

6 (b) Any moneys collected or received from sales by the board shall be paid into the Board
7 Publications Account established by ORS 197.832.

8 (18) Except for any sums collected for publication of board opinions, all fees collected by the
9 board under this section that are not awarded as costs shall be paid over to the State Treasurer to
10 be credited to the General Fund.

11 (19) The board shall track and report on its website:

12 (a) The number of reviews commenced, as described in subsection (1) of this section, the number
13 of reviews commenced for which a petition is filed under subsection (2) of this section and, in re-
14 lation to each of those numbers, the rate at which the reviews result in a decision of the board to
15 uphold, reverse or remand the land use decision or limited land use decision. The board shall track
16 and report reviews under this paragraph in categories established by the board.

17 (b) A list of petitioners, the number of reviews commenced and the rate at which the petitioner's
18 reviews have resulted in decisions of the board to uphold, reverse or remand the land use decision
19 or limited land use decision.

20 (c) A list of respondents, the number of reviews involving each respondent and the rate at which
21 reviews involving the respondent have resulted in decisions of the board to uphold, reverse or re-
22 mand the land use decision or limited land use decision. Additionally, when a respondent is the local
23 government that made the land use decision or limited land use decision, the board shall track
24 whether the local government appears before the board.

25 (d) A list of reviews, and a brief summary of the circumstances in each review, under which the
26 board exercises its discretion to require a losing party to pay the attorney fees of the prevailing
27 party.

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

29 197.850. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830
30 to 197.845 may seek judicial review of a final order issued in those proceedings.

31 (2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial review of orders issued
32 under ORS 197.830 to 197.845 is solely as provided in this section.

33 (3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred
34 upon the Court of Appeals. Proceedings for judicial review are instituted by filing a petition in the
35 Court of Appeals. The petition must be filed within 21 days following the date the board delivered
36 or mailed the order upon which the petition is based.

37 (b) Filing of the petition, as set forth in paragraph (a) of this subsection, and service of a peti-
38 tion on all persons identified in the petition as adverse parties of record in the board proceeding is
39 jurisdictional and may not be waived or extended.

40 (4) The petition must state the nature of the order the petitioner desires reviewed. Copies of the
41 petition must be served by first class, registered or certified mail on the board and all other parties
42 of record in the board proceeding.

43 (5) Within seven days after service of the petition, the board shall transmit to the court the
44 original or a certified copy of the entire record of the proceeding under review, but, by stipulation
45 of all parties to the review proceeding, the record may be shortened. The court may tax a party that

1 unreasonably refuses to stipulate to limit the record for the additional costs. The court may require
2 or permit subsequent corrections or additions to the record when deemed desirable. Except as spe-
3 cifically provided in this subsection, the court may not tax the cost of the record to the petitioner
4 or any intervening party. However, the court may tax such costs and the cost of transcription of
5 record to a party filing a frivolous petition for judicial review.

6 (6) Petitions and briefs must be filed within time periods and in a manner established by the
7 Court of Appeals by rule.

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

9 (b) The court may hear oral argument more than 49 days from the date of transmittal of the
10 record provided the court determines that the ends of justice served by holding oral argument on
11 a later day outweigh the best interests of the public and the parties. The court may not hold oral
12 argument more than 49 days from the date of transmittal of the record because of general congestion
13 of the court calendar or lack of diligent preparation or attention to the case by any member of the
14 court or any party.

15 (c) The court shall set forth in writing a determination to hear oral argument more than 49 days
16 from the date the record is transmitted, together with the reasons for its determination, and shall
17 provide a copy to the parties. The court shall schedule oral argument as soon as practicable there-
18 after.

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

20 (A) Whether the case is so unusual or complex, due to the number of parties or the existence
21 of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief
22 the case and for the court to prepare for oral argument; and

23 (B) Whether the failure to hold oral argument at a later date likely would result in a miscar-
24 riage of justice.

25 (8) Judicial review of an order issued under ORS 197.830 to 197.845 must be confined to the re-
26 cord. The court may not substitute its judgment for that of the board as to any issue of fact.

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

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

32 (b) The order to be unconstitutional; or

33 (c) The order is not supported by substantial evidence in the whole record as to facts found by
34 the board under ORS 197.835 (2).

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

37 (11) If the order of the board is remanded by the Court of Appeals or the Supreme Court, the
38 board shall respond to the court's appellate judgment within 30 days.

39 (12) A party must file with the board an undertaking with one or more sureties insuring that
40 the party will pay all costs, disbursements and attorney fees awarded against the party by the Court
41 of Appeals if:

42 (a) The party appealed a decision of the board to the Court of Appeals; and

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

45 (13) Upon entry of its final order, the court shall award attorney fees and expenses to a party

1 who:

2 (a) Prevails on a claim that an approval condition imposed by a local government on an appli-
3 cation for a permit pursuant to ORS 215.416 or 227.175 is unconstitutional under section 18, Article
4 I, Oregon Constitution, or the Fifth Amendment to the United States Constitution; or

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

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

9 **SECTION 4.** ORS 215.441 is amended to read:

10 215.441. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresiden-
11 tial place of worship is allowed on real property under state law and rules and local zoning ordi-
12 nances and regulations, a county shall allow the reasonable use of the real property for activities
13 customarily associated with the practices of the religious activity, including:

14 (a) Worship services.

15 (b) Religion classes.

16 (c) Weddings.

17 (d) Funerals.

18 (e) Meal programs.

19 (f) Child care, but not including private or parochial school education for prekindergarten
20 through grade 12 or higher education.

21 *[(g) Providing housing or space for housing in a building or buildings that are detached from the
22 place of worship, provided:]*

23 *[(A) At least 50 percent of the residential units provided under this paragraph are affordable to
24 households with incomes equal to or less than 60 percent of the median family income for the county
25 in which the real property is located;]*

26 *[(B) The real property is in an area zoned for residential use that is located within the urban
27 growth boundary; and]*

28 *[(C) The housing or space for housing complies with applicable land use regulations and meets the
29 standards and criteria for residential development for the underlying zone.]*

30 (2) A county may:

31 (a) Subject real property described in subsection (1) of this section to reasonable regulations,
32 including site review or design review, concerning the physical characteristics of the uses author-
33 ized under subsection (1) of this section; or

34 (b) Prohibit or restrict the use of real property by a place of worship described in subsection (1)
35 of this section if the county finds that the level of service of public facilities, including transporta-
36 tion, water supply, sewer and storm drain systems is not adequate to serve the place of worship
37 described in subsection (1) of this section.

38 (3) Notwithstanding any other provision of this section, a county may allow a private or paro-
39 chial school for prekindergarten through grade 12 or higher education to be sited under applicable
40 state law and rules and local zoning ordinances and regulations.

41 *[(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject
42 to a covenant appurtenant that restricts the owner and each successive owner of a building or any
43 residential unit contained in a building from selling or renting any residential unit described in sub-
44 section (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to
45 or less than 60 percent of the median family income for the county in which the real property is located*

1 *for a period of 60 years from the date of the certificate of occupancy.]*

2 **SECTION 5.** ORS 227.500 is amended to read:

3 227.500. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresiden-
4 tial place of worship is allowed on real property under state law and rules and local zoning ordi-
5 nances and regulations, a city shall allow the reasonable use of the real property for activities
6 customarily associated with the practices of the religious activity, including:

7 (a) Worship services.

8 (b) Religion classes.

9 (c) Weddings.

10 (d) Funerals.

11 (e) Meal programs.

12 (f) Child care, but not including private or parochial school education for prekindergarten
13 through grade 12 or higher education.

14 *[(g) Providing housing or space for housing in a building or buildings that are detached from the*
15 *place of worship, provided:]*

16 *[(A) At least 50 percent of the residential units provided under this paragraph are affordable to*
17 *households with incomes equal to or less than 60 percent of the median family income for the county*
18 *in which the real property is located;]*

19 *[(B) The real property is in an area zoned for residential use that is located within the urban*
20 *growth boundary; and]*

21 *[(C) The housing or space for housing complies with applicable land use regulations and meets the*
22 *standards and criteria for residential development for the underlying zone.]*

23 (2) A city may:

24 (a) Subject real property described in subsection (1) of this section to reasonable regulations,
25 including site review and design review, concerning the physical characteristics of the uses au-
26 thorized under subsection (1) of this section; or

27 (b) Prohibit or regulate the use of real property by a place of worship described in subsection
28 (1) of this section if the city finds that the level of service of public facilities, including transporta-
29 tion, water supply, sewer and storm drain systems is not adequate to serve the place of worship
30 described in subsection (1) of this section.

31 (3) Notwithstanding any other provision of this section, a city may allow a private or parochial
32 school for prekindergarten through grade 12 or higher education to be sited under applicable state
33 law and rules and local zoning ordinances and regulations.

34 *[(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject*
35 *to a covenant appurtenant that restricts the owner and each successive owner of a building or any*
36 *residential unit contained in a building from selling or renting any residential unit described in sub-*
37 *section (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to*
38 *or less than 60 percent of the median family income for the county in which the real property is located*
39 *for a period of 60 years from the date of the certificate of occupancy.]*

40 **SECTION 6.** ORS 197.779 is repealed.

41