

House Bill 3906

Sponsored by Representative SMITH G

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act allows a condemner to apply for land use approval. (Flesch Readability Score: 64.9).

Allows a condemner to apply for a land use approval for lands subject to its power of condemnation.

A BILL FOR AN ACT

1
2 Relating to land use applications by entities with the right of eminent domain; amending ORS
3 215.416 and 227.175.

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

5 **SECTION 1.** ORS 215.416 is amended to read:

6 215.416. (1) When required or authorized by the ordinances, rules and regulations of a county,
7 an owner of land may apply in writing to such persons as the governing body designates, for a
8 permit, in the manner prescribed by the governing body. The governing body shall establish fees
9 charged for processing permits at an amount no more than the actual or average cost of providing
10 that service. **A condemner, as defined in ORS 35.215, may apply to a county for a permit or
11 other land use authorization with respect to any land that is subject to its power of eminent
12 domain, whether or not the power has been exercised, as if the condemner owned the land.**

13 (2) The governing body shall establish a consolidated procedure by which an applicant may ap-
14 ply at one time for all permits or zone changes needed for a development project. The consolidated
15 procedure shall be subject to the time limitations set out in ORS 215.427. The consolidated proce-
16 dure shall be available for use at the option of the applicant no later than the time of the first pe-
17 riodic review of the comprehensive plan and land use regulations.

18 (3) Except as provided in subsection (11) of this section, the hearings officer shall hold at least
19 one public hearing on the application.

20 (4)(a) A county may not approve an application if the proposed use of land is found to be in
21 conflict with the comprehensive plan of the county and other applicable land use regulation or or-
22 dinance provisions. The approval may include such conditions as are authorized by statute or county
23 legislation.

24 (b)(A) A county may not deny an application for a housing development located within the urban
25 growth boundary if the development complies with clear and objective standards, including but not
26 limited to clear and objective design standards contained in the county comprehensive plan or land
27 use regulations.

28 (B) This paragraph does not apply to:

29 (i) Applications or permits for residential development in areas described in ORS 197A.400 (2);

30 or

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 (ii) Applications or permits reviewed under an alternative approval process adopted under ORS
2 197A.400 (3).

3 (c) A county may not condition an application for a housing development on a reduction in
4 density if:

5 (A) The density applied for is at or below the authorized density level under the local land use
6 regulations; and

7 (B) At least 75 percent of the floor area applied for is reserved for housing.

8 (d) A county may not condition an application for a housing development on a reduction in
9 height if:

10 (A) The height applied for is at or below the authorized height level under the local land use
11 regulations;

12 (B) At least 75 percent of the floor area applied for is reserved for housing; and

13 (C) Reducing the height has the effect of reducing the authorized density level under local land
14 use regulations.

15 (e) Notwithstanding paragraphs (c) and (d) of this subsection, a county may condition an appli-
16 cation for a housing development on a reduction in density or height only if the reduction is nec-
17 essary to resolve a health, safety or habitability issue or to comply with a protective measure
18 adopted pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the county
19 must adopt findings supported by substantial evidence demonstrating the necessity of the reduction.

20 (f) As used in this subsection:

21 (A) "Authorized density level" means the maximum number of lots or dwelling units or the
22 maximum floor area ratio that is permitted under local land use regulations.

23 (B) "Authorized height level" means the maximum height of a structure that is permitted under
24 local land use regulations.

25 (C) "Habitability" means being in compliance with the applicable provisions of the state building
26 code under ORS chapter 455 and the rules adopted thereunder.

27 (5) Hearings under this section shall be held only after notice to the applicant and also notice
28 to other persons as otherwise provided by law and shall otherwise be conducted in conformance
29 with the provisions of ORS 197.797.

30 (6) Notice of a public hearing on an application submitted under this section shall be provided
31 to the owner of an airport defined by the Oregon Department of Aviation as a "public use airport"
32 if:

33 (a) The name and address of the airport owner has been provided by the Oregon Department
34 of Aviation to the county planning authority; and

35 (b) The property subject to the land use hearing is:

36 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon
37 Department of Aviation to be a "visual airport"; or

38 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon
39 Department of Aviation to be an "instrument airport."

40 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a land use hearing
41 need not be provided as set forth in subsection (6) of this section if the zoning permit would only
42 allow a structure less than 35 feet in height and the property is located outside the runway "ap-
43 proach surface" as defined by the Oregon Department of Aviation.

44 (8)(a) Approval or denial of a permit application shall be based on standards and criteria which
45 shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county

1 and which shall relate approval or denial of a permit application to the zoning ordinance and com-
 2 prehensive plan for the area in which the proposed use of land would occur and to the zoning or-
 3 dinance and comprehensive plan for the county as a whole.

4 (b) When an ordinance establishing approval standards is required under ORS 197A.200 and
 5 197A.400 to provide only clear and objective standards, the standards must be clear and objective
 6 on the face of the ordinance.

7 (9) Approval or denial of a permit or expedited land division shall be based upon and accompa-
 8 nied by a brief statement that explains the criteria and standards considered relevant to the deci-
 9 sion, states the facts relied upon in rendering the decision and explains the justification for the
 10 decision based on the criteria, standards and facts set forth.

11 (10) Written notice of the approval or denial shall be given to all parties to the proceeding.

12 (11)(a)(A) The hearings officer or such other person as the governing body designates may ap-
 13 prove or deny an application for a permit without a hearing if the hearings officer or other desig-
 14 nated person gives notice of the decision and provides an opportunity for any person who is
 15 adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection,
 16 to file an appeal.

17 (B) Written notice of the decision shall be mailed to those persons described in paragraph (c)
 18 of this subsection.

19 (C) Notice under this subsection shall comply with ORS 197.797 (3)(a), (c), (g) and (h) and shall
 20 describe the nature of the decision. In addition, the notice shall state that any person who is ad-
 21 versely affected or aggrieved or who is entitled to written notice under paragraph (c) of this sub-
 22 section may appeal the decision by filing a written appeal in the manner and within the time period
 23 provided in the county's land use regulations. A county may not establish an appeal period that is
 24 less than 12 days from the date the written notice of decision required by this subsection was
 25 mailed. The notice shall state that the decision will not become final until the period for filing a
 26 local appeal has expired. The notice also shall state that a person who is mailed written notice of
 27 the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS
 28 197.830.

29 (D) An appeal from a hearings officer's decision made without hearing under this subsection
 30 shall be to the planning commission or governing body of the county. An appeal from such other
 31 person as the governing body designates shall be to a hearings officer, the planning commission or
 32 the governing body. In either case, the appeal shall be to a de novo hearing.

33 (E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial
 34 evidentiary hearing required under ORS 197.797 as the basis for an appeal to the Land Use Board
 35 of Appeals. At the de novo hearing:

36 (i) The applicant and other parties shall have the same opportunity to present testimony, argu-
 37 ments and evidence as they would have had in a hearing under subsection (3) of this section before
 38 the decision;

39 (ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised
 40 in a notice of appeal; and

41 (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are
 42 accepted at the hearing.

43 (b) If a local government provides only a notice of the opportunity to request a hearing, the
 44 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing
 45 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,

1 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the
 2 initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made
 3 by neighborhood or community organizations recognized by the governing body and whose bounda-
 4 ries include the site.

5 (c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the ap-
 6 plicant and to the owners of record of property on the most recent property tax assessment roll
 7 where such property is located:

8 (i) Within 100 feet of the property that is the subject of the notice when the subject property
 9 is wholly or in part within an urban growth boundary;

10 (ii) Within 250 feet of the property that is the subject of the notice when the subject property
 11 is outside an urban growth boundary and not within a farm or forest zone; or

12 (iii) Within 750 feet of the property that is the subject of the notice when the subject property
 13 is within a farm or forest zone.

14 (B) Notice shall also be provided to any neighborhood or community organization recognized by
 15 the governing body and whose boundaries include the site.

16 (C) At the discretion of the applicant, the local government also shall provide notice to the
 17 Department of Land Conservation and Development.

18 (12) A decision described in ORS 215.402 (4)(b) shall:

19 (a) Be entered in a registry available to the public setting forth:

20 (A) The street address or other easily understood geographic reference to the subject property;

21 (B) The date of the decision; and

22 (C) A description of the decision made.

23 (b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a
 24 limited land use decision.

25 (c) Be subject to the appeal period described in ORS 197.830 (5)(b).

26 (13) At the option of the applicant, the local government shall provide notice of the decision
 27 described in ORS 215.402 (4)(b) in the manner required by ORS 197.797 (2), in which case an appeal
 28 to the board shall be filed within 21 days of the decision. The notice shall include an explanation
 29 of appeal rights.

30 (14) Notwithstanding the requirements of this section, a limited land use decision shall be sub-
 31 ject to the requirements set forth in ORS 197.195 and 197.828.

32 **SECTION 2.** ORS 227.175, as amended by section 5, chapter 111, Oregon Laws 2024, is amended
 33 to read:

34 227.175. (1) When required or authorized by a city, an owner of land may apply in writing to the
 35 hearings officer, or such other person as the city council designates, for a permit or zone change,
 36 upon such forms and in such a manner as the city council prescribes. The governing body shall es-
 37 tablish fees charged for processing permits at an amount no more than the actual or average cost
 38 of providing that service. **A condemner, as defined in ORS 35.215, may apply to a city for a**
 39 **permit or other land use authorization with respect to any land that is subject to its power**
 40 **of eminent domain, whether or not the power has been exercised, as if the condemner owned**
 41 **the land.**

42 (2) The governing body of the city shall establish a consolidated procedure by which an appli-
 43 cant may apply at one time for all permits or zone changes needed for a development project. The
 44 consolidated procedure is subject to the time limitations set out in ORS 227.178. The consolidated
 45 procedure shall be available for use at the option of the applicant no later than the time of the first

1 periodic review of the comprehensive plan and land use regulations.

2 (3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least
3 one public hearing on the application.

4 (4)(a) A city may not approve an application unless the proposed development of land would be
5 in compliance with the comprehensive plan for the city and other applicable land use regulation or
6 ordinance provisions, including an ordinance described in ORS 197A.400 (1)(c). The approval may
7 include such conditions as are authorized by ORS 227.215 or any city legislation.

8 (b)(A) A city may not deny an application for a housing development located within the urban
9 growth boundary if the development complies with clear and objective standards, including clear and
10 objective design standards contained in the city comprehensive plan or land use regulations.

11 (B) This paragraph does not apply to:

12 (i) Applications or permits for residential development in areas described in ORS 197A.400 (2);

13 or

14 (ii) Applications or permits reviewed under an alternative approval process adopted under ORS
15 197A.400 (3).

16 (c) A city may not condition an application for a housing development on a reduction in density
17 if:

18 (A) The density applied for is at or below the authorized density level under the local land use
19 regulations; and

20 (B) At least 75 percent of the floor area applied for is reserved for housing.

21 (d) A city may not condition an application for a housing development on a reduction in height
22 if:

23 (A) The height applied for is at or below the authorized height level under the local land use
24 regulations;

25 (B) At least 75 percent of the floor area applied for is reserved for housing; and

26 (C) Reducing the height has the effect of reducing the authorized density level under local land
27 use regulations.

28 (e) Notwithstanding paragraphs (c) and (d) of this subsection, a city may condition an applica-
29 tion for a housing development on a reduction in density or height only if the reduction is necessary
30 to resolve a health, safety or habitability issue or to comply with a protective measure adopted
31 pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the city must adopt
32 findings supported by substantial evidence demonstrating the necessity of the reduction.

33 (f) As used in this subsection:

34 (A) “Authorized density level” means the maximum number of lots or dwelling units or the
35 maximum floor area ratio that is permitted under local land use regulations.

36 (B) “Authorized height level” means the maximum height of a structure that is permitted under
37 local land use regulations.

38 (C) “Habitability” means being in compliance with the applicable provisions of the state building
39 code under ORS chapter 455 and the rules adopted thereunder.

40 (5) Hearings under this section may be held only after notice to the applicant and other inter-
41 ested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.797.

42 (6) Notice of a public hearing on a zone use application shall be provided to the owner of an
43 airport, defined by the Oregon Department of Aviation as a “public use airport” if:

44 (a) The name and address of the airport owner has been provided by the Oregon Department
45 of Aviation to the city planning authority; and

1 (b) The property subject to the zone use hearing is:

2 (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon
3 Department of Aviation to be a “visual airport”; or

4 (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon
5 Department of Aviation to be an “instrument airport.”

6 (7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing
7 need only be provided as set forth in subsection (6) of this section if the permit or zone change
8 would only allow a structure less than 35 feet in height and the property is located outside of the
9 runway “approach surface” as defined by the Oregon Department of Aviation.

10 (8) If an application would change the zone of property that includes all or part of a mobile
11 home or manufactured dwelling park as defined in ORS 446.003, the governing body shall give
12 written notice by first class mail to each existing mailing address for tenants of the mobile home
13 or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first
14 hearing on the application. The governing body may require an applicant for such a zone change to
15 pay the costs of such notice.

16 (9) The failure of a tenant or an airport owner to receive a notice which was mailed does not
17 invalidate any zone change.

18 (10)(a)(A) The hearings officer or such other person as the governing body designates may ap-
19 prove or deny an application for a permit without a hearing if the hearings officer or other desig-
20 nated person gives notice of the decision and provides an opportunity for any person who is
21 adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection,
22 to file an appeal.

23 (B) Written notice of the decision shall be mailed to those persons described in paragraph (c)
24 of this subsection.

25 (C) Notice under this subsection shall comply with ORS 197.797 (3)(a), (c), (g) and (h) and shall
26 describe the nature of the decision. In addition, the notice shall state that any person who is ad-
27 versely affected or aggrieved or who is entitled to written notice under paragraph (c) of this sub-
28 section may appeal the decision by filing a written appeal in the manner and within the time period
29 provided in the city’s land use regulations. A city may not establish an appeal period that is less
30 than 12 days from the date the written notice of decision required by this subsection was mailed.
31 The notice shall state that the decision will not become final until the period for filing a local appeal
32 has expired. The notice also shall state that a person who is mailed written notice of the decision
33 cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830.

34 (D) An appeal from a hearings officer’s decision made without hearing under this subsection
35 shall be to the planning commission or governing body of the city. An appeal from such other person
36 as the governing body designates shall be to a hearings officer, the planning commission or the
37 governing body. In either case, the appeal shall be to a de novo hearing.

38 (E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial
39 evidentiary hearing required under ORS 197.797 as the basis for an appeal to the Land Use Board
40 of Appeals. At the de novo hearing:

41 (i) The applicant and other parties shall have the same opportunity to present testimony, argu-
42 ments and evidence as they would have had in a hearing under subsection (3) of this section before
43 the decision;

44 (ii) The presentation of testimony, arguments and evidence may not be limited to issues raised
45 in a notice of appeal; and

1 (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are
2 accepted at the hearing.

3 (b) If a local government provides only a notice of the opportunity to request a hearing, the
4 local government may charge a fee for the initial hearing. The maximum fee for an initial hearing
5 shall be the cost to the local government of preparing for and conducting the appeal, or \$250,
6 whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the
7 initial hearing shall be refunded. The fee allowed in this paragraph does not apply to appeals made
8 by neighborhood or community organizations recognized by the governing body and whose bounda-
9 ries include the site.

10 (c)(A) Notice of a decision under paragraph (a) of this subsection shall be provided to the ap-
11 plicant and to the owners of record of property on the most recent property tax assessment roll
12 where such property is located:

13 (i) Within 100 feet of the property that is the subject of the notice when the subject property
14 is wholly or in part within an urban growth boundary;

15 (ii) Within 250 feet of the property that is the subject of the notice when the subject property
16 is outside an urban growth boundary and not within a farm or forest zone; or

17 (iii) Within 750 feet of the property that is the subject of the notice when the subject property
18 is within a farm or forest zone.

19 (B) Notice shall also be provided to any neighborhood or community organization recognized by
20 the governing body and whose boundaries include the site.

21 (C) At the discretion of the applicant, the local government also shall provide notice to the
22 Department of Land Conservation and Development.

23 (11) A decision described in ORS 227.160 (2)(b) shall:

24 (a) Be entered in a registry available to the public setting forth:

25 (A) The street address or other easily understood geographic reference to the subject property;

26 (B) The date of the decision; and

27 (C) A description of the decision made.

28 (b) Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a
29 limited land use decision.

30 (c) Be subject to the appeal period described in ORS 197.830 (5)(b).

31 (12) At the option of the applicant, the local government shall provide notice of the decision
32 described in ORS 227.160 (2)(b) in the manner required by ORS 197.797 (2), in which case an appeal
33 to the board shall be filed within 21 days of the decision. The notice shall include an explanation
34 of appeal rights.

35 (13) Notwithstanding other requirements of this section, limited land use decisions are subject
36 to the requirements set forth in ORS 197.195 and 197.828.

37