

## SB 847 -19, -20 STAFF MEASURE SUMMARY

### Senate Committee On Housing and Development

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**Prepared By:** Kevin Rancik, LPRO Analyst

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

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#### WHAT THE MEASURE DOES:

**Housing Density Property Tax Valuation:** Freezes assessed value for five years for property with newly constructed accessory dwelling unit or middle housing, used as occupant’s primary residence. Establishes timelines and requirements to file claim; allows for appeal of denial. Terminates benefit in event eligible property is no longer occupied as primary residence. Allows frozen assessed value to transfer to new owner within five-year period, provided property remains new owner’s primary residence and timely claims are filed. Provides exemption for unoccupancy due to health or active military service. Applies to property tax years beginning on or after July 1, 2023.

**Residential Use of Commercial Lands:** Prevents local governments from prohibiting the siting and development of residential uses on commercially-zoned land within urban growth boundaries. Applies residential density level most comparable to level of commercial density currently allowed in zone. Specifies updates or analyses relating to economic development not required under this Act. Establishes exceptions for property that cannot be adequately served by infrastructure; contains a slope of 25 percent or greater; is within a 100-year floodplain; or is constrained by land use relating to natural disasters. Becomes operative January 1, 2024.

**Appeals of Middle-Income Housing Approvals:** Requires Land Use Board of Appeals (LUBA) affirm land use decisions it would otherwise remand if local government decision approved the development of middle income housing and: the respondent’s evidence was lacking or the respondent’s sole errors were procedural. Repeals requirement January 2, 2028. Awards attorney fees to applicant of affordable or supportive housing if LUBA affirms approval. Restricts petitions to LUBA to those whose primary residence is within one-half mile of proposed development. Defines “middle income housing” as that available to own or rent to families with incomes 120 percent or less of area median income and whose affordability is enforceable for no less than fifteen years. Becomes operative January 1, 2024.

**Emergency Shelter Siting:** Requires local governments to approve an application for development or use of land for emergency shelters under temporary authorization. Requires emergency shelters operated by public benefit corporations be recognized as tax exempt for at least three years before shelter application date. Establishes exemption from shelter approval under provisions of Act when most recent point-in-time count finds total sheltered and unsheltered homeless population is less than 0.18 percent of the state population as estimated by the Portland State University Population Research Center. Awards attorney fees to applicant who prevails on appeal of denial of shelter application.

**Siting Residential Care:** Adds secure residential treatment homes and facilities, community housing, community-based housing and structured housing, and independent residence facilities to definitions of “residential facility” and “residential home.” Adds continuing care retirement communities to definition of “residential facility.” Modifies language covering city and county siting requirements to “local government” requirements. Becomes operative January 1, 2024.

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

**Local Regulation of Condominiums:** Prohibits plats or declarations that meet requirements from undergoing additional mandatory review or approval. Adds legal description of annexed property to condominium annexation declarations. Requires local government declaration, if annexed property forms final stage of condominiums and excludes land originally intended for inclusion, a legal description of remainder, states remainder does not violate applicable rules, and is executed on behalf of appropriate body. Clarifies that assessor and Real Estate Commissioner, in approving declarations, may not charge a fee, allow or require review, or impose additional requirements for approval. Removes signature requirement from plat description in condominium declaration and from plat amendment required when removing portion of property from condominium termination. Prohibits local government requirements that plat amendments comply with ordinances or regulations, be approved, or condition approval of any permits for the condominium on a plat amendment. Becomes operative January 1, 2024.

**Subdividing for Development of Affordable Housing:** Requires city or county to accept public award or other reliable funding sources for development of sewer and water supply to subdivision plat if property is developed as affordable housing and funding award is greater than project cost. Becomes operative January 1, 2024.

**Prevailing Wages for Affordable Housing Development:** Exempts prevailing wage rate requirements from residential construction in which a public agency or private owner converts a building from commercial to housing; portions of mixed-use buildings that are affordable housing if at least 60 percent of the building consists of affordable housing; and other types of construction defined in local ordinances or codes that the commissioner may consider in determining wage rate applicability. Applies to procurements a public agency advertises or solicits, contracts for public works into which the agency enters, and defined projects for residential construction. Becomes operative January 1, 2024.

**Surplus Real Property Inventory:** Defines “surplus real property” as that which a local government or special district owns an interest in, is not suitable for the duties of the entity, and is located within an urban growth boundary or area zoned for residential use. Requires special districts, in addition to local governments, to prepare inventories of surplus real property. Becomes operative January 1, 2024.

**Duplexes and Single Room Occupancies:** Adds single room occupancies with up to six units to definition of “needed housing.” Defines “single room occupancy” as residential development with at least four independently rented, privately accessible, and lockable single-unit rooms with at least one shared kitchen and bathroom if the units do not have them individually. Removes minimum city size for duplex requirement in single-family dwelling zones. Requires local government amending plans relating to allowing middle housing to consider ways of increasing middle housing affordability, including but not limited to waiving system development charges, property tax exemptions, and assessing construction taxes. Appropriates unspecified General Fund moneys for the biennium beginning July 1, 2023, to the Department of Land Conservation and Development to provide grants to local governments to assist with amending comprehensive plans. Requires cities newly subject to provisions to adopt land use regulations or amend comprehensive plans no later than June 30, 2025. Becomes operative January 1, 2024.

Declares emergency, effective on passage.

*FISCAL: Has minimal fiscal impact*

*REVENUE: No revenue impact*

**ISSUES DISCUSSED:**

- Provisions of measure and amendments
- Infrastructure capacity for commercial conversions

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

**EFFECT OF AMENDMENT:**

-19 Replaces the measure.

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

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

**Emergency Shelter Siting:** Requires local governments to approve an application for development or use of land for emergency shelters as defined in ORS 197.782, and permits approval or denial without a hearing. Requires emergency shelters operated by public benefit corporations be recognized as tax exempt for at least three years before shelter application date. Establishes exemption from shelter approval under provisions of Act when most recent point-in-time count finds total sheltered and unsheltered homeless population is less than 0.18 percent of the state population as estimated by the Portland State University Population Research Center. Awards attorney fees to a local government and any intervening applicant that prevail on appeal of approval, or applicant that prevails on appeal of denial.

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

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

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

**Subdividing for Development of Affordable Housing:** Requires city or county to accept as other assurance, as used in Act, one or more award letters from public funding sources made to subdivider to develop affordable housing that is or will be subject to affordability restriction or affordable housing covenant, provided awards total an amount greater than project cost.

**Single Room Occupancies:** Defines “single room occupancy” (SRO) as residential development with at least four independently rented, lockable units with living and sleeping space for exclusive use of an occupant, but with shared sanitary or food preparation facilities. Requires local governments to allow SRO development within an urban growth boundary, with up to six units per single-family zoned parcel, and with unit counts consistent with density standards of parcels allowing five or more units. Adds SROs to definition of “needed housing.”

**Siting Duplexes:** Requires cities outside metropolitan service districts, with populations of 2,500 or greater and under 25,000, to allow duplex development on lots and parcels zoned for detached single-family dwellings. Clarifies local government amending comprehensive plan or land use regulations is not required to consider whether amendments significantly affect existing or planned transportation facilities. Requires cities newly subject to provisions to adopt land use regulations or amend comprehensive plans no later than June 30, 2025. Allows, no later than June 30, 2024, for cities newly subject to Act to request extension of timeline to amend land use regulations or comprehensive plans. Appropriates \$1,250,000 from General Fund, for biennium beginning July 1, 2023, to Department of Land Conservation and Development to provide grants to local governments to assist them with amending comprehensive plans.

**Removing Recorded Discriminatory Provisions:** Allows amendments to planned community or condominium declaration or bylaws, without a vote of owners or board members, or approval of Real Estate Commissioner, county assessor, or other person, that are made to conform declaration or bylaws with statute and if amendment is signed by president and secretary of homeowners association. Requires that before December 31, 2024, each homeowners association or condominium including residential units, first established before September 1, 2021, must amend its declaration and bylaws to ensure these governing documents do not restrict the community, lots, or units because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, source of income, disability, or the number of individuals simultaneously occupying a dwelling unit within occupancy limits. Clarifies Act provisions do not apply to planned communities and condominiums established after September 1, 2021, or which complied with requirements in effect prior to Act’s effective date.

**Affordable Housing on Public Utility Lands:** Allows public utilities to sell at or below market price, or gift, interest in real property for purpose of developing affordable housing. Requires such property to include affordable housing covenant. Prohibits utility from recovering costs of the property sale or gift from customers.

Declares emergency, effective on passage.

-20 Replaces the measure. Allows establishment of golf course, subject to county approval, in area zoned for exclusive farm use, including high-value farmland, if the tract did not contain specified perennials on December 6, 2007, and the golf course is in Coos County and west of U.S. Highway 101. Repeals provisions January 2, 2028.

#### **BACKGROUND:**

**Housing Density Property Tax Valuation:** Upon construction of an accessory dwelling unit (ADU), the entire property may face reassessment. Tax measures passed in the 1990s resulted in limits where a property’s maximum assessed value could only increase by about 3 percent per year, with 1995 serving as a property’s base year. Some conditions, such as construction of an accessory dwelling unit, can trigger a property reassessment, bringing the assessed value closer to current market value. This results in higher taxes and can serve as a disincentive to construct ADUs or middle housing.

Senate Bill 847 freezes assessed value for five years for new ADUs or middle housing used as the occupant's primary residence.

**Residential Use of Commercial Lands:** Counties and local governments may institute zoning laws which restrict the type of development allowed on property. Zoning laws can focus on type, such as residential, commercial, or industrial uses and segregate uses considered incompatible from each other. Zoning can also focus on density, such as restricting development to detached housing, or requiring a parcel to include a minimum number of units with the intent of attracting high-density development. Zoning influences neighborhood affordability. House Bill 2001 (2019) required cities with populations over 10,000 to allow middle housing such as duplexes and cottage clusters in residential zones with the intent to create more affordable residential options that had previously been illegal or difficult to get approval for. Senate Bill 8 (2021) restricted local governments from denying or limiting the approval of affordable housing applications, subject to certain zoning and property ownership conditions, and established density standards and conditions under which local governments must approve affordable housing applications.

Senate Bill 847 prevents local governments from blocking residential uses on commercially-zoned land within urban growth boundaries, with some exceptions relating to infrastructure, slope, floodplains, or natural disaster constraints.

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

Senate Bill 847 requires LUBA to affirm land use decisions for the development of middle-income housing in specific circumstances, and award attorney fees to middle-income developers whose applications are affirmed by LUBA. Only those whose primary residence is within one-half mile of proposed development may petition LUBA for review of a land use decision regarding middle-income housing.

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

Senate Bill 847 requires local governments to approve siting of emergency shelters provided certain conditions are met. The measure exempts certain local governments from these provisions, provided the total homeless population in the jurisdiction is below 0.18 percent of the state population. Shelters operated by public benefit corporations must be recognized as tax exempt for at least three years prior to the application date. Applicants who prevail on appeal of shelter application denials are awarded attorney fees.

**Siting Residential Care:** Residential facilities and residential homes are allowed by right in zones allowing single-family and multifamily residential use. Local governments may allow a residential home in an existing dwelling in an area zoned for farm use, subject to certain conditions. The current definition of "residential facility" includes residential care for between six and fifteen individuals, while a "residential home" is limited to residential care for five or fewer individuals. These definitions are not inclusive of other types of behavioral health housing.

Oregon Land Use Law (ORS Chapter 197) states, “it is the policy of this state that persons with disabilities and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups.”

Senate Bill 847 expands the definition of “residential facilities” and “residential home” to incorporate other forms of behavioral health housing, requiring local governments to approve them under the same standards as specified residential uses.

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

Senate Bill 847 exempts developments made up solely of affordable housing, or owned by public benefit or religious nonprofits, from the Oregon Planned Community Act.

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

Senate Bill 847 prohibits condominiums and plat amendments that otherwise meet the requirements of the law from undergoing further mandatory review or approval processes. It clarifies processes involving property annexation and removes the signature requirement from plat descriptions, amendments, and condominium terminations.

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

Senate Bill 847 requires cities or counties to accept public awards or other reliable funding sources for the development of sewer and water supply to subdivisions for affordable housing if the award amount exceeds the project cost.

**Prevailing Wages for Affordable Housing Development:** In Oregon, affordable housing projects are exempt from prevailing wage rate requirements. However, the inclusion of any commercial space in such projects removes the exemption for the entire project, not just for its commercial components. This can make it cost-prohibitive to develop affordable housing in conjunction with services, retail, and other non-residential uses. A February 2022 OHCS report to the Oregon Joint Committee on Ways and Means, for example, determined including child care facilities with affordable housing added 10-20 percent to development costs.

Senate Bill 847 exempts prevailing wage rate requirements from residential construction for commercial conversions to housing and affordable portions of mixed-use buildings when at least 60 percent of the building

consists of affordable housing.

**Surplus Real Property Inventory:** Oregon statute requires the Department of Administrative Services (DAS) to maintain an inventory of state-owned real property, and land-owning agencies must provide DAS a biennial inventory that distinguishes between land within and outside urban growth boundaries. House Bill 2918 (2021) required local governments to submit surveys of such property to the Department of Land Conservation and Development (DLCD) by January 1 of even-numbered years.

Senate Bill 847 requires special districts to prepare inventories of surplus real property within urban growth boundaries or zoned for rural residential use, and the property is unsuitable for the duties of the entity.

**Duplexes and Single Room Occupancies:** House Bill 2001 (2019) required cities with populations over 10,000 to allow duplexes to be built on parcels zoned for single-family residential housing. The Land Conservation and Development Commission adopted administrative rules and model housing codes to ease the process for local governments to comply with the requirement. "Single-room occupancy" refers to structures in which residents rent an individual room for themselves but share common spaces such as kitchens and bathrooms. Historically, these rooms have rented for less than market rates of full-sized apartments, and today sometimes feature social services designed to aid low-income populations. Housing availability in this category has declined over time.

Senate Bill 847 adds single-room occupancies to the definition of "needed housing," and it requires cities of all sizes to allow duplexes on single-family zoned land and consider ways to increase middle housing affordability. Cities newly subject to these provisions are required to update their land use regulations or amend their comprehensive plans, and an unspecified amount is allocated to the Department of Land Conservation and Development to help with these tasks.