

HB 3414-19
(LC 4079)
6/8/23 (RLM/ps)

Requested by Representative BREESE-IVERSON

**PROPOSED AMENDMENTS TO
HOUSE BILL 3414**

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest
2 of the line and delete line 3 and insert “amending ORS 183.471, 197.843 and
3 455.770; and declaring an emergency.”.

4 Delete lines 5 through 26 and delete pages 2 through 7 and insert:

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

10 **“(b) ‘Adjustment’ does not include:**

11 **“(A) A request to allow a use of property not otherwise permissible**
12 **under applicable zoning requirements;**

13 **“(B) Deviations from land use regulations or requirements related**
14 **to accessibility, affordability, fire ingress or egress or statewide land**
15 **use planning goals relating to natural resources, natural hazards,**
16 **Willamette River Greenway, estuarine resources, coastal shorelands,**
17 **beaches and dunes or ocean resources;**

18 **“(C) A complete waiver of land use regulations; or**

19 **“(D) Deviations to requirements of building codes, federal or state**
20 **water quality requirements, or requirements of any other federal,**
21 **state or local law that is not a land use regulation.**

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

3 **“(a) Applications are for a building permit or a quasi-judicial, lim-**
4 **ited or ministerial land use decision;**

5 **“(b) Development is on lands zoned for residential or mixed-use**
6 **residential uses;**

7 **“(c) Development is within an urban growth boundary, not includ-**
8 **ing lands that have not been annexed by a city; and**

9 **“(d) Development is of net new housing units, including single-**
10 **family or multifamily, mixed-use residential, manufactured dwelling**
11 **parks, accessory dwelling units or middle housing as defined in ORS**
12 **197.758.**

13 **“(3) A local government may not approve more than 10 distinct**
14 **adjustments under this section. Each development standard described**
15 **in subsection (4) of this section and each design standard described in**
16 **subsection (5) of this section is considered a distinct adjustment. Ad-**
17 **justments meeting the criteria under this section shall be granted by**
18 **a local government and may be resolved through an existing or new**
19 **administrative process of the local government that allows for flexi-**
20 **bility in addressing development or design standards for residential**
21 **development.**

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

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

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

1 “(c) **Parking minimums;**

2 “(d) **Minimum or maximum lot sizes, for up to a 10 percent adjust-**
3 **ment;**

4 “(e) **Minimum or maximum lot widths and depths, for up to a 10**
5 **percent adjustment;**

6 “(f) **Requirements for bicycle parking that establish:**

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

9 “(B) **The location of the spaces, provided that secure, covered bi-**
10 **cycle parking spaces are within or adjacent to the residential devel-**
11 **opment;**

12 “(g) **Minimum or maximum building lot coverage requirements:**

13 “(A) **For up to a 15 percent adjustment, for accessory dwelling units**
14 **with a single-family detached house; or**

15 “(B) **For up to a 20 percent adjustment, for multifamily, mixed-use**
16 **residential and middle housing;**

17 “(h) **Unit density maximums, up to an amount necessary to account**
18 **for other adjustments under this section;**

19 “(i) **Building height maximums, in addition to existing applicable**
20 **height bonuses, except for single-family detached houses or where de-**
21 **nial of the variance is necessary to address a fire, life or safety issue,**
22 **for an increase of the greater of:**

23 “(A) **One story; or**

24 “(B) **A 20 percent increase to base zone height with rounding con-**
25 **sistent with methodology outlined in city code; and**

26 “(j) **Prohibitions, on the ground floor of a mixed-use building,**
27 **against:**

28 “(A) **Residential uses except for one face of the building that faces**
29 **the street and is within 20 feet of the street; and**

30 “(B) **Nonresidential active uses that support the residential uses of**

1 the building, including lobbies, day care, passenger loading, commu-
2 nity rooms, exercise facilities, offices, activity spaces or live-work
3 spaces, except for active uses in specifically and clearly defined mixed
4 use areas or commercial corridors designated by local governments.

5 “(5) A local government shall grant an adjustment to design stan-
6 dards that regulate:

7 “(a) Facade materials, articulation, color or pattern;

8 “(b) Roof forms and materials;

9 “(c) Entry and garage door materials and patterns;

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

12 “(e) Window material and design;

13 “(f) Window size or total window area, for up to a 30 percent ad-
14 justment;

15 “(g) Building orientation requirements, not including transit street
16 orientation requirements;

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

20 “(i) Balconies, porches, recesses and offsets.

21 “(6) To qualify for an adjustment under this section, the applicant
22 must state in the application for adjustment that at least one of the
23 following criteria apply:

24 “(a) The adjustment will enable development of housing that would
25 not otherwise be feasible due to cost or delay resulting from the un-
26 adjusted land use regulations;

27 “(b) The adjustment will enable development of housing that re-
28 duces the sale or rental prices per residential unit;

29 “(c) The adjustment will increase the number of housing units
30 within the application;

1 “(d) All of the units in the application are subject to an affordable
2 housing covenant making them affordable to moderate income house-
3 holds as described in ORS 456.270 to 456.295 for a minimum of 30 years;
4 or

5 “(e) At least 20 percent of the units in the application are subject
6 to an affordable housing covenant making them affordable to low in-
7 come households as described in ORS 456.270 to 456.295 for a minimum
8 of 60 years.

9 “SECTION 3. (1) Notwithstanding ORS 197.015 (10)(b), an approval
10 of an application for an adjustment under section 2 of this 2023 Act is
11 a land use decision for the purposes of ORS chapter 197.

12 “(2)(a) Within 30 days after receiving a complete application under
13 section 2 of this 2023 Act, the local government shall inform the ap-
14 plicant whether the adjustments requested by the application satisfy
15 the criteria under section 2 of this 2023 Act.

16 “(b) If a determination is made that any adjustments do not satisfy
17 such criteria, the local government shall allow an applicant 30 days to
18 submit additional evidence for evaluation under this subsection.

19 “(3) Unless an appeal is filed before a final decision under sub-
20 section (6) of this section, an application for an adjustment under
21 section 2 of this 2023 Act must receive a final decision on or before the
22 development application decision and within the timelines imposed by
23 ORS 197.311, 215.416 and 227.175.

24 “(4) A denial of an application for an adjustment under section 2
25 of this 2023 Act must be in a brief written statement that explains the
26 criteria and standards considered relevant to the decision, states the
27 facts relied upon in rendering the decision and explains the justifica-
28 tion for the decision based on the criteria, standards and facts set
29 forth. If the denial of an application for an adjustment is made sepa-
30 rately from the main land use decision, the decision does not require

1 notice under ORS 197.195 or 197.797.

2 “(5) Only the applicant or the Housing Accountability and Pro-
3 duction Office established under section 7 of this 2023 Act may appeal
4 a land use decision made under section 2 of this 2023 Act.

5 “(6) In lieu of any other appeal process, an applicant may elect to
6 appeal a land use decision made under section 2 of this 2023 Act to the
7 Land Use Board of Appeals under an expedited appellate process that,
8 notwithstanding any other provision of ORS 197.830 to 197.845, is sub-
9 ject to the following process:

10 “(a) The appeal may be made only once from any decision, including
11 a decision other than a final decision, made by a local government’s
12 governing body, planning commission, hearings body, hearings officer,
13 planning director or any other local government staff or body entitled
14 to make a binding decision.

15 “(b) The appeal serves to waive any unexhausted right of appeal
16 prescribed by the local government, including as described in ORS
17 215.422 and 227.180.

18 “(c) The board may order issues on appeal under this subsection
19 bifurcated, and decided separately, from any other issue on appeal.

20 “(d) The issues on appeal must be argued without oral argument
21 on an expedited petition and briefing schedule established by an order
22 of the board.

23 “(e) All issues on appeal must be decided by a final order of the
24 board made before the latter of:

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

26 “(B) 40 days after the transmittal of the record.

27 “(7) A local government and the board may stay any decision or
28 appeal of a main land use decision during an appeal taken under sub-
29 section (6) of this section.

30 “(8) As used in this section, ‘main land use decision’ means a land

1 use decision, if any exists, for which the developer has requested an
2 approval of an adjustment under section 2 of this 2023 Act.

3 **“SECTION 4. (1) A city required to provide a report under section**
4 **37 (1), chapter 13, Oregon Laws 2023 (Enrolled House Bill 2001), shall**
5 **include as part of that report information reasonably requested from**
6 **the Department of Land Conservation and Development on residential**
7 **development produced through approvals of adjustments granted un-**
8 **der section 2 of this 2023 Act. The department may not develop a sep-**
9 **arate process for collecting this data or otherwise place an undue**
10 **burden on local governments.**

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

17 **“SECTION 5. Sections 2 to 4 of this 2023 Act are repealed on Janu-**
18 **ary 2, 2032.**

19 **“SECTION 6. As used in sections 6 to 9 of this 2023 Act, ‘housing**
20 **law’ means ORS 92.010 to 92.192, 92.830 to 92.845, 197.286 to 197.314,**
21 **197.360 to 197.380, 197.475 to 197.490, 197.505 to 197.540, 197.660 to 197.670,**
22 **197.748, 197.758, 215.402 to 215.438, 227.160 to 227.186, 455.148, 455.150,**
23 **455.152, 455.153, 455.156, 455.157, 455.165, 455.170, 455.175, 455.180, 455.185**
24 **to 455.198, 455.200, 455.202 to 455.208, 455.210, 455.220, 455.465 and 455.467**
25 **and section 2 of this 2023 Act and administrative rules implementing**
26 **those laws, to the extent that the law or rule creates a mandatory duty**
27 **on a local government or its agent and the application of the law or**
28 **rule relates to residential development or pertains to a permit for a**
29 **residential use or division of land for residential purposes.**

30 **“SECTION 7. (1) The Department of Land Conservation and Devel-**

1 opment and the Department of Consumer and Business Services shall
2 enter into an interagency agreement to establish and administer the
3 Housing Accountability and Production Office.

4 “(2) The Housing Accountability and Production Office shall:

5 “(a) Provide technical assistance to local jurisdictions to:

6 “(A) Comply with housing laws;

7 “(B) Reduce permitting and land use barriers to housing production;

8 and

9 “(C) Support reliable and effective implementation of local proce-
10 dures and standards relating to the approval of residential develop-
11 ment projects;

12 “(b) Serve as a resource for housing developers experiencing per-
13 mitting and land use barriers related to housing production, through
14 activities that include responding to requests for technical assistance
15 regarding housing laws; and

16 “(c) Investigate and respond to complaints of violations of housing
17 law under section 8 of this 2023 Act.

18 “(3) The Land Conservation and Development Commission and the
19 Department of Consumer and Business Services may jointly or sepa-
20 rately adopt, amend or repeal rules for:

21 “(a) Carrying out the respective responsibilities of the departments
22 and the office under sections 6 to 9 of this 2023 Act; and

23 “(b) Establishing model codes, procedures and practices by which
24 local governments may comply with housing laws.

25 “(4) The office shall prioritize assisting jurisdictions voluntarily
26 undertaking changes to come into compliance with housing laws.

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

1 to a specific development project, the office may receive complaints
2 only from the residential developer of the project. For complaints not
3 related to a specific development project, the office may receive com-
4 plaints from any person, including the Department of Land Conserva-
5 tion and Development.

6 “(2) The office shall investigate suspected violations of housing laws
7 or violations credibly alleged under subsection (1) of this section, un-
8 less for a specific development project the residential developer has
9 filed a notice of appeal with the Land Use Board of Appeals or has
10 initiated private litigation regarding any aspect of the application de-
11 cision that was alleged to have been the subject of the housing law
12 violation.

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

25 “(4) No earlier than 60 days after a warning notice is delivered un-
26 der subsection (3) of this section, the office may take the following
27 actions:

28 “(a) Initiate a request for an enforcement order of the Land Con-
29 servation and Development Commission by providing a notice of re-
30 quest under section 9 (2) of this 2023 Act.

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

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

9 **“(d) Except regarding matters under the exclusive jurisdiction of**
10 **the Land Use Board of Appeals, apply to any circuit court for an order**
11 **compelling compliance with any housing law. If the court finds that**
12 **the defendant is not complying with a housing law, the court may**
13 **grant an injunction requiring compliance.**

14 **“(5) The office may not, in the name of the office, exercise the au-**
15 **thority of the Department of Land Conservation and Development**
16 **under ORS 197.293.**

17 **“(6) The office shall send notice to any complainant under sub-**
18 **section (1) of this section when the office:**

19 **“(a) Takes any action under subsection (3) or (4) of this section; or**

20 **“(b) Has determined that it will not take further actions or make**
21 **further investigations.**

22 **“(7) The actions authorized of the office under this section are in**
23 **addition to and may be exercised in conjunction with any other in-**
24 **vestigative or enforcement authority that may be exercised by the**
25 **Department of Land Conservation and Development, the Land Con-**
26 **servation and Development Commission or the Department of Con-**
27 **sumer and Business Services.**

28 **“(8) Nothing in this section:**

29 **“(a) Amends the jurisdiction of the Land Use Board of Appeals or**
30 **of a circuit court;**

1 **“(b) Creates a new cause of action; or**

2 **“(c) Tolls or extends the statute of limitations for any claim or**
3 **deadline for any appeal or other action, except as provided in sub-**
4 **section (9) of this section.**

5 **“(9) Notwithstanding ORS 197.830 (9), a notice of intent to appeal a**
6 **land use decision under ORS 197.830 may be filed up to 21 days after**
7 **a complainant receives a notice under subsection (6) of this section,**
8 **provided that the allegation was filed under subsection (1) of this sec-**
9 **tion within 21 days following the decision.**

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

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

27 **“(3) After receiving notice of an enforcement order request under**
28 **subsection (2) of this section, the affected local government shall in-**
29 **clude the following disclosure in any subsequent notice of a land use**
30 **decision that could be affected by the enforcement order:**

1 “ _____
2 **NOTICE: The Housing and Accountability and Production Office has**
3 **found good cause for an enforcement proceeding against**
4 **_____ (name of local government). An enforcement order**
5 **may be adopted that could limit, prohibit or require the application**
6 **of specified criteria to any action authorized by this decision but not**
7 **applied for until after the adoption of the enforcement order. Future**
8 **applications for building permits or time extensions may be affected.**

9 “ _____
10 **“(4) Within 14 days following receipt by the commission of the no-**
11 **tice under subsection (2) of this section, the Director of the Depart-**
12 **ment of Land Conservation and Development shall assign the**
13 **enforcement order proceedings to a hearings officer who is:**

14 **“(a) An administrative law judge assigned under ORS 183.635; or**
15 **“(b) A hearings officer randomly selected from a pool of officers**
16 **appointed by the commission to review proceedings initiated under**
17 **this section.**

18 **“(5) The hearings officer shall schedule a contested case hearing**
19 **within 60 days of the delivery of the notice to the commission under**
20 **subsection (2) of this section.**

21 **“(6) The hearings officer shall prepare a proposed enforcement or-**
22 **der, including recommended findings and conclusions of law. A pro-**
23 **posed enforcement order may require the local government to adopt**
24 **models that have been developed by the office under section 7 (3)(b)**
25 **of this 2023 Act that are suitable to address the basis for the proposed**
26 **enforcement order. The hearings officer must issue and serve the**
27 **proposed enforcement order on the office and all parties to the hearing**
28 **within 30 days of the date the record closed.**

29 **“(7)(a) The proposed enforcement order becomes a final order of the**
30 **commission 14 days after service on the office and all parties to the**

1 hearing, unless the office or a party to the hearing appeals the pro-
2 posed enforcement order to the commission prior to the proposed
3 enforcement order becoming final.

4 “(b) If the proposed enforcement order is appealed, the commission
5 shall consider the matter at:

6 “(A) Its next regularly scheduled meeting; or

7 “(B) If the appeal is made 45 or fewer days prior to the next regu-
8 larly scheduled meeting, at the following regularly scheduled meeting
9 or a special meeting held earlier.

10 “(8) The commission shall affirm, affirm with modifications or re-
11 verse the proposed enforcement order. The commission shall issue a
12 final order no later than 30 days after the meeting at which it con-
13 sidered the matter.

14 “(9) The commission may adopt rules administering this section,
15 including rules related to standing, preserving issues for commission
16 review or other provisions concerning the commission’s scope and
17 standard for review of proposed enforcement orders under this section.

18 “SECTION 10. Sections 8 and 9 of this 2023 Act apply only to vio-
19 lations of housing laws occurring on or after April 1, 2024.

20 “SECTION 11. On or before September 15, 2024, the Housing Ac-
21 countability and Production Office established under section 7 of this
22 2023 Act shall:

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

30 “(2) Provide the report under subsection (1) of this section to an

1 **appropriate interim committee of the Legislative Assembly in the**
2 **manner provided in ORS 192.245.**

3 **“SECTION 12.** ORS 183.471 is amended to read:

4 “183.471. (1) When an agency issues a final order in a contested case, the
5 agency shall maintain the final order in a digital format that:

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

7 “(b) Is suitable for indexing and searching; and

8 “(c) Preserves the textual attributes of the document, including the man-
9 ner in which the document is paginated and any boldfaced, italicized or
10 underlined writing in the document.

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

17 “(3) Notwithstanding ORS 192.324, an agency may not charge a fee for the
18 first two requests submitted under this section in a calendar year. For any
19 subsequent request, an agency may impose a fee in accordance with ORS
20 192.324 to reimburse the agency for the actual costs of complying with the
21 request.

22 “(4) For purposes of this section, a final order entered in a contested case
23 by an administrative law judge under ORS 183.625 (3) is a final order issued
24 by the agency that authorized the administrative law judge to conduct the
25 hearing.

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

28 “(a) The Department of Revenue;

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

30 “(c) The Department of Corrections;

1 “(d) The Employment Relations Board;
2 “(e) The Public Utility Commission of Oregon;
3 “(f) The Oregon Health Authority;
4 “(g) The Land Conservation and Development Commission, **except for**
5 **enforcement orders under section 9 of this 2023 Act**;
6 “(h) The Land Use Board of Appeals;
7 “(i) The Division of Child Support of the Department of Justice;
8 “(j) The Department of Transportation, if the final order relates to the
9 suspension, revocation or cancellation of identification cards, vehicle regis-
10 trations, vehicle titles or driving privileges or to the assessment of taxes or
11 stipulated settlements in the regulation of vehicle related businesses;
12 “(k) The Employment Department or the Employment Appeals Board, if
13 the final order relates to benefits as defined in ORS 657.010;
14 “(L) The Employment Department, if the final order relates to an assess-
15 ment of unemployment tax for which a hearing was not held; or
16 “(m) The Department of Human Services, if the final order was not re-
17 lated to licensing or certification.
18 **“SECTION 13.** ORS 455.770 is amended to read:
19 “455.770. (1) In addition to any other authority and power granted to the
20 Director of the Department of Consumer and Business Services under ORS
21 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945,
22 479.995 and 480.510 to 480.670 and [*this chapter and*] ORS chapters 447, **455**,
23 460 and 693 **and sections 6 to 9 of this 2023 Act**, with respect to munici-
24 palities, building officials and inspectors, if the director has reason to believe
25 that there is a failure to enforce or a violation of any provision of the state
26 building code or ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420,
27 479.510 to 479.945, 479.995 or 480.510 to 480.670 [*or this chapter*] or ORS
28 chapter 447, **455**, 460 or 693 or any rule adopted under those statutes, the
29 director may:
30 “(a) Examine building code activities of the municipality;

1 “(b) Take sworn testimony; and

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

6 “(2) The investigative authority authorized in subsection (1) of this sec-
7 tion covers the violation or omission by a municipality related to enforce-
8 ment of codes or administrative rules, certification of inspectors or financial
9 transactions dealing with permit fees and surcharges under any of the fol-
10 lowing circumstances when:

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

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

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

15 “(3) Prior to starting an investigation under subsection (1) of this section,
16 the director shall notify the municipality in writing setting forth the
17 allegation and the rules or statutes pertaining to the allegation and give the
18 municipality 30 days to respond to the allegation. If the municipality does
19 not satisfy the director’s concerns, the director may then commence an in-
20 vestigation.

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

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

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

27 “(c) A reasonable time shall be provided to the municipality for compli-
28 ance.

29 “(5) The director may revoke any authority of the municipality to ad-
30 minister any part of the state building code or ORS 446.003 to 446.200, 446.225

1 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.995 or 480.510 to 480.670
2 [or *this chapter*] or ORS chapter 447, **455**, 460 or 693 or any rule adopted
3 under those statutes if the director determines after a hearing conducted
4 under ORS 183.413 to 183.497 that:

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

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

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

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

11 **“(1) ‘Net residential acre’ means an acre of residentially designated
12 buildable land, not including nondevelopable rights of way for streets,
13 roads or utilities.**

14 **“(2) ‘Site’ means a lot or parcel or contiguous lots or parcels, or
15 both, with or without common ownership.**

16 **“SECTION 16. (1) Notwithstanding any other provision of ORS
17 197.286 to 197.314, a city outside of Metro may adopt an amendment to
18 the city’s urban growth boundary to include a site if:**

19 **“(a) The site is adjacent to the existing urban growth boundary of
20 the city, including land that is separated from the existing urban
21 growth boundary by a street or road;**

22 **“(b) The site is:**

23 **“(A) Designated as an urban reserve under ORS 195.137 to 195.145
24 includings designations adopted under ORS 197.652 to 197.658;**

25 **“(B) Designated as nonresource land; or**

26 **“(C) Subject to an acknowledged exception to a statewide land use
27 planning goal relating to farmland or forest land;**

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

30 **“(d) The city has adopted a conceptual plan for the site that satis-**

1 **fies the requirements of section 18 of this 2023 Act; and**

2 **“(e) The total acreage of the site:**

3 **“(A) For a city with a population of 25,000 or greater, does not ex-**
4 **ceed 150 net residential acres; or**

5 **“(B) For a city with a population of less than 25,000, does not exceed**
6 **75 net residential acres.**

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

9 **“SECTION 17. Notwithstanding any other provision of ORS 197.286**
10 **to 197.314:**

11 **“(1) A city within Metro may petition Metro to include a site to the**
12 **urban growth boundary that satisfies the requirements of section 16**
13 **(1) of this 2023 Act.**

14 **“(2) If the total net residential acres included in petitions received**
15 **under this section on or before July 1, 2024, is not greater than 600**
16 **acres, Metro shall:**

17 **“(a) On or before September 1, 2024, without conducting a public**
18 **hearing, adopt an amendment to Metro’s urban growth boundary to**
19 **include the land described in the petitions.**

20 **“(b) Within 60 days following a petition filed after July 1, 2024,**
21 **without conducting a public hearing, adopt amendments to its urban**
22 **growth boundary to include the land described in the petition, provided**
23 **that approval of the petition will not result in more than 600 total net**
24 **residential acres under this subsection. Metro shall review petitions**
25 **under this paragraph in the order in which they are received.**

26 **“(3) If the total net residential acres included in petitions received**
27 **on or before July 1, 2024, is greater than 600 acres, on or before Jan-**
28 **uary 1, 2026, Metro shall:**

29 **“(a) Review the petitions;**

30 **“(b) Select for approval those petitions:**

1 **“(A) That best comply with the provisions of section 18 of this 2023**
2 **Act;**

3 **“(B) That are most likely to address needed housing in the Metro**
4 **region; and**

5 **“(C) For which the sites do not combine to exceed 600 total net**
6 **residential acres; and**

7 **“(c) Adopt an amendment to Metro’s urban growth boundary to**
8 **include the sites in the petitions selected under paragraph (b) of this**
9 **subsection.**

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

11 **“(a) ‘Affordable units’ means residential units described in sub-**
12 **section (3)(f)(A) or (4) of this section.**

13 **“(b) ‘Market rate units’ means residential units other than afford-**
14 **able units.**

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

19 **“(3) The conceptual plan must:**

20 **“(a) Establish the total net residential acres within the site and**
21 **must require for those residential areas:**

22 **“(A) A diversity of housing types and sizes, including middle hous-**
23 **ing as defined in ORS 197.758; and**

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

26 **“(ii) For cities within Baker, Clatsop, Coos, Crook, Curry, Gilliam,**
27 **Grant, Harney, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow,**
28 **Sherman, Tillamook, Umatilla, Union, Wallowa and Wheeler Counties**
29 **and the cities of Dunes City, Florence and Reedsport, an average**
30 **density of at least four dwelling units per net residential acre, whether**

1 for affordable units, market rate units or both; or

2 “(iii) For all other cities, an average density of at least eight

3 dwelling units per net residential acre, whether for affordable units,

4 market rate units or both;

5 “(b) Designate within the site:

6 “(A) Recreation and open space lands; and

7 “(B) Lands for commercial uses, either separate or as a mixed use,

8 that:

9 “(i) Primarily serve the immediate surrounding housing;

10 “(ii) Provide goods and services at a smaller scale than provided on

11 typical lands zoned for commercial use; and

12 “(iii) Are provided at the minimum amount necessary to support

13 and integrate viable commercial and residential uses;

14 “(c) If the city has a population of 5,000 or greater, include a

15 transportation network for the site that provides diverse transporta-

16 tion options, including walking, bicycling and transit use if public

17 transit services are available, along with both sufficient internal con-

18 nections and connections to areas within the existing urban growth

19 boundary of the city;

20 “(d) Ensure that any area within the site will either retain its des-

21 ignation or otherwise be protected if the area is designated for pro-

22 tection in an acknowledged comprehensive plan pursuant to a

23 statewide land use planning goal relating to:

24 “(A) Open spaces, scenic and historic areas or natural resources;

25 “(B) Areas subject to natural hazards;

26 “(C) The Willamette River Greenway;

27 “(D) Estuarine resources;

28 “(E) Coast shorelands; or

29 “(F) Beaches and dunes;

30 “(e) Ensure that the site will be served with all necessary urban

1 services as defined in ORS 195.065, including through a binding agree-
2 ment among the city, each owner within the site and any other nec-
3 essary public or private utility provider, local government or district,
4 as defined in ORS 195.060, or combination of local governments and
5 districts; and

6 “(f) Include requirements that ensure that:

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

11 “(i) Available for rent, with or without government assistance, by
12 households with an income of 80 percent or less of the area median
13 income as defined in ORS 456.270; or

14 “(ii) Available for purchase, with or without government assistance,
15 by households with an income of 130 percent or less of the area median
16 income;

17 “(B) The construction of all affordable units has commenced before
18 the city issues certificates of occupancy to the last 15 percent of mar-
19 ket rate units; and

20 “(C) All common areas and amenities are equally available to resi-
21 dents of affordable units and of market rate units.

22 “(4) A city may require greater affordability requirements for resi-
23 dential units than are required under subsection (3)(f)(A) of this sec-
24 tion, provided that the city significantly and proportionally offsets
25 development costs related to:

26 “(a) Permits or fees;

27 “(b) System development charges;

28 “(c) Property taxes; or

29 “(d) Land acquisition and predevelopment costs.

30 **SECTION 19.** (1) Before adopting a conceptual plan under section

1 18 of this 2023 Act, a city shall:

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

5 “(b) Provide opportunities for public participation, including, at
6 least:

7 “(A) One public comment period;

8 “(B)(i) One meeting of the city’s planning commission where public
9 testimony is considered;

10 “(ii) One meeting of the city’s council where public testimony is
11 considered; or

12 “(iii) One public open house; and

13 “(C) Notice on the city’s website or published in a paper of record
14 at least 14 days before:

15 “(i) A meeting under subparagraph (B) of this paragraph; and

16 “(ii) The beginning of a comment period under subparagraph (A)
17 of this paragraph.

18 “(c) Consult with, request necessary information from and provide
19 the opportunity for written comment from:

20 “(A) The owners of each lot or parcel within the site;

21 “(B) If the city does not currently exercise land use jurisdiction
22 over the entire site, the governing body of each county with land use
23 jurisdiction over the site;

24 “(C) Any special district that provides urban services to the site;
25 and

26 “(D) Any public or private utility that provides utilities to the site.

27 “(2) The petition under subsection (1)(a) of this section must:

28 “(a) Be in writing in a form and format as required by the city;

29 “(b) Specify the lots or parcels that are the subject of the petition;

30 and

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

4 “(3) If the city has received approval for the amendment to the pe-
5 tition from all property owners of such lands, in writing in a form and
6 format specified by the city, a city may adopt a conceptual plan for
7 all or a portion of the lands contained within a petition filed under
8 subsection (1)(a) of this section.

9 “(4) A conceptual plan must include findings identifying reasons for
10 inclusion of lands within the conceptual plan and reasons why any
11 lands for which a petition was submitted were not included within the
12 conceptual plan.

13 “SECTION 20. (1) Within 21 days after the adoption of an amend-
14 ment to an urban growth boundary and the adoption or amendment
15 of a conceptual plan under sections 15 to 22 of this 2023 Act, one of the
16 following shall submit the conceptual plan and amendment to the
17 Department of Land Conservation and Development for review:

18 “(a) The city, for an amendment under section 16 of this 2023 Act;
19 or

20 “(b) Metro, for an amendment under section 17 of this 2023 Act.

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

23 “(a) Review the submittal for compliance with the provisions of
24 sections 15 to 22 of this 2023 Act.

25 “(b)(A) If the submittal substantially complies with the provisions
26 of sections 15 to 22 of this 2023 Act, issue an order approving the sub-
27 mittal; or

28 “(B) If the submittal does not substantially comply with the pro-
29 visions of sections 15 to 22 of this 2023 Act, issue an order remanding
30 the submittal to the city or to Metro with a specific determination of

1 any deficiencies in the submittal and with sufficient detail to identify
2 a specific remedy for any deficiency in a subsequent resubmittal.

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

5 “(a) The department shall notify the city; and

6 “(b) The city may amend its conceptual plan and resubmit a peti-
7 tion to Metro under section 17 of this 2023 Act.

8 “(4) Judicial review of the department’s order:

9 “(a) Must be as a review of orders other than a contested case under
10 to ORS 183.484; and

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

12 “SECTION 21. A city for which an amendment was made to an ur-
13 ban growth boundary under section 16 or 17 of this 2023 Act and ap-
14 proved under section 20 of this 2023 Act shall submit a report
15 describing the status of development within the included area to the
16 Department of Land Conservation and Development every two years
17 until:

18 “(1) January 2, 2033; or

19 “(2) The city determines that development consistent with the ac-
20 knowledged conceptual plan is deemed complete.

21 “SECTION 22. An action by a local government under sections 15
22 to 22 of this 2023 Act is not a land use decision as defined in ORS
23 197.015.

24 “SECTION 23. Sections 15 to 22 of this 2023 Act are repealed on
25 January 2, 2033.

26 “SECTION 24. ORS 197.843 is amended to read:

27 “197.843. (1) The Land Use Board of Appeals shall award attorney fees to
28 *[an applicant whose application is only for the development of affordable*
29 *housing, as defined in ORS 197.308, or publicly supported housing, as defined*
30 *in ORS 456.250]* a person whose application includes the development

1 **of needed housing, as defined in section 23, chapter 13, Oregon Laws**
2 **2023 (Enrolled House Bill 2001), and any local government that ap-**
3 **proved a quasi-judicial land use decision,** if the board affirms a quasi-
4 judicial land use decision approving the application or reverses a
5 quasi-judicial land use decision denying the application.

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

10 “(3) As used in this section[:],

11 “[*(a) ‘Applicant’ includes:*]

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

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

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

16 “[*(D) A religious nonprofit corporation;*]

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

19 “[*(F) A local government that approved the application of an applicant de-*
20 *scribed in this paragraph.*]

21 “[*(b)*] ‘attorney fees’ includes prelitigation legal expenses, including pre-
22 paring the application and supporting the application in local land use
23 hearings or proceedings.

24 **“SECTION 25. The amendments to ORS 197.843 by section 24 of this**
25 **2023 Act apply to decisions for which a notice of intent to appeal under**
26 **ORS 197.830 is filed on or after January 1, 2024.**

27 **“SECTION 26. (1) Sections 2 to 4, 6 and 7 of this 2023 Act and the**
28 **amendments to ORS 197.843 and 455.770 by sections 13 and 24 of this**
29 **2023 Act become operative on January 1, 2024.**

30 **“(2) Sections 8 and 9 of this 2023 Act become operative on April 1,**

1 2024.

2 “(3) The Department of Land Conservation and Development and
3 the Department of Consumer and Business Services may take any
4 action before the operative dates specified in subsections (1) and (2)
5 of this section that is necessary for the departments to exercise, on
6 and after the operative dates specified in subsections (1) and (2) of this
7 section, all of the duties, functions and powers conferred on the de-
8 partments by sections 2 to 4 and 6 to 9 of this 2023 Act and the
9 amendments to ORS 197.843 and 455.770 by sections 13 and 24 of this
10 2023 Act.

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

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

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

25 **“SECTION 29.** In addition to and not in lieu of any other appropri-
26 ation, there is appropriated to the Department of Land Conservation
27 and Development, for the biennium beginning July 1, 2023, out of the
28 General Fund:

29 **“(1)** The amount of \$_____ to perform the duties of the Housing
30 Accountability and Production Office under sections 6 to 9 of this 2023

1 **Act.**

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

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

6 **“(b) Grants to local governments or nonprofit organizations to de-**
7 **velop programs or documents under paragraph (a) of this section;**

8 **“(c) Before April 1, 2024, technical assistance and grants to local**
9 **governments that proactively acknowledge the need to update the lo-**
10 **cal implementation of land use regulations and building code enforce-**
11 **ment to comply with housing laws; and**

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

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

16 **“(B) Updates to land use regulations needed to comply with changes**
17 **to Land Conservation and Development Commission rules or the legal**
18 **interpretations of land use laws or rules, if those changes relate to**
19 **housing.**

20 **“SECTION 30. This 2023 Act being necessary for the immediate**
21 **preservation of the public peace, health and safety, an emergency is**
22 **declared to exist, and this 2023 Act takes effect July 1, 2023.”.**

23