

Senate Bill 8

Sponsored by Senator COURTNEY

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**.

Limits standards and conditions of approval that local governments may apply to certain affordable housing. 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, 215.441
3 and 227.500; and repealing ORS 197.779.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 197.286 to**
6 **197.314.**

7 **SECTION 2. (1) As used in this section "affordable housing" means residential property:**

8 (a) **In which each unit on the property is affordable to own or rent to families with in-**
9 **comes of 80 percent of the area median income as determined by the Oregon Housing Sta-**
10 **bility Council based on information from the United States Department of Housing and Urban**
11 **Development;**

12 (b) **In which the average of all units on the property is affordable to families with in-**
13 **comes of 60 percent of the area median income; and**

14 (c) **Whose affordability is enforceable, including as described in ORS 456.270 to 456.295,**
15 **for a duration of no less than 60 years.**

16 (2) **Notwithstanding the zoned use of the property, in reviewing an application for the**
17 **development of affordable housing, a local government may not deny the application or con-**
18 **dition the approval on an application for a zoning or use change for the property, if:**

19 (a) **The property is owned by an applicant that is:**

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

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

22 (b) **The property is zoned for commercial uses.**

23 (3)(a) **Notwithstanding any statewide land use goal or land use regulation, a local gov-**
24 **ernment shall approve an application for the development of affordable housing at an au-**
25 **thorized density level and authorized height level, as defined in ORS 227.175 (4), of the**
26 **greater of:**

27 (A) **Any local density bonus for affordable housing; or**

28 (B) **Without consideration of any local density bonus for affordable housing:**

29 (i) **For property with existing density of eight or fewer units per acre, 200 percent of the**

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 existing density and one additional floor;

2 (ii) For property with existing density of nine or more units per acre and 16 or fewer
3 units per acre, 150 percent of the existing density and two additional floors; or

4 (iii) For property with existing density of 17 or more units per acre, 125 percent of the
5 existing density and three additional floors.

6 (b) This subsection does not apply to housing allowed under subsection (2) of this section.

7 (4)(a) If an applicant for the development of affordable housing or publicly supported
8 housing, as defined in ORS 456.250, is the prevailing party in an appeal heard by the Land
9 Use Board of Appeals or on appeal from the board, the applicant is entitled to an award of
10 costs and reasonable attorney fees.

11 (b) As used in this subsection:

12 (A) "Applicants" include:

13 (i) Applicants with a funding reservation agreement with a public funder for the purpose
14 of developing publicly supported housing;

15 (ii) A housing authority, as defined in ORS 456.005;

16 (iii) A qualified housing sponsor, as defined in ORS 456.548;

17 (iv) A religious nonprofit corporation;

18 (v) A public benefit nonprofit corporation whose primary purpose is the development of
19 affordable housing; and

20 (vi) A local government who approved the application of an applicant described in this
21 subparagraph.

22 (B) "Attorney fees" include prelitigation legal expenses, including preparing the applica-
23 tion and supporting the application in local land use hearings or proceedings.

24 (5) A party who was awarded attorney fees under subsection (4) of this section shall re-
25 pay the fees plus any interest from the time of the judgment if the property upon which the
26 fees are based is developed for a use other than the housing for which the applicant applied.

27 (6)(a) This section applies to development of housing within an urban growth boundary.

28 (b) This section does not apply on lands where the local government determines that:

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

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

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

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

36 (i) Natural disasters and hazards; or

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

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

40 197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to
41 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Ap-
42 peals.

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

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

1 and

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

3 (3) If a local government makes a land use decision without providing a hearing, except as
 4 provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision
 5 that is different from the proposal described in the notice of hearing to such a degree that the notice
 6 of the proposed action did not reasonably describe the local government’s final actions, a person
 7 adversely affected by the decision may appeal 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 (4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416
 12 (11) or 227.175 (10):

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

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

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

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

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

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

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

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

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

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

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

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

45 (A) The applicant who initiated the action before the local government, special district or state

1 agency; or

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

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

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

9 (9) A notice of intent to appeal a land use decision or limited land use decision shall be filed
 10 not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of
 11 intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to
 12 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is
 13 mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a
 14 statement identifying when, how and to whom notice was provided under ORS 197.615 does not
 15 render the notice defective. Copies of the notice of intent to appeal shall be served upon the local
 16 government, special district or state agency and the applicant of record, if any, in the local gov-
 17 ernment, special district or state agency proceeding. The notice shall be served and filed in the form
 18 and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a
 19 deposit for costs to be established by the board. If a petition for review is not filed with the board
 20 as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded
 21 to the local government, special district or state agency as cost of preparation of the record.

22 (10)(a) Within 21 days after service of the notice of intent to appeal, the local government, spe-
 23 cial district or state agency shall transmit to the board the original or a certified copy of the entire
 24 record of the proceeding under review. By stipulation of all parties to the review proceeding the
 25 record may be shortened. The board may require or permit subsequent corrections to the record;
 26 however, the board shall issue an order on a motion objecting to the record within 60 days of re-
 27 ceiving the motion. If the board denies a petitioner's objection to the record, the board may establish
 28 a new deadline for the petition for review to be filed that may not be less than 14 days from the
 29 later of the original deadline for the brief or the date of denial of the petitioner's record objection.

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

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

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

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

40 (b) The date of the decision.

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

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

44 (b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing
 45 the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the

1 respondent's brief, the local government or state agency may withdraw its decision for purposes of
 2 reconsideration. If a local government or state agency withdraws an order for purposes of recon-
 3 sideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision.
 4 If the petitioner is dissatisfied with the local government or agency action after withdrawal for
 5 purposes of reconsideration, the petitioner may refile the notice of intent and the review shall pro-
 6 ceed upon the revised order. An amended notice of intent is not required if the local government
 7 or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

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

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

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

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

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

23 **(c) Shall award costs and attorney fees to a party as provided in section 2 (4) of this 2021**
 24 **Act.**

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

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

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

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

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

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

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

43 (c) A list of respondents, the number of reviews involving each respondent and the rate at which
 44 reviews involving the respondent have resulted in decisions of the board to uphold, reverse or re-
 45 mand the land use decision or limited land use decision. Additionally, when a respondent is the local

1 government that made the land use decision or limited land use decision, the board shall track
 2 whether the local government appears before the board.

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

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

7 215.441. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresiden-
 8 tial place of worship is allowed on real property under state law and rules and local zoning ordi-
 9 nances and regulations, a county shall allow the reasonable use of the real property for activities
 10 customarily associated with the practices of the religious activity, including:

11 (a) Worship services.

12 (b) Religion classes.

13 (c) Weddings.

14 (d) Funerals.

15 (e) Meal programs.

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

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

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

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

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

27 (2) A county may:

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

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

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

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

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

45 227.500. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresiden-

1 tial place of worship is allowed on real property under state law and rules and local zoning ordi-
 2 nances and regulations, a city shall allow the reasonable use of the real property for activities
 3 customarily associated with the practices of the religious activity, including:

4 (a) Worship services.

5 (b) Religion classes.

6 (c) Weddings.

7 (d) Funerals.

8 (e) Meal programs.

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

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

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

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

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

20 (2) A city may:

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

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

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

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

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

38