

D R A F T

SUMMARY

Prohibits enforcement of residential irrigation requirements by homeowners association following finding or declaration of existing or likely drought conditions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to community water supply; amending ORS 94.572 and 94.630; and declaring an emergency.

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

SECTION 1. ORS 94.630 is amended to read:

94.630. (1) Subject to [*subsection (2)*] **subsections (2) and (5)** of this section and except as otherwise provided in its declaration or bylaws, a homeowners association may:

(a) Adopt and amend bylaws, rules and regulations for the planned community;

(b) Adopt and amend budgets for revenues, expenditures and reserves, and collect assessments from owners for common expenses and the reserve account established under ORS 94.595;

(c) Hire and terminate managing agents and other employees, agents and independent contractors;

(d) Defend against any claims, proceedings or actions brought against it;

(e) Subject to subsection (4) of this section, initiate or intervene in litigation or administrative proceedings in its own name and without joining the individual owners in the following:

(A) Matters relating to the collection of assessments and the enforcement

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.

of governing documents;

(B) Matters arising out of contracts to which the association is a party;

(C) Actions seeking equitable or other nonmonetary relief regarding matters that affect the common interests of the owners, including but not limited to the abatement of nuisance;

(D) Matters, including but not limited to actions for damage, destruction, impairment or loss of use, relating to or affecting:

(i) Individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

(ii) Common property;

(E) Matters relating to or affecting the lots or interests of the owners including but not limited to damage, destruction, impairment or loss of use of a lot or portion thereof, if:

(i) Resulting from a nuisance or a defect in or damage to common property or individually owned real property, the expenses for which, including maintenance, repair or replacement, insurance or other expenses, the association is responsible; or

(ii) Required to facilitate repair to any common property; and

(F) Any other matter to which the association has standing under law or pursuant to the declaration or bylaws;

(f) Make contracts and incur liabilities;

(g) Regulate the use, maintenance, repair, replacement and modification of common property;

(h) Cause additional improvements to be made as a part of the common property;

(i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common property may be conveyed or subjected to a security interest only pursuant to ORS 94.665;

(j) Grant easements, leases, licenses and concessions through or over the common property as provided in ORS 94.665;

1 (k) Modify, close, remove, eliminate or discontinue the use of common
2 property, including any improvement or landscaping, regardless of whether
3 the common property is mentioned in the declaration, provided that:

4 (A) Nothing in this paragraph is intended to limit the authority of the
5 association to seek approval of the modification, closure, removal, elimi-
6 nation or discontinuance by the owners; and

7 (B) Modification, closure, removal, elimination or discontinuance other
8 than on a temporary basis of any swimming pool, spa or recreation or com-
9 munity building must be approved by at least a majority of owners voting
10 on the matter at a meeting or by written ballot held in accordance with the
11 declaration, bylaws or ORS 94.647;

12 (L) Impose and receive any payments, fees or charges for the use, rental
13 or operation of the common property and services provided to owners;

14 (m) Adopt rules regarding the termination of utility services paid for out
15 of assessments of the association and access to and use of recreational and
16 service facilities available to owners. The rules must provide for written
17 notice and an opportunity to be heard before the association may terminate
18 the rights of any owners to receive the benefits or services until the cor-
19 rection of any violation covered by the rule has occurred;

20 (n) Impose charges for late payment of assessments and attorney fees re-
21 lated to the collection of assessments and, after giving written notice and
22 an opportunity to be heard, levy reasonable fines for violations of the dec-
23 laration, bylaws, rules and regulations of the association, provided that the
24 charge imposed or the fine levied by the association is based:

25 (A) On a schedule contained in the declaration or bylaws, or an amend-
26 ment to either that is delivered to each lot, mailed to the mailing address
27 of each lot or mailed to the mailing addresses designated in writing by the
28 owners; or

29 (B) On a resolution of the association or its board of directors that is
30 delivered to each lot, mailed to the mailing address of each lot or mailed to
31 the mailing addresses designated in writing by the owners;

1 (o) Impose reasonable charges for the preparation and recordation of
2 amendments to the declaration;

3 (p) Provide for the indemnification of its officers and the board of direc-
4 tors and maintain liability insurance for directors and officers;

5 (q) Assign its right to future income, including the right to receive com-
6 mon expense assessments; and

7 (r) Exercise any other powers necessary and proper for the administration
8 and operation of the association.

9 (2) *[Notwithstanding subsection (1) of this section,]* A declaration may not
10 impose any limitation on the ability of the association to deal with a
11 declarant that is more restrictive than the limitations imposed on the ability
12 of the association to deal with any other person, except during the period
13 of declarant control under ORS 94.600.

14 (3) A permit or authorization, or an amendment, modification, termination
15 or other instrument affecting a permit or authorization, issued by the board
16 of directors that is authorized by law, the declaration or bylaws may be re-
17 corded in the deed records of the county in which the planned community
18 is located. A permit or authorization, or an amendment, modification, ter-
19 mination or other instrument affecting a permit or authorization, recorded
20 under this subsection shall:

21 (a) Be executed by the president and secretary of the association and ac-
22 knowledged in the manner provided for acknowledgment of instruments by
23 the officers;

24 (b) Include the name of the planned community and a reference to where
25 the declaration and any applicable supplemental declarations are recorded;

26 (c) Identify, by the designations stated or referenced in the declaration
27 or applicable supplemental declaration, all affected lots and common prop-
28 erty; and

29 (d) Include other information and signatures if required by law, the dec-
30 laration, bylaws or the board of directors.

31 (4)(a) Subject to paragraph (f) of this subsection, before initiating liti-

gation or an administrative proceeding in which the association and an owner have an adversarial relationship, the party that intends to initiate litigation or an administrative proceeding shall offer to use any dispute resolution program available within the county in which the planned community is located that is in substantial compliance with the standards and guidelines adopted under ORS 36.175. The written offer must be hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the association, for the other party.

(b) If the party receiving the offer does not accept the offer within 10 days after receipt by written notice hand-delivered or mailed by certified mail, return receipt requested, to the address, contained in the records of the association, for the other party, the initiating party may commence the litigation or the administrative proceeding. The notice of acceptance of the offer to participate in the program must contain the name, address and telephone number of the body administering the dispute resolution program.

(c) If a qualified dispute resolution program exists within the county in which the planned community is located and an offer to use the program is not made as required under paragraph (a) of this subsection, litigation or an administrative proceeding may be stayed for 30 days upon a motion of the noninitiating party. If the litigation or administrative action is stayed under this paragraph, both parties shall participate in the dispute resolution process.

(d) Unless a stay has been granted under paragraph (c) of this subsection, if the dispute resolution process is not completed within 30 days after receipt of the initial offer, the initiating party may commence litigation or an administrative proceeding without regard to whether the dispute resolution is completed.

(e) Once made, the decision of the court or administrative body arising from litigation or an administrative proceeding may not be set aside on the grounds that an offer to use a dispute resolution program was not made.

(f) The requirements of this subsection do not apply to circumstances in

which irreparable harm to a party will occur due to delay or to litigation or an administrative proceeding initiated to collect assessments, other than assessments attributable to fines.

(5) A provision of a planned community's declaration, bylaws, rules, regulations or landscaping or architectural guidelines that imposes irrigation requirements on an owner shall be void and unenforceable following:

(a) A declaration by the Governor that a severe, continuing drought exists or is likely to exist;

(b) A finding by the Water Resources Commission that a severe or continuing drought exists or is likely to occur; or

(c) Adoption by the governing body of a political subdivision within which the planned community is located of an ordinance requiring conservation or curtailment of water use.

SECTION 2. ORS 94.572 is amended to read:

94.572. (1)(a) A Class I or Class II planned community created before January 1, 2002, that was not created under ORS 94.550 to 94.783 is subject to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3), [and] (4) **and (5)**, 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 to the extent that those statutes are consistent with any governing documents. If the governing documents do not provide for the formation of an association, the requirements of this subsection are not effective until the formation of an association in accordance with paragraph (b) of this subsection. If a provision of the governing documents is inconsistent with this subsection, the owners may amend the governing documents using the procedures in this subsection:

(A) In accordance with the procedures for the adoption of amendments in the governing documents and subject to any limitations in the governing documents, the owners may amend the inconsistent provisions of the gov-

erning documents to conform to the extent feasible with this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3), [and] (4) **and (5)**, 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780. Nothing in this paragraph requires the owners to amend a declaration or bylaws to include the information required by ORS 94.580 or 94.635.

(B) If there are no procedures for amendment in the governing documents:

(i) For an amendment to a recorded governing document other than bylaws, the owners may amend the inconsistent provisions of the document to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3) and (4), 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 by a vote of at least 75 percent of the owners in the planned community.

(ii) For an amendment to the bylaws, the owners may amend the inconsistent provisions of the bylaws to conform to this section and ORS 94.550, 94.590, 94.595 (5) to (9), 94.625, 94.626, 94.630 (1), (3), [and] (4) **and (5)**, 94.639, 94.640, 94.641, 94.642, 94.645, 94.647, 94.650, 94.652, 94.655, 94.657, 94.658, 94.660, 94.661, 94.662, 94.665, 94.670, 94.675, 94.676, 94.680, 94.690, 94.695, 94.704, 94.709, 94.712, 94.716, 94.719, 94.723, 94.728, 94.733, 94.762, 94.770, 94.775, 94.777 and 94.780 by a vote of at least a majority of the owners in the planned community.

(iii) An amendment may be adopted at a meeting held in accordance with the governing documents or by another procedure permitted by the governing documents following the procedures prescribed in ORS 94.647, 94.650 or 94.660.

(iv) An amendment to a recorded declaration shall be executed, certified and recorded as provided in ORS 94.590 (2) and (3) and shall be subject to

ORS 94.590 (5). An amendment to the bylaws and any other governing document shall be executed and certified as provided in ORS 94.590 (3) and shall be recorded in the office of the recording officer of every county in which the planned community is located if the bylaws or other governing document to which the amendment relates were recorded.

(C) An amendment adopted pursuant to this paragraph shall include:

(i) A reference to the recording index numbers and date of recording of the declaration or other governing document, if recorded, to which the amendment relates; and

(ii) A statement that the amendment is adopted pursuant to the applicable subparagraph of this paragraph.

(b)(A) If the governing documents do not provide for the formation of an association of owners, at least 10 percent of the owners in the planned community or any governing entity may initiate the formation of an association as provided in this paragraph. The owners or the governing entity initiating the association formation shall call an organizational meeting for the purpose of voting whether to form an association described in ORS 94.625. The notice of the meeting shall:

(i) Name the initiating owners or governing entity;

(ii) State that the organizational meeting is for the purpose of voting whether to form an association in accordance with the proposed articles of incorporation;

(iii) State that if the owners vote to form an association, the owners may elect the initial board of directors provided for in the articles of incorporation and may adopt the initial bylaws;

(iv) State that to form an association requires an affirmative vote of at least a majority of the owners in the planned community, or, if a larger percentage is specified in the applicable governing document, the larger percentage;

(v) State that to adopt articles of incorporation, to elect the initial board of directors pursuant to the articles of incorporation or to adopt the initial

1 bylaws requires an affirmative vote of at least a majority of the owners
2 present;

3 (vi) State that if the initial board of directors is not elected, an interim
4 board of directors shall be elected pursuant to bylaws adopted as provided
5 in subparagraph (C) of this paragraph;

6 (vii) State that a copy of the proposed articles of incorporation and by-
7 laws will be available at least five business days before the meeting and state
8 the method of requesting a copy; and

9 (viii) Be delivered in accordance with the declaration and bylaws. If there
10 is no governing document or the document does not include applicable pro-
11 visions, the owners or governing entity shall follow the procedures pre-
12 scribed in ORS 94.650 (4).

13 (B) At least five business days before the organizational meeting, the in-
14 itiating owners or governing entity shall cause articles of incorporation and
15 bylaws to be drafted. The bylaws shall include, to the extent applicable, the
16 information required by ORS 94.635.

17 (C) At the organizational meeting:

18 (i) Representatives of the initiating owners or governing entity shall, to
19 the extent not inconsistent with the governing documents, conduct the
20 meeting according to Robert's Rules of Order as provided in ORS 94.657.

21 (ii) The initiating owners or governing entity shall make available copies
22 of the proposed articles of incorporation and the proposed bylaws.

23 (iii) The affirmative vote of at least a majority of the owners of a planned
24 community, or, if a larger percentage is specified in the applicable governing
25 document, the larger percentage, is required to form an association under
26 this paragraph.

27 (iv) If the owners vote to form an association, the owners shall adopt
28 articles of incorporation and may elect the initial board of directors as pro-
29 vided in the articles of incorporation, adopt bylaws and conduct any other
30 authorized business by an affirmative vote of at least a majority of the
31 owners present. If the owners do not elect the initial board of directors,

1 owners shall elect an interim board of directors by an affirmative vote of at
2 least a majority of the owners present to serve until the initial board of di-
3 rectors is elected.

4 (v) An owner may vote by proxy, or by written ballot, if approved, in the
5 discretion of a majority of the initiating owners or governing entity.

6 (D) Not later than 10 business days after the organizational meeting, the
7 board of directors shall:

8 (i) Cause the articles of incorporation to be filed with the Secretary of
9 State under ORS chapter 65;

10 (ii) Cause the notice of planned community described in subsection (4) of
11 this section to be prepared, executed and recorded in accordance with sub-
12 section (4) of this section;

13 (iii) Provide a copy of the notice of planned community to each owner,
14 together with a copy of the adopted articles of incorporation and bylaws, if
15 any, or a statement of the procedure and method for adoption of bylaws de-
16 scribed in subparagraph (C) of this paragraph. The copies and any statement
17 shall be delivered to each lot, mailed to the mailing address of each lot or
18 mailed to the mailing addresses designated by the owners in writing; and

19 (iv) Cause a statement of association information to be prepared, executed
20 and recorded in accordance with ORS 94.667.

21 (E) If the owners vote to form an association, all costs incurred under this
22 paragraph, including but not limited to the preparation and filing of the ar-
23 ticles of incorporation, drafting of bylaws, preparation of notice of meeting
24 and the drafting, delivery and recording of all notices and statements shall
25 be a common expense of the owners and shall be allocated as provided in the
26 appropriate governing document or any amendment thereto.

27 (2)(a) The owners of lots in a Class I or Class II planned community that
28 are subject to the provisions of ORS chapter 94 specified in subsection (1)
29 of this section may elect to be subject to any other provisions of ORS 94.550
30 to 94.783 upon compliance with the procedures prescribed in subsection (1)
31 of this section.

(b) If the owners of lots in a Class I or Class II planned community elect to be subject to additional provisions of ORS 94.550 to 94.783, unless the notice of planned community otherwise required or permitted under subsection (4) of this section includes a statement of the election pursuant to this paragraph, the board of directors of the association shall cause the notice of planned community described in subsection (4) of this section to be prepared, executed and recorded in accordance with subsection (4) of this section.

(3)(a) The owners of lots in a Class III planned community created before January 1, 2002, may elect to be subject to provisions of ORS 94.550 to 94.783 upon compliance with the applicable procedures in subsection (1) of this section.

(b) If the owners of lots in a Class III planned community elect to be subject to provisions of ORS 94.550 to 94.783, the board of directors of the association shall cause the notice of planned community described in subsection (4) of this section to be prepared, executed and recorded in accordance with subsection (4) of this section.

(4) The notice of planned community required or permitted by this section shall be:

(a) Titled "Notice of Planned Community under ORS 94.572";

(b) Executed by the president and secretary of the association; and

(c) Recorded in the office of the recording officer of every county in which the property is located.

(5) The notice of planned community shall include:

(a) The name of the planned community and association as identified in the recorded declaration, conditions, covenants and restrictions or other governing document and, if different, the current name of the association;

(b) A list of the properties, described as required for recordation in ORS 93.600, within the jurisdiction of the association;

(c) Information identifying the recorded declaration, conditions, covenants and restrictions or other governing documents and a reference to the re-

1 cording index numbers and date of recording of the governing documents;

2 (d) A statement that the property described in accordance with paragraph
3 (b) of this subsection is subject to specific provisions of the Oregon Planned
4 Community Act;

5 (e) A reference to the specific provisions of the Oregon Planned Commu-
6 nity Act that apply to the subject property and a reference to the subsection
7 of this section under which the application is made; and

8 (f) If an association is formed under subsection (1)(b)(A) of this section,
9 a statement to that effect.

10 (6) An amended statement shall include a reference to the recording index
11 numbers and the date of recording of prior statements.

12 (7) The county clerk may charge a fee for recording a statement under
13 this section according to the provisions of ORS 205.320 (1)(d).

14 (8) The board of directors of an association not otherwise required to
15 cause a notice of planned community described in subsection (4) of this sec-
16 tion to be prepared and recorded under this section may cause a notice of
17 planned community to be prepared, executed and recorded as provided in
18 subsection (4) of this section.

19 (9) Title to a unit, lot or common property in a Class I or Class II planned
20 community created before January 1, 2002, may not be rendered
21 unmarketable or otherwise affected by a failure of the planned community
22 to be in compliance with a requirement of this section.

23 (10) As used in this section:

24 (a) "Governing entity" means an incorporated or unincorporated associ-
25 ation, committee, person or any other entity that has authority, under a
26 governing document, to maintain commonly maintained property, impose as-
27 sessments on lots or to act on behalf of lot owners within the planned com-
28 munity on matters of common concern.

29 (b) "Recorded declaration" means an instrument recorded with the county
30 recording officer of the county in which the planned community is located
31 that contains conditions, covenants and restrictions binding lots in the

1 planned community or imposes servitudes upon the real property.

2 **SECTION 3. This 2016 Act being necessary for the immediate pres-**
3 **ervation of the public peace, health and safety, an emergency is de-**
4 **clared to exist, and this 2016 Act takes effect on its passage.**

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