

Senate Bill 406

Sponsored by Senator WEBER (Presession filed.)

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**.

Requires certain cities in Tillamook County to allow middle housing on residentially zoned lands, to adopt housing production strategies and to accommodate estimated housing needs upon lands inventoried as buildable lands.

A BILL FOR AN ACT

1
2 Relating to housing in Tillamook County; creating new provisions; and amending ORS 197.290,
3 197.293, 197.296 and 197.758 and section 3, chapter 639, Oregon Laws 2019.

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

5 **SECTION 1.** ORS 197.758 is amended to read:

6 197.758. (1) As used in this section:

7 (a) "Cottage clusters" means groupings of no fewer than four detached housing units per acre
8 with a footprint of less than 900 square feet each and that include a common courtyard.

9 (b) "Middle housing" means:

10 (A) Duplexes;

11 (B) Triplexes;

12 (C) Quadplexes;

13 (D) Cottage clusters; and

14 (E) Townhouses.

15 (c) "Townhouses" means a dwelling unit constructed in a row of two or more attached units,
16 where each dwelling unit is located on an individual lot or parcel and shares at least one common
17 wall with an adjacent unit.

18 (2) Except as provided in subsection (4) of this section, each city with a population of 25,000 or
19 more **or within Tillamook County** and each county or city within a metropolitan service district
20 shall allow the development of:

21 (a) All middle housing types in areas zoned for residential use that allow for the development
22 of detached single-family dwellings; and

23 (b) A duplex on each lot or parcel zoned for residential use that allows for the development of
24 detached single-family dwellings.

25 (3) Except as provided in subsection (4) of this section, each city not within a metropolitan
26 service district with a population of more than 10,000 and less than 25,000 shall allow the develop-
27 ment of a duplex on each lot or parcel zoned for residential use that allows for the development of
28 detached single-family dwellings. Nothing in this subsection prohibits a local government from al-
29 lowing middle housing types in addition to duplexes.

30 (4) This section does not apply to:

31 (a) Cities with a population of 1,000 or fewer;

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 (b) Lands not within an urban growth boundary;

2 (c) Lands that are not incorporated and also lack sufficient urban services, as defined in ORS
3 195.065;

4 (d) Lands that are not zoned for residential use, including lands zoned primarily for commercial,
5 industrial, agricultural or public uses; or

6 (e) Lands that are not incorporated and are zoned under an interim zoning designation that
7 maintains the land's potential for planned urban development.

8 (5) Local governments may regulate siting and design of middle housing required to be permitted
9 under this section, provided that the regulations do not, individually or cumulatively, discourage the
10 development of all middle housing types permitted in the area through unreasonable costs or delay.
11 Local governments may regulate middle housing to comply with protective measures adopted pur-
12 suant to statewide land use planning goals.

13 (6) This section does not prohibit local governments from permitting:

14 (a) Single-family dwellings in areas zoned to allow for single-family dwellings; or

15 (b) Middle housing in areas not required under this section.

16 **SECTION 2.** Sections 3, chapter 639, Oregon Laws 2019, is amended to read:

17 **Sec. 3.** (1) Notwithstanding ORS 197.646, a local government shall adopt land use regulations
18 or amend its comprehensive plan to implement [*section 2 of this 2019 Act*] **ORS 197.758** no later than:

19 (a) June 30, 2021, for each city subject to [*section 2 (3) of this 2019 Act*] **ORS 197.758 (3)**; [or]

20 (b) June 30, 2022, for each local government subject to [*section 2 (2) of this 2019 Act.*] **ORS**
21 **197.758 (2) except as provided in paragraph (c) of this subsection; or**

22 **(c) June 30, 2025, for each city in Tillamook County.**

23 (2) The Land Conservation and Development Commission, with the assistance of the Building
24 Codes Division of the Department of Consumer and Business Services, shall develop a model middle
25 housing ordinance no later than December 31, 2020.

26 (3) A local government that has not acted within the time provided under subsection (1) of this
27 section shall directly apply the model ordinance developed by the commission under subsection (2)
28 of this section under ORS 197.646 (3) until the local government acts as described in subsection (1)
29 of this section.

30 (4) In adopting regulations or amending a comprehensive plan under this section, a local gov-
31 ernment shall consider ways to increase the affordability of middle housing by considering ordi-
32 nances and policies that include but are not limited to:

33 (a) Waiving or deferring system development charges;

34 (b) Adopting or amending criteria for property tax exemptions under ORS 307.515 to 307.523,
35 307.540 to 307.548 or 307.651 to 307.687 or property tax freezes under ORS 308.450 to 308.481; and

36 (c) Assessing a construction tax under ORS 320.192 and 320.195.

37 (5) When a local government makes a legislative decision to amend its comprehensive plan or
38 land use regulations to allow middle housing in areas zoned for residential use that allow for de-
39 tached single-family dwellings, the local government is not required to consider whether the
40 amendments significantly affect an existing or planned transportation facility.

41 **SECTION 3.** ORS 197.290 is amended to read:

42 197.290. (1) A city with a population greater than 10,000 **or within Tillamook County** shall
43 develop and adopt a housing production strategy under this section no later than one year after the
44 city's deadline for completing a housing capacity analysis under ORS 197.296 (2)(a) or (10)(b) or
45 197.297.

1 (2) A housing production strategy must include a list of specific actions, including the adoption
 2 of measures and policies, that the city shall undertake to promote development within the city to
 3 address a housing need identified under ORS 197.296 (6)(b) or (10)(b) or 197.297. Actions under this
 4 subsection may include:

5 (a) The reduction of financial and regulatory impediments to developing needed housing, in-
 6 cluding removing or easing approval standards or procedures for needed housing at higher densities
 7 or that is affordable;

8 (b) The creation of financial and regulatory incentives for development of needed housing, in-
 9 cluding creating incentives for needed housing at higher densities or that is affordable; and

10 (c) The development of a plan to access resources available at local, regional, state and national
 11 levels to increase the availability and affordability of needed housing.

12 (3) In creating a housing production strategy, a city shall review and consider:

13 (a) Socioeconomic and demographic characteristics of households living in existing needed
 14 housing;

15 (b) Market conditions affecting the provision of needed housing;

16 (c) Measures already adopted by the city to promote the development of needed housing;

17 (d) Existing and expected barriers to the development of needed housing; and

18 (e) For each action the city includes in its housing production strategy:

19 (A) The schedule for its adoption;

20 (B) The schedule for its implementation;

21 (C) Its expected magnitude of impact on the development of needed housing; and

22 (D) The time frame over which it is expected to impact needed housing.

23 (4) The housing production strategy must include within its index a copy of the city's most re-
 24 cently completed survey under ORS 456.586 (2).

25 (5) The adoption of a housing production strategy is not a land use decision and is not subject
 26 to appeal or review except as provided in ORS 197.291.

27 (6) A city *[with a population of 10,000 or less]* **not described in subsection (1) of this section**
 28 may develop a housing production strategy as provided in this section.

29 **SECTION 4.** ORS 197.293 is amended to read:

30 197.293. (1) The Land Conservation and Development Commission, in consultation with the
 31 Housing and Community Services Department, shall adopt criteria for reviewing and identifying
 32 cities *[with a population greater than 10,000]* **described in ORS 197.290 (1)** that have not sufficiently:

33 (a) Achieved production of needed housing within their jurisdiction; or

34 (b) Implemented a housing production strategy adopted under ORS 197.290.

35 (2) The criteria adopted by the commission under subsection (1) of this section may include the
 36 city's:

37 (a) Unmet housing need as described in ORS 197.296 (6);

38 (b) Unmet housing need in proportion to the city's population;

39 (c) Percentage of households identified as severely rent burdened as described in ORS 456.586;

40 (d) Recent housing development;

41 (e) Recent adoption of a housing production strategy under ORS 197.290 or adoption of actions
 42 pursuant to a housing production strategy;

43 (f) Recent or frequent previous identification by the Department of Land Conservation and De-
 44 velopment under this section; or

45 (g) Other attributes that the commission considers relevant.

1 (3) The Department of Land Conservation and Development may review cities under the criteria
2 adopted under subsection (2) of this section for the purposes of prioritizing actions by the depart-
3 ment, including:

4 (a) Awarding available technical or financial resources;

5 (b) Providing enhanced review and oversight of the city's housing production strategy;

6 (c) Requiring a report and explanation if a city does not implement an action within the ap-
7 proximate time frame scheduled within a housing production strategy;

8 (d) Entering into agreements with the city relating to the city's modification or implementation
9 of its housing production strategy; or

10 (e) Petitioning the commission to act under ORS 197.319 to 197.335 to require the city to comply
11 with ORS 197.286 to 197.314 or statewide land use planning goals related to housing or urbanization.

12 **SECTION 5.** ORS 197.296 is amended to read:

13 197.296. (1)(a) The provisions of subsections (2) to (9) of this section apply to metropolitan ser-
14 vice district regional framework plans and local government comprehensive plans for lands within
15 the urban growth boundary of a city that is located outside of a metropolitan service district and
16 has a population of 25,000 or more.

17 (b) The Land Conservation and Development Commission may establish a set of factors under
18 which additional cities are subject to the provisions of this section. In establishing the set of factors
19 required under this paragraph, the commission shall consider the size of the city, the rate of popu-
20 lation growth of the city or the proximity of the city to another city with a population of 25,000 or
21 more or to a metropolitan service district.

22 (2)(a) A local government shall demonstrate that its comprehensive plan or regional framework
23 plan provides sufficient buildable lands within the urban growth boundary established pursuant to
24 statewide planning goals to accommodate estimated housing needs for 20 years:

25 (A) At periodic review under ORS 197.628 to 197.651;

26 (B) As scheduled by the commission:

27 (i) At least once each eight years for local governments that are not within a metropolitan
28 service district; or

29 (ii) At least once each six years for a metropolitan service district; or

30 (C) At any other legislative review of the comprehensive plan or regional framework plan that
31 concerns the urban growth boundary and requires the application of a statewide planning goal re-
32 lating to buildable lands for residential use.

33 (b) The 20-year period shall commence on the date initially scheduled for completion of the re-
34 view under paragraph (a) of this subsection.

35 (3) In performing the duties under subsection (2) of this section, a local government shall:

36 (a) Inventory the supply of buildable lands within the urban growth boundary and determine the
37 housing capacity of the buildable lands; and

38 (b) Conduct an analysis of existing and projected housing need by type and density range, in
39 accordance with all factors under ORS 197.303 and statewide planning goals and rules relating to
40 housing, to determine the number of units and amount of land needed for each needed housing type
41 for the next 20 years.

42 (4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable
43 lands" includes:

44 (A) Vacant lands planned or zoned for residential use;

45 (B) Partially vacant lands planned or zoned for residential use;

1 (C) Lands that may be used for a mix of residential and employment uses under the existing
2 planning or zoning; and

3 (D) Lands that may be used for residential infill or redevelopment.

4 (b) For the purpose of the inventory and determination of housing capacity described in sub-
5 section (3)(a) of this section, the local government must demonstrate consideration of:

6 (A) The extent that residential development is prohibited or restricted by local regulation and
7 ordinance, state law and rule or federal statute and regulation;

8 (B) A written long term contract or easement for radio, telecommunications or electrical facili-
9 ties, if the written contract or easement is provided to the local government; and

10 (C) The presence of a single family dwelling or other structure on a lot or parcel.

11 (c) Except for land that may be used for residential infill or redevelopment, a local government
12 shall create a map or document that may be used to verify and identify specific lots or parcels that
13 have been determined to be buildable lands.

14 (5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of
15 housing capacity pursuant to subsection (3)(a) of this section must be based on data relating to land
16 within the urban growth boundary that has been collected since the last review under subsection
17 (2)(a)(B) of this section. The data shall include:

18 (A) The number, density and average mix of housing types of urban residential development that
19 have actually occurred;

20 (B) Trends in density and average mix of housing types of urban residential development;

21 (C) Market factors that may substantially impact future urban residential development; and

22 (D) The number, density and average mix of housing types that have occurred on the buildable
23 lands described in subsection (4)(a) of this section.

24 (b) A local government shall make the determination described in paragraph (a) of this sub-
25 section using a shorter time period than the time period described in paragraph (a) of this subsection
26 if the local government finds that the shorter time period will provide more accurate and reliable
27 data related to housing capacity. The shorter time period may not be less than three years.

28 (c) A local government shall use data from a wider geographic area or use a time period longer
29 than the time period described in paragraph (a) of this subsection if the analysis of a wider ge-
30 ographic area or the use of a longer time period will provide more accurate, complete and reliable
31 data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a)
32 of this subsection. The local government must clearly describe the geographic area, time frame and
33 source of data used in a determination performed under this paragraph.

34 (6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than
35 the housing capacity determined pursuant to subsection (3)(a) of this section, the local government
36 shall take one or both of the following actions to accommodate the additional housing need:

37 (a) Amend its urban growth boundary to include sufficient buildable lands to accommodate
38 housing needs for the next 20 years. As part of this process, the local government shall consider the
39 effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include
40 sufficient land reasonably necessary to accommodate the siting of new public school facilities. The
41 need and inclusion of lands for new public school facilities shall be a coordinated process between
42 the affected public school districts and the local government that has the authority to approve the
43 urban growth boundary.

44 (b) Amend its comprehensive plan, regional framework plan, functional plan or land use regu-
45 lations to include new measures that demonstrably increase the likelihood that residential develop-

1 ment will occur at densities sufficient to accommodate housing needs for the next 20 years without
2 expansion of the urban growth boundary. A local government or metropolitan service district that
3 takes this action shall adopt findings regarding the density expectations assumed to result from
4 measures adopted under this paragraph based upon the factors listed in ORS 197.303 (2) and data
5 in subsection (5)(a) of this section. The density expectations may not project an increase in resi-
6 dential capacity above achieved density by more than three percent without quantifiable validation
7 of such departures. For a local government located outside of a metropolitan service district, a
8 quantifiable validation must demonstrate that the assumed housing capacity has been achieved in
9 areas that are zoned to allow no greater than the same authorized density level within the local
10 jurisdiction or a jurisdiction in the same region. For a metropolitan service district, a quantifiable
11 validation must demonstrate that the assumed housing capacity has been achieved in areas that are
12 zoned to allow no greater than the same authorized density level within the metropolitan service
13 district.

14 (c) As used in this subsection, “authorized density level” has the meaning given that term in
15 ORS 227.175.

16 (7) Using the housing need analysis conducted under subsection (3)(b) of this section, the local
17 government shall determine the overall average density and overall mix of housing types at which
18 residential development of needed housing types must occur in order to meet housing needs over the
19 next 20 years. If that density is greater than the actual density of development determined under
20 subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types
21 determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic
22 review, shall adopt measures that demonstrably increase the likelihood that residential development
23 will occur at the housing types and density and at the mix of housing types required to meet housing
24 needs over the next 20 years.

25 (8)(a) A local government outside a metropolitan service district that takes any actions under
26 subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use
27 regulations comply with goals and rules adopted by the commission and implement ORS 197.286 to
28 197.314.

29 (b) A local government shall determine the density and mix of housing types anticipated as a
30 result of actions taken under subsections (6) and (7) of this section and monitor and record the ac-
31 tual density and mix of housing types achieved following the adoption of these actions. The local
32 government shall compare actual and anticipated density and mix. The local government shall sub-
33 mit its comparison to the commission at the next review of its urban growth boundary under sub-
34 section (2)(a) of this section.

35 (9) In establishing that actions and measures adopted under subsections (6) and (7) of this sec-
36 tion demonstrably increase the likelihood of higher density residential development, the local gov-
37 ernment shall at a minimum ensure that land zoned for needed housing is in locations appropriate
38 for the housing types identified under subsection (3) of this section, is zoned at density ranges that
39 are likely to be achieved by the housing market using the analysis in subsection (3) of this section
40 and is in areas where sufficient urban services are planned to enable the higher density development
41 to occur over the 20-year period. Actions or measures, or both, may include but are not limited to:

42 (a) Increases in the permitted density on existing residential land;

43 (b) Financial incentives for higher density housing;

44 (c) Provisions permitting additional density beyond that generally allowed in the zoning district
45 in exchange for amenities and features provided by the developer;

1 (d) Removal or easing of approval standards or procedures;

2 (e) Minimum density ranges;

3 (f) Redevelopment and infill strategies;

4 (g) Authorization of housing types not previously allowed by the plan or regulations;

5 (h) Adoption of an average residential density standard; and

6 (i) Rezoning or redesignation of nonresidential land.

7 (10)(a) The provisions of this subsection apply to local government comprehensive plans for
8 lands within the urban growth boundary of a city that is located outside of a metropolitan service
9 district and has a population of less than 25,000.

10 (b) As required under paragraph (c) of this subsection, a city shall, according to rules of the
11 commission:

12 (A) Determine the estimated housing needs within the jurisdiction for the next 20 years;

13 (B) Inventory the supply of buildable lands available within the urban growth boundary to ac-
14 commodate the estimated housing needs determined under this subsection; and

15 (C) Adopt measures necessary to accommodate the estimated housing needs determined under
16 this subsection.

17 (c) The actions required under paragraph (b) of this subsection shall be undertaken:

18 (A) At periodic review pursuant to ORS 197.628 to 197.651;

19 (B) On a schedule established by the commission for cities with a population greater than 10,000
20 **or within Tillamook County**, not to exceed once each eight years; or

21 (C) At any other legislative review of the comprehensive plan that requires the application of
22 a statewide planning goal relating to buildable lands for residential use.

23 (d) For the purpose of the inventory described in this subsection, “buildable lands” includes
24 those lands described in subsection (4)(a) of this section.

25 (11) If a city with a population of 10,000 or less conducts an inventory of the supply of buildable
26 lands or an estimate of housing need, it must satisfy the requirements of subsection (10) of this
27 section.

28 **SECTION 6. No later than June 30, 2024, the Land Conservation and Development Com-**
29 **mission shall adopt a schedule by which cities in Tillamook County shall demonstrate suffi-**
30 **cient buildable lands.**

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