

A-Engrossed
House Bill 3414

Ordered by the House June 21
Including House Amendments dated June 21

Sponsored by Representatives RAYFIELD, DEXTER; Representative FAHEY (at the request of Governor Tina Kotek)

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.

[Limits conditions under which] **Requires** local governments *[may deny variance]* **to approve certain adjustments to land use regulations** for housing development within urban growth boundary. **Establishes alternate appellate procedures for adjustments. Requires certain cities to report to Department of Land Conservation and Development on use of adjustments. Requires department to report biennially to interim committee of Legislative Assembly. Sunsets January 2, 2032.**

Requires Department of Land Conservation and Development and Department of Consumer and Business Services to jointly establish and administer Housing Accountability and Production Office. Requires office to assist local governments and housing developers with housing laws relating to land use and land divisions.

Authorizes office to take certain actions to enforce housing laws. **Establishes new process through which office may request enforcement orders relating to land use housing laws. Becomes operative April 1, 2024.**

Requires office to commission report on developing efficiencies in housing production and to deliver report to interim committee of Legislative Assembly, on or before September 15, 2024.

[Appropriates continuously moneys from Consumer and Business Services Fund received from administration of building codes for use by office.]

Develops alternative process to amend urban growth boundaries to include up to 150 net residential acres per city. Provides for limitations and review by Metro, where applicable, and for review by Department of Land Conservation and Development and courts. Sunsets January 2, 2033.

Expands eligibility for attorney fees for appeals of residential development proposals to include local governments and all needed housing.

Appropriates moneys from General Fund to department *[for use by]* **to establish and operate office and to provide grants to local governments for housing law compliance.**

Declares emergency, effective July 1, 2023.

A BILL FOR AN ACT

1
2 Relating to local implementation of housing laws; creating new provisions; amending ORS 183.471,
3 197.843 and 455.770; and declaring an emergency.

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

5 **SECTION 1. Sections 2 to 4 of this 2023 Act are added to and made a part of ORS 197.286**
6 **to 197.314.**

7 **SECTION 2. (1) As used in sections 2 to 4 of this 2023 Act:**

8 (a) "Adjustment" means a deviation from an existing land use regulation.

9 (b) "Adjustment" does not include:

10 (A) A request to allow a use of property not otherwise permissible under applicable zon-
11 ing requirements;

12 (B) Deviations from land use regulations or requirements related to accessibility,
13 affordability, fire ingress or egress or statewide land use planning goals relating to natural

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 resources, natural hazards, Willamette River Greenway, estuarine resources, coastal
2 shorelands, beaches and dunes or ocean resources;

3 (C) A complete waiver of land use regulations; or

4 (D) Deviations to requirements of building codes, federal or state water quality require-
5 ments or requirements of any other federal, state or local law that is not a land use regu-
6 lation.

7 (2) This section applies only if all of the following conditions are met:

8 (a) Applications are for a building permit or a quasi-judicial, limited or ministerial land
9 use decision;

10 (b) Development is on lands zoned for residential or mixed-use residential uses;

11 (c) Development is within an urban growth boundary, not including lands that have not
12 been annexed by a city; and

13 (d) Development is of net new housing units, including single-family or multifamily,
14 mixed-use residential, manufactured dwelling parks, accessory dwelling units or middle
15 housing as defined in ORS 197.758.

16 (3) A local government may not approve more than 10 distinct adjustments under this
17 section. Each development standard described in subsection (4) of this section and each de-
18 sign standard described in subsection (5) of this section is considered a distinct adjustment.
19 Adjustments meeting the criteria under this section shall be granted by a local government
20 and may be resolved through an existing or new administrative process of the local govern-
21 ment that allows for flexibility in addressing development or design standards for residential
22 development.

23 (4) A local government shall grant an adjustment to the following development standards:

24 (a) Side and rear setbacks and step backs, provided that the setbacks still comply with
25 utility siting requirements;

26 (b) The amount of landscaped area, common area or open space area, for a reduction of
27 up to 25 percent, provided that stormwater management requirements and tree codes are
28 met and that there is no impact to tree canopy requirements or ground or surface water
29 resources;

30 (c) Parking minimums;

31 (d) Minimum or maximum lot sizes, for up to a 10 percent adjustment;

32 (e) Minimum or maximum lot widths and depths, for up to a 10 percent adjustment;

33 (f) Requirements for bicycle parking that establish:

34 (A) The minimum number of spaces, provided that there is at least one-half space per
35 residential unit; or

36 (B) The location of the spaces, provided that secure, covered bicycle parking spaces are
37 within or adjacent to the residential development;

38 (g) Minimum or maximum building lot coverage requirements:

39 (A) For up to a 15 percent adjustment, for accessory dwelling units with a single-family
40 detached house; or

41 (B) For up to a 20 percent adjustment, for multifamily, mixed-use residential and middle
42 housing;

43 (h) Unit density maximums, up to an amount necessary to account for other adjustments
44 under this section;

45 (i) Building height maximums, in addition to existing applicable height bonuses, except

1 for single-family detached houses or where denial of the variance is necessary to address a
2 fire, life or safety issue, for an increase of the greater of:

3 (A) One story; or

4 (B) A 20 percent increase to base zone height with rounding consistent with methodology
5 outlined in city code, if any; and

6 (j) Prohibitions, on the ground floor of a mixed-use building, against:

7 (A) Residential uses except for one face of the building that faces the street and is within
8 20 feet of the street; and

9 (B) Nonresidential active uses that support the residential uses of the building, including
10 lobbies, day care, passenger loading, community rooms, exercise facilities, offices, activity
11 spaces or live-work spaces, except for active uses in specifically and clearly defined mixed
12 use areas or commercial corridors designated by local governments.

13 (5) A local government shall grant an adjustment to design standards that regulate:

14 (a) Facade materials, articulation, color or pattern;

15 (b) Roof forms and materials;

16 (c) Entry and garage door materials and patterns;

17 (d) Garage door orientation, except when the building is adjacent to or across from a
18 school or public park;

19 (e) Window material and design;

20 (f) Window size or total window area, for up to a 30 percent adjustment;

21 (g) Building orientation requirements, not including transit street orientation require-
22 ments;

23 (h) Building height transition requirements, for up to a 50 percent adjustment from the
24 base zone, except where necessary to address a fire, life or safety issue; or

25 (i) Balconies, porches, recesses and offsets.

26 (6) To qualify for an adjustment under this section, the applicant must state in the ap-
27 plication for adjustment that at least one of the following criteria apply:

28 (a) The adjustment will enable development of housing that would not otherwise be fea-
29 sible due to cost or delay resulting from the unadjusted land use regulations;

30 (b) The adjustment will enable development of housing that reduces the sale or rental
31 prices per residential unit;

32 (c) The adjustment will increase the number of housing units within the application;

33 (d) All of the units in the application are subject to an affordable housing covenant
34 making them affordable to moderate income households as described in ORS 456.270 to
35 456.295 for a minimum of 30 years; or

36 (e) At least 20 percent of the units in the application are subject to an affordable housing
37 covenant making them affordable to low income households as described in ORS 456.270 to
38 456.295 for a minimum of 60 years.

39 **SECTION 3.** (1) Notwithstanding ORS 197.015 (10)(b), a decision on an application for an
40 adjustment under section 2 of this 2023 Act is a land use decision for the purposes of ORS
41 chapter 197.

42 (2)(a) Within 30 days after receiving a complete application under section 2 of this 2023
43 Act, the local government shall inform the applicant whether the local government believes
44 that the adjustments requested by the application satisfy the criteria under section 2 of this
45 2023 Act.

1 (b) If a local government informs the applicant that any adjustments do not satisfy such
2 criteria, the applicant is allowed 30 days to submit additional evidence for evaluation under
3 this subsection.

4 (c) A decision by a local government under this subsection is not a land use decision.

5 (3) Unless an appeal is filed before a final decision under subsection (6) of this section,
6 an application for an adjustment under section 2 of this 2023 Act must receive a final deci-
7 sion on or before the development application decision and within the timelines imposed by
8 ORS 197.311, 215.416 and 227.175.

9 (4) A denial of an application for an adjustment under section 2 of this 2023 Act must be
10 in a brief written statement that explains the criteria and standards considered relevant to
11 the decision, states the facts relied upon in rendering the decision and explains the justi-
12 fication for the decision based on the criteria, standards and facts set forth. If the denial of
13 an application for an adjustment is made separately from any other related application, the
14 decision does not require notice under ORS 197.195 or 197.797.

15 (5) Only the applicant or the Housing Accountability and Production Office established
16 under section 7 of this 2023 Act may appeal a land use decision made under section 2 of this
17 2023 Act.

18 (6) In lieu of any other appeal process, an applicant may elect to appeal a land use deci-
19 sion made under section 2 of this 2023 Act to the Land Use Board of Appeals under an ex-
20 pedited appellate process that, notwithstanding ORS 197.825 (2)(a) or 197.830 to 197.845, is
21 subject to the following process:

22 (a) The petition for appeal may be made only once from any decision, including a decision
23 other than a final decision, made by a local government's governing body, planning commis-
24 sion, hearings body, hearings officer, planning director or any other local government staff
25 or body entitled to make a binding decision.

26 (b) The appeal serves to waive any unexhausted right of appeal prescribed by the local
27 government, including a right as described in ORS 215.422 and 227.180.

28 (c) The caption of the petition must request review under this subsection.

29 (d) The board may, by order, require that issues on appeal under this subsection be
30 bifurcated, and decided separately, from any other related application.

31 (e) The issues on appeal must be argued without oral argument on an expedited petition
32 and briefing schedule established by an order of the board.

33 (f) All issues on appeal must be decided by a final order of the board made before the
34 latter of:

35 (A) 60 days after the receipt of the notice of appeal; or

36 (B) 40 days after the transmittal of the record.

37 (7) During an appeal taken under subsection (6) of this section any other related appli-
38 cation or its appeal is stayed and any deadline of a local government with respect to the
39 decision under ORS 197.311, 215.416 or 227.175 is tolled.

40 (8) As used in this section, "other related application" means a land use decision, if any
41 exists, for which the developer has requested an approval of an adjustment under section 2
42 of this 2023 Act.

43 **SECTION 4.** (1) A city required to provide a report under section 37 (1), chapter 13,
44 Oregon Laws 2023 (Enrolled House Bill 2001), shall include as part of that report information
45 reasonably requested from the Department of Land Conservation and Development on resi-

1 **dential development produced through approvals of adjustments granted under section 2 of**
2 **this 2023 Act. The department may not develop a separate process for collecting this data**
3 **or otherwise place an undue burden on local governments.**

4 **(2) On or before September 15 of each even-numbered year, the department shall provide**
5 **a report to an interim committee of the Legislative Assembly related to housing in the**
6 **manner provided in ORS 192.245 on the data collected under subsection (1) of this section.**
7 **The committee shall invite the League of Oregon Cities to provide feedback on the report**
8 **and the efficacy of section 2 of this 2023 Act.**

9 **SECTION 5. Sections 2 to 4 of this 2023 Act are repealed on January 2, 2032.**

10 **SECTION 6. As used in sections 6 to 9 of this 2023 Act, “housing law” means ORS 92.010**
11 **to 92.192, 92.830 to 92.845, 197.286 to 197.314, 197.360 to 197.380, 197.475 to 197.490, 197.505 to**
12 **197.540, 197.660 to 197.670, 197.748, 197.758, 215.402 to 215.438, 227.160 to 227.186, 455.148,**
13 **455.150, 455.152, 455.153, 455.156, 455.157, 455.165, 455.170, 455.175, 455.180, 455.185 to 455.198,**
14 **455.200, 455.202 to 455.208, 455.210, 455.220, 455.465 and 455.467 and section 2 of this 2023 Act**
15 **and administrative rules implementing those laws, to the extent that the law or rule imposes**
16 **a mandatory duty on a local government or its agent and the application of the law or rule**
17 **relates to residential development or pertains to a permit for a residential use or division**
18 **of land for residential purposes.**

19 **SECTION 7. (1) The Department of Land Conservation and Development and the De-**
20 **partment of Consumer and Business Services shall enter into an interagency agreement to**
21 **establish and administer the Housing Accountability and Production Office.**

22 **(2) The Housing Accountability and Production Office shall:**

23 **(a) Provide technical assistance to local jurisdictions to:**

24 **(A) Comply with housing laws;**

25 **(B) Reduce permitting and land use barriers to housing production; and**

26 **(C) Support reliable and effective implementation of local procedures and standards re-**
27 **lating to the approval of residential development projects;**

28 **(b) Serve as a resource for housing developers experiencing permitting and land use**
29 **barriers related to housing production, through activities that include responding to requests**
30 **for technical assistance regarding housing laws;**

31 **(c) Investigate and respond to complaints of violations of housing laws under section 8**
32 **of this 2023 Act; and**

33 **(d) Mediate active disputes relating to housing laws between a local government and**
34 **residential developer, including mediation under ORS 197.860.**

35 **(3) The Land Conservation and Development Commission and the Department of Con-**
36 **sumer and Business Services may jointly or separately adopt, amend or repeal rules for:**

37 **(a) Carrying out the respective responsibilities of the departments and the office under**
38 **sections 6 to 9 of this 2023 Act; and**

39 **(b) Establishing model codes, procedures and practices by which local governments may**
40 **comply with housing laws.**

41 **(4) The office shall prioritize assisting jurisdictions voluntarily undertaking changes to**
42 **come into compliance with housing laws.**

43 **SECTION 8. (1) The Housing Accountability and Production Office established under**
44 **section 7 of this 2023 Act shall establish a form or format through which the office receives**
45 **allegations of local governments’ violations of housing laws. For complaints that relate to a**

1 specific development project, the office may receive complaints only from the residential
2 developer of the project. For complaints not related to a specific development project, the
3 office may receive complaints from any person, including the Department of Land Conser-
4 vation and Development or the Department of Consumer and Business Services.

5 (2)(a) Except as provided in paragraph (b) of this subsection, the office shall investigate
6 suspected violations of housing laws or violations credibly alleged under subsection (1) of this
7 section.

8 (b) If, at any time, a complainant has filed a notice of appeal with the Land Use Board
9 of Appeals or has initiated private litigation regarding any aspect of the application decision
10 that was alleged to have been the subject of the housing law violation, the office's continuing
11 involvement may only consist of:

12 (A) Providing agency briefs, including briefs under ORS 197.830 (8), to the board or the
13 court;

14 (B) Providing technical assistance to the local government unrelated to the resolution
15 of the specific complaint; or

16 (C) Providing mediation at the request of the local government and complainant, includ-
17 ing under ORS 197.860.

18 (3) If the office has a reasonable basis to conclude that a violation has been or is likely
19 to be committed, the office shall deliver written warning notice to the local government
20 specifying the violation and any authority under this section that the office intends to invoke
21 if the violation continues or is not remedied. The notice may include an invitation to address
22 the suspected violation through mediation, the execution of a voluntary compliance agree-
23 ment or the adoption of suitable models developed by the office under section 7 (3)(b) of this
24 2023 Act. The office shall prioritize technical assistance funding to local governments that
25 agree to comply with housing laws under this subsection. A determination by the office is
26 not a legislative or judicial decision.

27 (4) No earlier than 60 days after a warning notice is delivered under subsection (3) of this
28 section, the office may take the following actions:

29 (a) Initiate a request for an enforcement order of the Land Conservation and Develop-
30 ment Commission by providing a notice of request under section 9 (2) of this 2023 Act.

31 (b) Seek a court order against a local government as described under ORS 455.160 (3)
32 without being adversely affected or serving the demand as described in ORS 455.160 (2).

33 (c) Notwithstanding ORS 197.090 (2)(b) to (e), participate in and seek review of a matter
34 under ORS 197.090 (2)(a) that pertains to housing laws without the notice or consent of the
35 commission. No less than once every two years, the office shall report to the commission
36 on the matters in which the office participated under this paragraph.

37 (d) Except regarding matters under the exclusive jurisdiction of the Land Use Board of
38 Appeals, apply to any circuit court for an order compelling compliance with any housing law.
39 If the court finds that the defendant is not complying with a housing law, the court may
40 grant an injunction requiring compliance.

41 (5) The office may not, in the name of the office, exercise the authority of the Depart-
42 ment of Land Conservation and Development under ORS 197.293.

43 (6) The office shall send notice to any complainant under subsection (1) of this section
44 when the office:

45 (a) Takes any action under subsection (3) or (4) of this section; or

1 (b) Has determined that it will not take further actions or make further investigations.

2 (7) The actions authorized of the office under this section are in addition to and may be
3 exercised in conjunction with any other investigative or enforcement authority that may be
4 exercised by the Department of Land Conservation and Development, the Land Conservation
5 and Development Commission or the Department of Consumer and Business Services.

6 (8) Nothing in this section:

7 (a) Amends the jurisdiction of the Land Use Board of Appeals or of a circuit court;

8 (b) Creates a new cause of action; or

9 (c) Tolls or extends the statute of limitations for any claim or deadline for any appeal
10 or other action.

11 **SECTION 9.** (1) Under section 8 (4)(a) of this 2023 Act, the Housing Accountability and
12 Production Office may request an enforcement order that a local government take action
13 necessary to bring its comprehensive plan, land use regulation, limited land use decisions or
14 other land use decisions or actions into compliance with a housing law, except for a housing
15 law that pertains to building codes or the administration of building codes. Except as other-
16 wise provided in this section, a request for an enforcement order by the office is subject to
17 the applicable provisions of ORS 197.335 and ORS chapter 183 and is not subject to ORS
18 197.319, 197.324 or 197.328.

19 (2) The office shall make a request for an enforcement order under this section through
20 a notice to the local government that states the grounds for initiation and summarizes the
21 procedures for the enforcement order proceeding along with a copy of the notice to the Land
22 Conservation and Development Commission. A decision of the office to initiate an enforce-
23 ment order is final and is not subject to appeal.

24 (3) After receiving notice of an enforcement order request under subsection (2) of this
25 section, the affected local government shall include the following disclosure in any subse-
26 quent notice of a land use decision that could be affected by the enforcement order:

27 _____
28
29 **NOTICE:** The Housing and Accountability and Production Office has found good cause for
30 an enforcement proceeding against _____ (name of local government).
31 An enforcement order may be adopted that could limit, prohibit or require the application
32 of specified criteria to any action authorized by this decision but not applied for until after
33 the adoption of the enforcement order. Future applications for building permits or time ex-
34 tensions may be affected.

35 _____
36
37 (4) Within 14 days following receipt by the commission of the notice under subsection (2)
38 of this section, the Director of the Department of Land Conservation and Development shall
39 assign the enforcement order proceedings to a hearings officer who is:

40 (a) An administrative law judge assigned under ORS 183.635; or

41 (b) A hearings officer randomly selected from a pool of officers appointed by the com-
42 mission to review proceedings initiated under this section.

43 (5) The hearings officer shall schedule a contested case hearing within 60 days of the
44 delivery of the notice to the commission under subsection (2) of this section.

45 (6) The hearings officer shall prepare a proposed enforcement order, including recom-

1 mended findings and conclusions of law. A proposed enforcement order may require the local
2 government to adopt models that have been developed by the office under section 7 (3)(b) of
3 this 2023 Act that are suitable to address the basis for the proposed enforcement order. The
4 hearings officer must issue and serve the proposed enforcement order on the office and all
5 parties to the hearing within 30 days of the date the record closed.

6 (7)(a) The proposed enforcement order becomes a final order of the commission 14 days
7 after service on the office and all parties to the hearing, unless the office or a party to the
8 hearing appeals the proposed enforcement order to the commission prior to the proposed
9 enforcement order becoming final.

10 (b) If the proposed enforcement order is appealed, the commission shall consider the
11 matter at:

12 (A) Its next regularly scheduled meeting; or

13 (B) If the appeal is made 45 or fewer days prior to the next regularly scheduled meeting,
14 at the following regularly scheduled meeting or a special meeting held earlier.

15 (8) The commission shall affirm, affirm with modifications or reverse the proposed
16 enforcement order. The commission shall issue a final order no later than 30 days after the
17 meeting at which it considered the matter.

18 (9) The commission may adopt rules administering this section, including rules related
19 to standing, preserving issues for commission review or other provisions concerning the
20 commission's scope and standard for review of proposed enforcement orders under this sec-
21 tion.

22 **SECTION 10.** Sections 8 and 9 of this 2023 Act apply only to violations of housing laws
23 occurring on or after April 1, 2024.

24 **SECTION 11.** On or before September 15, 2024, the Housing Accountability and Pro-
25 duction Office established under section 7 of this 2023 Act shall:

26 (1) Contract with an organization possessing relevant expertise to produce a report
27 identifying improvements in the local building plan approval, land use, zoning and permitting
28 processes, including but not limited to plan approval timelines, process efficiency, local best
29 practices and other ways to accelerate and improve the efficiency of the development process
30 for construction, with a focus on increasing housing production; and

31 (2) Provide the report under subsection (1) of this section to an appropriate interim
32 committee of the Legislative Assembly in the manner provided in ORS 192.245.

33 **SECTION 12.** ORS 183.471 is amended to read:

34 183.471. (1) When an agency issues a final order in a contested case, the agency shall maintain
35 the final order in a digital format that:

36 (a) Identifies the final order by the date it was issued;

37 (b) Is suitable for indexing and searching; and

38 (c) Preserves the textual attributes of the document, including the manner in which the docu-
39 ment is paginated and any boldfaced, italicized or underlined writing in the document.

40 (2) The Oregon State Bar may request that an agency provide the Oregon State Bar, or its
41 designee, with electronic copies of final orders issued by the agency in contested cases. The request
42 must be in writing. No later than 30 days after receiving the request, the agency, subject to ORS
43 192.338, 192.345 and 192.355, shall provide the Oregon State Bar, or its designee, with an electronic
44 copy of all final orders identified in the request.

45 (3) Notwithstanding ORS 192.324, an agency may not charge a fee for the first two requests

1 submitted under this section in a calendar year. For any subsequent request, an agency may impose
2 a fee in accordance with ORS 192.324 to reimburse the agency for the actual costs of complying with
3 the request.

4 (4) For purposes of this section, a final order entered in a contested case by an administrative
5 law judge under ORS 183.625 (3) is a final order issued by the agency that authorized the adminis-
6 trative law judge to conduct the hearing.

7 (5) This section does not apply to final orders by default issued under ORS 183.417 (3) or to final
8 orders issued in contested cases by:

9 (a) The Department of Revenue;

10 (b) The State Board of Parole and Post-Prison Supervision;

11 (c) The Department of Corrections;

12 (d) The Employment Relations Board;

13 (e) The Public Utility Commission of Oregon;

14 (f) The Oregon Health Authority;

15 (g) The Land Conservation and Development Commission, **except for enforcement orders un-**
16 **der section 9 of this 2023 Act;**

17 (h) The Land Use Board of Appeals;

18 (i) The Division of Child Support of the Department of Justice;

19 (j) The Department of Transportation, if the final order relates to the suspension, revocation or
20 cancellation of identification cards, vehicle registrations, vehicle titles or driving privileges or to the
21 assessment of taxes or stipulated settlements in the regulation of vehicle related businesses;

22 (k) The Employment Department or the Employment Appeals Board, if the final order relates to
23 benefits as defined in ORS 657.010;

24 (L) The Employment Department, if the final order relates to an assessment of unemployment
25 tax for which a hearing was not held; or

26 (m) The Department of Human Services, if the final order was not related to licensing or certi-
27 fication.

28 **SECTION 13.** ORS 455.770 is amended to read:

29 455.770. (1) In addition to any other authority and power granted to the Director of the De-
30 partment of Consumer and Business Services under ORS 446.003 to 446.200, 446.225 to 446.285,
31 446.395 to 446.420, 479.510 to 479.945, 479.995 and 480.510 to 480.670 and *[this chapter and]* ORS
32 chapters 447, **455**, 460 and 693 **and sections 6 to 9 of this 2023 Act**, with respect to municipalities,
33 building officials and inspectors, if the director has reason to believe that there is a failure to en-
34 force or a violation of any provision of the state building code or ORS 446.003 to 446.200, 446.225
35 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 or 480.510 to 480.670 *[or this chapter]* or
36 ORS chapter 447, **455**, 460 or 693 or any rule adopted under those statutes, the director may:

37 (a) Examine building code activities of the municipality;

38 (b) Take sworn testimony; and

39 (c) With the authorization of the Office of the Attorney General, subpoena persons and records
40 to obtain testimony on official actions that were taken or omitted or to obtain documents otherwise
41 subject to public inspection under ORS 192.311 to 192.478.

42 (2) The investigative authority authorized in subsection (1) of this section covers the violation
43 or omission by a municipality related to enforcement of codes or administrative rules, certification
44 of inspectors or financial transactions dealing with permit fees and surcharges under any of the
45 following circumstances when:

1 (a) The duties are clearly established by law, rule or agreement;

2 (b) The duty involves procedures for which the means and methods are clearly established by
3 law, rule or agreement; or

4 (c) The duty is described by clear performance standards.

5 (3) Prior to starting an investigation under subsection (1) of this section, the director shall notify
6 the municipality in writing setting forth the allegation and the rules or statutes pertaining to the
7 allegation and give the municipality 30 days to respond to the allegation. If the municipality does
8 not satisfy the director's concerns, the director may then commence an investigation.

9 (4) If the Department of Consumer and Business Services or the director directs corrective
10 action, the following shall be done:

11 (a) The corrective action shall be in writing and served on the building official and the chief
12 executive officers of all municipalities affected;

13 (b) The corrective action shall identify the facts and law relied upon for the required action; and

14 (c) A reasonable time shall be provided to the municipality for compliance.

15 (5) The director may revoke any authority of the municipality to administer any part of the state
16 building code or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945,
17 479.995 or 480.510 to 480.670 [*or this chapter*] or ORS chapter 447, **455**, 460 or 693 or any rule
18 adopted under those statutes if the director determines after a hearing conducted under ORS 183.413
19 to 183.497 that:

20 (a) All of the requirements of this section and ORS 455.775 and 455.895 were met; and

21 (b) The municipality did not comply with the corrective action required.

22 **SECTION 14. Sections 15 to 22 of this 2023 Act are added to and made a part of ORS**
23 **197.286 to 197.314.**

24 **SECTION 15. As used in sections 15 to 22 of this 2023 Act:**

25 (1) "Net residential acre" means an acre of residentially designated buildable land, not
26 including nondevelopable rights of way for streets, roads or utilities.

27 (2) "Site" means a lot or parcel or contiguous lots or parcels, or both, with or without
28 common ownership.

29 **SECTION 16. (1) Notwithstanding any other provision of ORS 197.286 to 197.314, a city**
30 **outside of Metro may adopt an amendment to the city's urban growth boundary to include**
31 **a site if:**

32 (a) The site is adjacent to the existing urban growth boundary of the city or is separated
33 from the existing urban growth boundary by only a street or road;

34 (b) The site is:

35 (A) Designated as an urban reserve under ORS 195.137 to 195.145, including sites whose
36 designations are adopted under ORS 197.652 to 197.658;

37 (B) Designated as nonresource land; or

38 (C) Subject to an acknowledged exception to a statewide land use planning goal relating
39 to farmland or forest land;

40 (c) The city has not previously adopted an urban growth boundary amendment under
41 sections 15 to 22 of this 2023 Act;

42 (d) The city has adopted a conceptual plan for the site that satisfies the requirements
43 of section 18 of this 2023 Act; and

44 (e) The total acreage of the site:

45 (A) For a city with a population of 25,000 or greater, does not exceed 150 net residential

1 **acres; or**

2 **(B) For a city with a population of less than 25,000, does not exceed 75 net residential**
3 **acres.**

4 **(2) The adoption of an amendment to an urban growth boundary under this section does**
5 **not require county approval.**

6 **SECTION 17. (1) A city within Metro may petition Metro to include a site within the ur-**
7 **ban growth boundary that satisfies the requirements of section 16 (1) of this 2023 Act and**
8 **that is designated as an urban reserve.**

9 **(2) Within 120 days of receiving a petition, Metro shall determine whether the petition**
10 **substantially complies with the provisions of section 18 of this 2023 Act. If Metro determines**
11 **that a petition does not substantially comply with the provisions of section 18 of this 2023**
12 **Act, Metro shall:**

13 **(a) Notify the city of any deficiencies in the petition, specifying sufficient detail to allow**
14 **the city to remedy any deficiency in a subsequent resubmittal; and**

15 **(b) Allow the city to amend its conceptual plan and resubmit it as a petition to Metro**
16 **under this section.**

17 **(3) If Metro determines that a petition does comply with section 18 of this 2023 Act,**
18 **notwithstanding any other provision of ORS 197.286 to 197.314, Metro shall adopt amendments**
19 **to its urban growth boundary to include the site in the petition, provided the amendment**
20 **does not result in more than 600 total net residential acres added under this subsection.**

21 **(4) If the net residential acres included in approved petitions received on or before July**
22 **1, 2024, total less than 600 net residential acres, Metro shall adopt amendments to its urban**
23 **growth boundary under subsection (3) of this section:**

24 **(a) On or before November 1, 2024, for petitions received on or before July 1, 2024; or**

25 **(b) Within 120 days following the receipt of a petition received after July 1, 2024, in the**
26 **order in which the petitions are received.**

27 **(5) If the net residential acres included in approved petitions received on or before July**
28 **1, 2024, total 600 or more net residential acres, on or before January 1, 2026, Metro shall**
29 **adopt amendments to its urban growth boundary under subsection (3) of this section to in-**
30 **clude the sites in those petitions that Metro determines will:**

31 **(a) Best comply with the provisions of section 18 of this 2023 Act; and**

32 **(b) Maximize the development of needed housing.**

33 **(6) Metro may not conduct a hearing to review or select petitions or adopt amendments**
34 **to its urban growth boundary under this section.**

35 **SECTION 18. (1) As used in this section:**

36 **(a) “Affordable units” means residential units described in subsection (3)(f)(A) or (4) of**
37 **this section.**

38 **(b) “Market rate units” means residential units other than affordable units.**

39 **(2) Prior to adopting an urban growth boundary amendment under section 16 of this 2023**
40 **Act or petitioning Metro under section 17 of this 2023 Act, a city must adopt a conceptual**
41 **plan for the site as an amendment to its comprehensive plan.**

42 **(3) The conceptual plan must:**

43 **(a) Establish the total net residential acres within the site and must require for those**
44 **residential areas:**

45 **(A) A diversity of housing types and sizes, including middle housing as defined in ORS**

1 **197.758; and**

2 **(B)(i) For a city within Metro, an average density of at least 15 dwelling units per net**
3 **residential acre;**

4 **(ii) For cities within Baker, Clatsop, Coos, Crook, Curry, Gilliam, Grant, Harney,**
5 **Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union,**
6 **Wallowa and Wheeler Counties and the cities of Dunes City, Florence and Reedsport, an av-**
7 **erage density of at least four dwelling units per net residential acre, whether for affordable**
8 **units, market rate units or both; or**

9 **(iii) For all other cities, an average density of at least eight dwelling units per net resi-**
10 **dential acre, whether for affordable units, market rate units or both;**

11 **(b) Designate within the site:**

12 **(A) Recreation and open space lands; and**

13 **(B) Lands for commercial uses, either separate or as a mixed use, that:**

14 **(i) Primarily serve the immediate surrounding housing;**

15 **(ii) Provide goods and services at a smaller scale than provided on typical lands zoned for**
16 **commercial use; and**

17 **(iii) Are provided at the minimum amount necessary to support and integrate viable**
18 **commercial and residential uses;**

19 **(c) If the city has a population of 5,000 or greater, include a transportation network for**
20 **the site that provides diverse transportation options, including walking, bicycling and transit**
21 **use if public transit services are available, along with both sufficient internal connections**
22 **and connections to areas within the existing urban growth boundary of the city;**

23 **(d) Ensure that any area within the site will either retain its designation or otherwise**
24 **be protected if the area is designated for protection in an acknowledged comprehensive plan**
25 **pursuant to a statewide land use planning goal relating to:**

26 **(A) Open spaces, scenic and historic areas or natural resources;**

27 **(B) Areas subject to natural hazards;**

28 **(C) The Willamette River Greenway;**

29 **(D) Estuarine resources;**

30 **(E) Coast shorelands; or**

31 **(F) Beaches and dunes;**

32 **(e) Ensure that the site will be served with all necessary urban services as defined in**
33 **ORS 195.065, which may be facilitated through a binding agreement among the city, each**
34 **owner within the site and any other necessary public or private utility provider, local gov-**
35 **ernment or district, as defined in ORS 195.060, or combination of local governments and**
36 **districts; and**

37 **(f) Include requirements that ensure that:**

38 **(A) At least 30 percent of the residential units are subject to affordability restrictions,**
39 **including but not limited to affordable housing covenants, as described in ORS 456.270 to**
40 **456.295, that require for a period of not less than 60 years that the units be:**

41 **(i) Available for rent, with or without government assistance, by households with an in-**
42 **come of 80 percent or less of the area median income as defined in ORS 456.270; or**

43 **(ii) Available for purchase, with or without government assistance, by households with**
44 **an income of 130 percent or less of the area median income;**

45 **(B) The construction of all affordable units has commenced before the city issues certif-**

1 **icates of occupancy to the last 15 percent of market rate units;**

2 **(C) All common areas and amenities are equally available to residents of affordable units**
3 **and of market rate units; and**

4 **(D) Necessary restrictions to ensure the development of affordable units are recorded**
5 **under ORS 456.280 (1)(b) before building permits are issued for any property within the site.**

6 **(4) A city may require greater affordability requirements for residential units than are**
7 **required under subsection (3)(f)(A) of this section, provided that the city significantly and**
8 **proportionally offsets development costs related to:**

9 **(a) Permits or fees;**

10 **(b) System development charges;**

11 **(c) Property taxes; or**

12 **(d) Land acquisition and predevelopment costs.**

13 **SECTION 19. (1) Before adopting a conceptual plan under section 18 of this 2023 Act, a**
14 **city shall:**

15 **(a) Review a petition filed by a property owner or group of property owners proposing**
16 **an urban growth boundary amendment under sections 15 to 22 of this 2023 Act.**

17 **(b) Provide opportunities for public participation, including, at least:**

18 **(A) One public comment period;**

19 **(B)(i) One meeting of the city's planning commission where public testimony is consid-**
20 **ered;**

21 **(ii) One meeting of the city's council where public testimony is considered; or**

22 **(iii) One public open house; and**

23 **(C) Notice on the city's website or published in a paper of record at least 14 days before:**

24 **(i) A meeting under subparagraph (B) of this paragraph; and**

25 **(ii) The beginning of a comment period under subparagraph (A) of this paragraph.**

26 **(c) Consult with, request necessary information from and provide the opportunity for**
27 **written comment from:**

28 **(A) The owners of each lot or parcel within the site;**

29 **(B) If the city does not currently exercise land use jurisdiction over the entire site, the**
30 **governing body of each county with land use jurisdiction over the site;**

31 **(C) Any special district that provides urban services to the site; and**

32 **(D) Any public or private utility that provides utilities to the site.**

33 **(2) The petition under subsection (1)(a) of this section must:**

34 **(a) Be in writing in a form and format as required by the city;**

35 **(b) Specify the lots or parcels that are the subject of the petition; and**

36 **(c) Be signed by all owners of lots or parcels included within the petition, including a**
37 **consent to annexation if the property is added to the urban growth boundary.**

38 **(3) If the city has received approval for the amendment to the petition from all property**
39 **owners of such lands, in writing in a form and format specified by the city, a city may adopt**
40 **a conceptual plan for all or a portion of the lands contained within a petition filed under**
41 **subsection (1)(a) of this section.**

42 **(4) A conceptual plan must include findings identifying reasons for inclusion of lands**
43 **within the conceptual plan and reasons why any lands for which a petition was submitted**
44 **were not included within the conceptual plan.**

45 **SECTION 20. (1) Within 21 days after the adoption of an amendment to an urban growth**

1 boundary and the adoption or amendment of a conceptual plan under sections 15 to 22 of this
2 2023 Act, one of the following shall submit the conceptual plan and amendment to the De-
3 partment of Land Conservation and Development for review:

- 4 (a) The city, for an amendment under section 16 of this 2023 Act; or
- 5 (b) Metro, for an amendment under section 17 of this 2023 Act.

6 (2) Within 60 days after receiving a submittal under subsection (1) of this section, the
7 department shall:

8 (a) Review the submittal for compliance with the provisions of sections 15 to 22 of this
9 2023 Act.

10 (b)(A) If the submittal substantially complies with the provisions of sections 15 to 22 of
11 this 2023 Act, issue an order approving the submittal; or

12 (B) If the submittal does not substantially comply with the provisions of sections 15 to
13 22 of this 2023 Act, issue an order remanding the submittal to the city or to Metro with a
14 specific determination of any deficiencies in the submittal and with sufficient detail to iden-
15 tify a specific remedy for any deficiency in a subsequent resubmittal.

16 (3) If a conceptual plan is remanded to Metro under subsection (2)(b) of this section:

17 (a) The department shall notify the city; and

18 (b) The city may amend its conceptual plan and resubmit a petition to Metro under sec-
19 tion 17 of this 2023 Act.

20 (4) Judicial review of the department's order:

21 (a) Must be as a review of orders other than a contested case under ORS 183.484; and

22 (b) May be initiated only by the city or an owner of a proposed site.

23 **SECTION 21.** A city for which an amendment was made to an urban growth boundary
24 under section 16 or 17 of this 2023 Act and approved under section 20 of this 2023 Act shall
25 submit a report describing the status of development within the included area to the De-
26 partment of Land Conservation and Development every two years until:

27 (1) January 2, 2033; or

28 (2) The city determines that development consistent with the acknowledged conceptual
29 plan is deemed complete.

30 **SECTION 22.** Notwithstanding ORS 197.626, an action by a local government under
31 sections 15 to 22 of this 2023 Act is not a land use decision as defined in ORS 197.015.

32 **SECTION 23.** Sections 15 to 22 of this 2023 Act are repealed on January 2, 2033.

33 **SECTION 24.** ORS 197.843 is amended to read:

34 197.843. (1) The Land Use Board of Appeals shall award attorney fees to [*an applicant whose*
35 *application is only for the development of affordable housing, as defined in ORS 197.308, or publicly*
36 *supported housing, as defined in ORS 456.250*] **a person whose application includes the develop-**
37 **ment of needed housing, as defined in section 23, chapter 13, Oregon Laws 2023 (Enrolled**
38 **House Bill 2001), and any local government that approved a quasi-judicial land use decision,**
39 **if the board affirms a quasi-judicial land use decision approving the application or reverses a**
40 **quasi-judicial land use decision denying the application.**

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

44 (3) As used in this section[:],

45 [(a) "*Applicant*" includes:]

1 [(A) *An applicant with a funding reservation agreement with a public funder for the purpose of*
2 *developing publicly supported housing;*]

3 [(B) *A housing authority, as defined in ORS 456.005;*]

4 [(C) *A qualified housing sponsor, as defined in ORS 456.548;*]

5 [(D) *A religious nonprofit corporation;*]

6 [(E) *A public benefit nonprofit corporation whose primary purpose is the development of affordable*
7 *housing; and*]

8 [(F) *A local government that approved the application of an applicant described in this*
9 *paragraph.*]

10 [(b)] “attorney fees” includes prelitigation legal expenses, including preparing the application
11 and supporting the application in local land use hearings or proceedings.

12 **SECTION 25.** The amendments to ORS 197.843 by section 24 of this 2023 Act apply to de-
13 cisions for which a notice of intent to appeal under ORS 197.830 is filed on or after January
14 1, 2024.

15 **SECTION 26.** (1) Sections 2 to 4, 6 and 7 of this 2023 Act and the amendments to ORS
16 197.843 and 455.770 by sections 13 and 24 of this 2023 Act become operative on January 1, 2024.

17 (2) Sections 8 and 9 of this 2023 Act become operative on April 1, 2024.

18 (3) The Department of Land Conservation and Development and the Department of Con-
19 sumer and Business Services may take any action before the operative dates specified in
20 subsections (1) and (2) of this section that is necessary for the departments to exercise, on
21 and after the operative dates specified in subsections (1) and (2) of this section, all of the
22 duties, functions and powers conferred on the departments by sections 2 to 4 and 6 to 9 of
23 this 2023 Act and the amendments to ORS 197.843 and 455.770 by sections 13 and 24 of this
24 2023 Act.

25 **SECTION 27.** Section 6 of this 2023 Act is amended to read:

26 **Sec. 6.** As used in sections 6 to 9 of this 2023 Act, “housing law” means ORS 92.010 to 92.192,
27 92.830 to 92.845, 197.286 to 197.314, 197.360 to 197.380, 197.475 to 197.490, 197.505 to 197.540, 197.660
28 to 197.670, 197.748, 197.758, 215.402 to 215.438, 227.160 to 227.186, 455.148, 455.150, 455.152, 455.153,
29 455.156, 455.157, 455.165, 455.170, 455.175, 455.180, 455.185 to 455.198, 455.200, 455.202 to 455.208,
30 455.210, 455.220, 455.465 and 455.467 [*and section 2 of this 2023 Act*] and administrative rules imple-
31 menting those laws, to the extent that the law or rule creates a mandatory duty on a local govern-
32 ment or its agent and the application of the law or rule relates to residential development or
33 pertains to a permit for a residential use or division of land for residential purposes.

34 **SECTION 28.** The amendments to section 6 of this 2023 Act by section 27 of this 2023 Act
35 become operative on January 1, 2032.

36 **SECTION 29.** In addition to and not in lieu of any other appropriation, there is appro-
37 priated to the Department of Land Conservation and Development, for the biennium begin-
38 ning July 1, 2023, out of the General Fund:

39 (1) The amount of \$_____ to perform the duties of the Housing Accountability and Pro-
40 duction Office under sections 6 to 9 of this 2023 Act.

41 (2) The amount of \$10,000,000 to provide:

42 (a) Programs or documents relating to education, guidance or best practices for local
43 governments regarding compliance with state housing laws, as defined in section 6 of this
44 2023 Act;

45 (b) Grants to local governments or nonprofit organizations to develop programs or doc-

1 **uments under paragraph (a) of this subsection;**

2 **(c) Before April 1, 2024, technical assistance and grants to local governments that pro-**
3 **actively acknowledge the need to update the local implementation of land use regulations and**
4 **building code enforcement to comply with housing laws; and**

5 **(d) On and after April 1, 2024, technical assistance and grants to assist local governments**
6 **with:**

7 **(A) The implementation of voluntary compliance agreements as described in section 8 (3)**
8 **of this 2023 Act; or**

9 **(B) Updates to land use regulations needed to comply with changes to Land Conservation**
10 **and Development Commission rules or the legal interpretations of land use laws or rules, if**
11 **those changes relate to housing.**

12 **SECTION 30. This 2023 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
14 **July 1, 2023.**

15
