

# DRAFT

## SUMMARY

Directs Land Conservation and Development Commission to encourage local governments to dedicate land for affordable housing. Authorizes commission to establish process to expedite inclusion within urban growth boundary of land dedicated to affordable housing.

Permits local government to require developers to allocate up to 10 percent of housing units in new multiunit developments for affordable housing. Designates housing development projects complying with local government inclusionary zoning requirement as expedited land division. Requires local governments to prepare housing cost impact statements upon consideration of certain legislative actions.

Permits Metro to designate up to five subregions for consideration for urban growth boundary expansion.

Creates income tax credit for development of affordable housing.

Ends moratorium on local governments' imposing construction taxes.

Creates new authority for local government, local service district and special government body to impose construction taxes, at rate not exceeding \$0.50 per square foot, on improvements to residential, commercial and industrial real property that result in new structure or additional square footage in existing structure, including remodeling that adds living space. Requires local government, local service district and special government body to transfer construction excise tax revenue to Housing and Community Services Department Revolving Account for distribution by department to local government, local service district or special government body and certain programs for home ownership, rental assistance and affordable housing.

Modifies provisions requiring landlord to provide emergency exits from bedrooms.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to housing; creating new provisions; amending ORS 90.460, 197.298, 197.309, 197.360, 223.299, 223.301, 315.053, 320.170, 320.176 and 320.186 and

section 1, chapter 829, Oregon Laws 2007; repealing section 9, chapter 829, Oregon Laws 2007; and prescribing an effective date.

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

**SECTION 1.** Section 2 of this 2016 Act is added to and made a part of ORS 197.295 to 197.314.

**SECTION 2.** (1) The Legislative Assembly finds that an adequate supply of land dedicated to affordable housing and planned and zoned to protect the land's use for affordable housing over the long term is necessary for the economic prosperity of Oregon communities.

(2) The Land Conservation and Development Commission shall adopt or amend statewide land use planning goals or rules and initiate other programs as necessary to:

(a) Encourage local governments to provide an adequate supply of land within urban growth boundaries that is dedicated to affordable housing;

(b) Encourage the development of affordable housing on land dedicated to affordable housing; and

(c) Protect land dedicated to affordable housing from conversion to other uses before or after the development of affordable housing.

(3) Notwithstanding the presence within an urban growth boundary of a 20-year supply of buildable lands as required by ORS 197.296, the commission by rule may:

(a) Establish a process for amending urban growth boundaries that expedites amendments initiated at any time to include land dedicated to affordable housing pursuant to this section.

(b) Require that land included within an urban growth boundary pursuant to this section:

(A) Remain available for affordable housing over the long term; and

(B) Be planned and zoned to limit uses that convert affordable housing to other uses.

(c) Notwithstanding the priority for inclusion of land under ORS

1 **197.298, authorize the inclusion within an urban growth boundary un-**  
2 **der this section of land dedicated to affordable housing that is:**

3 **(A) Adjacent to the urban growth boundary; and**

4 **(B) Served, or capable of being served within one year, by trans-**  
5 **portation facilities, sewer and water service and other public utilities**  
6 **and facilities that are necessary for the development of affordable**  
7 **housing.**

8 **(d) Authorize land dedicated to affordable housing pursuant to this**  
9 **section to be exempt from the 20-year supply of buildable lands as re-**  
10 **quired by ORS 197.296 and the statewide planning goal pertaining to**  
11 **urbanization.**

12 **(4) A local government may exempt undeveloped land within an**  
13 **urban growth boundary that is dedicated to affordable housing pursu-**  
14 **ant to this section from the buildable lands inventory.**

15 **(5) A local government that amends its urban growth boundary**  
16 **pursuant to this section to facilitate the development of affordable**  
17 **housing:**

18 **(a) Shall ensure that housing developed on these lands continues**  
19 **to be used to provide affordable housing through:**

20 **(A) Zoning regulations;**

21 **(B) Guaranteed rental rates or sales prices;**

22 **(C) Regulations, provisions or conditions such as those described in**  
23 **ORS 197.309 (2); or**

24 **(D) Other regulations, provisions or conditions determined by the**  
25 **local government to be effective in maintaining the affordability of**  
26 **housing on land dedicated to that purpose pursuant to this section.**

27 **(b) May authorize a mix of affordable housing and other housing**  
28 **types on a site, provided the percentage of affordable housing units**  
29 **developed on the site meets or exceeds a percentage required by rules**  
30 **of the commission.**

31 **(6) Except under exceptional circumstances determined by the**

commission by rule, if land is included within an urban growth boundary to provide for affordable housing, a local government may not rezone that land to allow a use other than the use allowed pursuant to this section.

(7) This section does not authorize a local government to convert land within an urban growth boundary that is planned for needed housing to other uses due to the inclusion of land for affordable housing pursuant to this section.

(8) For purposes of this section, the commission shall define “affordable housing,” taking into consideration regional factors and issues including, but not limited to, the benefits and burdens of rental housing versus home ownership and issues related to government assisted housing and manufactured dwelling parks.

**SECTION 3.** ORS 197.298 is amended to read:

197.298. (1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary of Metro except under the following priorities:

(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.

(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.

(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).

(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.

(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:

(a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;

(b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or

(c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.

(4) When a city includes land within the urban growth boundary of the city pursuant to ORS 197.295 to 197.314, the city shall prioritize lands for inclusion as provided in ORS 197A.320.

**(5) Subsections (1) to (3) of this section do not apply to limit inclusion in an urban growth boundary of land dedicated to affordable housing under section 2 of this 2016 Act.**

**SECTION 4.** ORS 197.309 is amended to read:

197.309. (1) Except as provided in [subsection (2)] **subsections (2) and (3)** of this section, a [city, county or metropolitan service district] **local government** may not adopt a land use regulation or functional plan provision, or impose as a condition for approving a permit under ORS 215.427 or 227.178, a requirement that has the effect of establishing the sales price for a housing unit or residential building lot or parcel, or that requires a housing unit or residential building lot or parcel to be designated for sale to any particular class or group of purchasers.

(2) [This section] **Subsection (1) of this section** does not limit the authority of a [city, county or metropolitan service district] **local government**

to:

(a) Adopt or enforce a land use regulation, functional plan provision or condition of approval creating or implementing an incentive, contract commitment, density bonus or other voluntary regulation, provision or condition designed to increase the supply of moderate or lower cost housing units; [or]

(b) Enter into an affordable housing covenant as provided in ORS 456.270 to 456.295[.]; or

**(c) Adopt or enforce a land use regulation, functional plan provision or condition of approval creating or implementing an incentive, contract commitment, density bonus or other voluntary regulation, provision or condition requiring that up to 10 percent of housing units in proposed new multiunit housing developments containing 30 or more housing units be allocated for affordable housing.**

**(3) Subsection (1) of this section does not apply to regulations, provisions or conditions adopted by a local government that are intended to establish and maintain affordable housing pursuant to section 2 of this 2016 Act.**

**(4) For the purpose of this section, “affordable housing” means housing units that are sold at a rate not to exceed 30 percent of the median family income for a family of four residing within the jurisdiction of the local government.**

**SECTION 5.** ORS 223.299 is amended to read:

223.299. As used in ORS 223.297 to 223.314:

(1)(a) “Capital improvement” means facilities or assets used for the following:

(A) Water supply, treatment and distribution;

(B) Waste water collection, transmission, treatment and disposal;

(C) Drainage and flood control;

(D) Transportation; or

(E) Parks and recreation.

(b) "Capital improvement" does not include costs of the operation or routine maintenance of capital improvements.

**(2) "Employer" means any person that contracts to pay remuneration for, and secures the right to direct and control the services of, any person.**

[(2)] **(3)** "Improvement fee" means a fee for costs associated with capital improvements to be constructed.

[(3)] **(4)** "Reimbursement fee" means a fee for costs associated with capital improvements already constructed, or under construction when the fee is established, for which the local government determines that capacity exists.

[(4)(a)] **(5)(a)** "System development charge" means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement or issuance of a development permit, building permit or connection to the capital improvement. "System development charge" includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the local government for its average cost of inspecting and installing connections with water and sewer facilities.

(b) "System development charge" does not include any fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed upon a land use decision, expedited land division or limited land use decision.

**SECTION 6.** ORS 223.301 is amended to read:

223.301. [(1) As used in this section, "employer" means any person who contracts to pay remuneration for, and secures the right to direct and control the services of, any person.]

[(2) A local government may not establish or impose a system development charge that requires an employer to pay a reimbursement fee or an improvement fee based on:]

**(1) A local government may not establish or impose a system de-**

**velopment charge that:**

**(a) Is based in whole or in part on the value of land, facilities or improvements for which the local government did not expend public funds.**

**(b) Requires an employer to pay an improvement fee or a reimbursement fee based on:**

(A) The number of individuals hired by the employer after a specified date; or

(B) A methodology that assumes that costs are necessarily incurred for capital improvements when an employer hires an additional employee.

[(3)] **(2)** A methodology set forth in an ordinance or resolution that establishes an improvement fee or a reimbursement fee *[shall]* **may** not include or incorporate any method or system under which the payment of the fee or the amount of the fee is determined by the number of employees of an employer without regard to new construction, new development or new use of an existing structure by the employer.

**SECTION 7.** ORS 197.360 is amended to read:

197.360. (1) As used in this section:

(a) “Expedited land division” means a division of land under ORS 92.010 to 92.192, 92.205 to 92.245 or 92.830 to 92.845 by a local government that:

(A) Includes only land that is zoned for residential uses and is within an urban growth boundary.

(B) Is solely for the purposes of residential use, including recreational or open space uses accessory to residential use.

(C) Does not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect:

(i) Open spaces, scenic and historic areas and natural resources;

(ii) The Willamette River Greenway;

(iii) Estuarine resources;



(iv) Coastal shorelands; and

(v) Beaches and dunes.

(D) Satisfies minimum street or other right-of-way connectivity standards established by acknowledged land use regulations or, if such standards are not contained in the applicable regulations, as required by statewide planning goals or rules.

(E) Will result in development that *[either]*:

(i) Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site; *[or]*

(ii) Will be sold or rented to households with incomes below 120 percent of the median family income for the county in which the project is built[.];

**or**

**(iii) Complies with a land use regulation, functional plan provision or condition of approval creating or implementing an incentive, contract commitment, density bonus or other voluntary regulation, provision or condition requiring that up to 10 percent of housing units in proposed new multiunit housing developments containing 30 or more housing units be allocated for affordable housing. For the purposes of this subparagraph, “affordable housing” has the meaning given that term in ORS 197.309.**

(b) “Expedited land division” includes land divisions that create three or fewer parcels under ORS 92.010 to 92.192 and meet the criteria set forth in paragraph (a) of this subsection.

(2) An expedited land division as described in this section is not a land use decision or a limited land use decision under ORS 197.015 or a permit under ORS 215.402 or 227.160.

(3) The provisions of ORS 197.360 to 197.380 apply to all elements of a local government comprehensive plan and land use regulations applicable to a land division, including any planned unit development standards and any procedures designed to regulate:

(a) The physical characteristics of permitted uses;

(b) The dimensions of the lots or parcels to be created; or

(c) Transportation, sewer, water, drainage and other facilities or services necessary for the proposed development, including but not limited to right-of-way standards, facility dimensions and on-site and off-site improvements.

(4) An application for an expedited land division submitted to a local government shall describe the manner in which the proposed division complies with each of the provisions of subsection (1) of this section.

**SECTION 8. A local government shall prepare a housing cost impact statement when the local government considers a proposal for adoption or repeal of any local ordinance or rule, or any amendment to an existing local ordinance or rule, relating to land use, housing, real estate, property development, environmental protection or infrastructure.**

**SECTION 9. When evaluating a potential expansion of its urban growth boundary, Metro may designate up to five subregions for analysis under ORS 197.298 and for consideration as a permitted exception under ORS 197.732 (2)(c)(B) and any land use goal applicable to providing for an orderly and efficient transition from rural to urban land use.**

**SECTION 10. Section 11 of this 2016 Act is added to and made a part of ORS chapter 315.**

**SECTION 11. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, shall be allowed to a taxpayer that is a developer of affordable housing.**

**(2) The credit shall equal 100 percent of the system development charge paid by the taxpayer to a local government related to an affordable housing development project.**

**(3) Except as provided in subsection (5) of this section, the credit must be claimed for the income or corporate excise tax year that is:**

1 (a) The year in which the investment for which a credit is being  
2 claimed is made; and

3 (b) A year, all or part of which is described in subsection (4) of this  
4 section.

5 (4) Any tax credit otherwise allowable under this section that is not  
6 used by the taxpayer in a particular year may be carried forward and  
7 offset against the taxpayer's tax liability for the next succeeding tax  
8 year. Any credit remaining unused in the next succeeding tax year  
9 may be carried forward and used in the second succeeding tax year,  
10 and likewise any credit not used in that second succeeding tax year  
11 may be carried forward and used in the third succeeding tax year, and  
12 any credit not used in that third succeeding tax year may be carried  
13 forward and used in the fourth succeeding tax year, and any credit not  
14 used in that fourth succeeding tax year may be carried forward and  
15 used in the fifth succeeding tax year, but may not be carried forward  
16 for any tax year thereafter.

17 (5) The credit allowed under this section is not in lieu of any de-  
18 preciation or amortization deduction to which the taxpayer otherwise  
19 may be entitled under ORS chapter 316, 317 or 318 for the tax year.

20 (6) The taxpayer's adjusted basis for determining gain or loss may  
21 not be further decreased by any amount of credit allowed under this  
22 section.

23 (7) A developer of affordable housing may transfer all or part of a  
24 tax credit allowed under this section to one or more developers of af-  
25 fordable housing or to one or more developers that otherwise partic-  
26 ipate in the development of affordable housing projects for which the  
27 tax credit under this section is allowed.

28 (8)(a) A nonresident shall be allowed the credit under this section  
29 in the proportion provided in ORS 316.117.

30 (b) If a change in the status of a taxpayer from resident to non-  
31 resident or from nonresident to resident occurs, the credit allowed

under this section shall be determined in a manner consistent with  
ORS 316.117.

(c) If a change in the taxable year of a taxpayer occurs as described  
in ORS 314.085, or if the Department of Revenue terminates the  
taxpayer's taxable year under ORS 314.440, the credit allowed under  
this section shall be prorated or computed in a manner consistent with  
ORS 314.085.

(9) As used in this section:

(a) "Affordable housing" has the meaning given that term in ORS  
197.309.

(b) "Affordable housing development project" means a project for  
the construction of a multiunit housing development containing 30 or  
more housing units where 10 percent of the housing units will be sold  
as affordable housing.

**SECTION 12.** ORS 315.053 is amended to read:

315.053. An income tax credit allowed under ORS 315.141, 315.331, 315.336,  
315.341 or 315.354 or section 12, chapter 855, Oregon Laws 2007[,] **or section**  
**11 of this 2016 Act** may be transferred or sold only to one or more of the  
following:

(1) A C corporation.

(2) An S corporation.

(3) A personal income taxpayer.

**SECTION 13.** ORS 320.170 is amended to read:

320.170. (1) [*Construction taxes may be imposed by*] A school district, as  
defined in ORS 330.005, **may impose a construction tax only** in accordance  
with ORS 320.170 to 320.189.

(2) Construction taxes imposed by a school district must be collected,  
subject to ORS 320.179, by a local government, local service district, special  
government body, state agency or state official that issues a permit for  
structural improvements regulated by the state building code.

**SECTION 14.** Section 1, chapter 829, Oregon Laws 2007, is added to

**and made a part of ORS 320.170 to 320.189.**

**SECTION 15.** Section 1, chapter 829, Oregon Laws 2007, is amended to read:

**Sec. 1.** (1) A local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117, may not impose a tax on the privilege of constructing improvements to real property except as provided in [*sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189.**

(2) Subsection (1) of this section does not apply to:

(a) A tax that is in effect as of May 1, 2007, or to the extension or continuation of such a tax, provided that the rate of tax does not increase from the rate in effect as of May 1, 2007;

(b) A tax on which a public hearing was held before May 1, 2007; or

(c) The amendment or increase of a tax adopted by a county for transportation purposes prior to May 1, 2007, provided that the proceeds of such a tax continue to be used for those purposes.

(3) For purposes of [*this section and sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189**, construction taxes are limited to privilege taxes imposed under [*sections 2 to 8 of this 2007 Act*] **ORS 320.170 to 320.189** and do not include any other financial obligations such as building permit fees, financial obligations that qualify as system development charges under ORS 223.297 to 223.314 or financial obligations imposed on the basis of factors such as income.

**SECTION 16.** ORS 320.176 is amended to read:

320.176. (1) Construction taxes imposed [*under ORS 320.170 to 320.189*] **by a school district pursuant to ORS 320.170** may be imposed only on improvements to real property that result in a new structure or additional square footage in an existing structure and may not exceed:

(a) \$1 per square foot on structures or portions of structures intended for residential use, including but not limited to single-unit or multiple-unit housing; and

(b) \$0.50 per square foot on structures or portions of structures intended for nonresidential use, not including multiple-unit housing of any kind.

(2) In addition to the limitations under subsection (1) of this section, a construction tax imposed on structures intended for nonresidential use may not exceed \$25,000 per building permit or \$25,000 per structure, whichever is less.

(3)(a) For years beginning on or after June 30, 2009, the limitations under subsections (1) and (2) of this section shall be adjusted for changes in construction costs by multiplying the limitations set forth in subsections (1) and (2) of this section by the ratio of the averaged monthly construction cost index for the 12-month period ending June 30 of the preceding calendar year over the averaged monthly construction cost index for the 12-month period ending June 30, 2008.

(b) The Department of Revenue shall determine the adjusted limitations under this section and shall report those limitations to entities imposing construction taxes. The department shall round the adjusted limitation under subsection (2) of this section to the nearest multiple of \$100.

(c) As used in this subsection, “construction cost index” means the Engineering News-Record Construction Cost Index, or a similar nationally recognized index of construction costs as identified by the department by rule.

**SECTION 17.** ORS 320.186 is amended to read:

320.186. A school district may pledge construction taxes **imposed pursuant to ORS 320.170** to the payment of obligations issued to finance or refinance capital improvements as defined in ORS 320.183.

**SECTION 18.** Sections 19 and 20 of this 2016 Act are added to and made a part of ORS 320.170 to 320.189.

**SECTION 19.** (1) The governing body of a local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117, may impose a construction tax by adoption of an ordinance or resolution that conforms to the requirements of sections 19 and 20 of this 2016 Act.

1       (2) The tax may be imposed on improvements to residential, com-  
2       mercial and industrial real property that result in a new structure or  
3       additional square footage in an existing structure, including remodel-  
4       ing that adds living space.

5       (3) The ordinance or resolution shall state the rate of the tax. The  
6       tax may not exceed \$0.50 per square foot.

7       (4) The tax shall be paid at the time specified in ORS 320.189 to the  
8       local government, local service district or special government body  
9       that imposed the tax.

10      SECTION 20. (1) As soon as practicable after the end of each fiscal  
11      quarter, a local government, local service district or special govern-  
12      ment body that imposes a construction tax pursuant to section 19 of  
13      this 2016 Act shall transfer the construction tax revenues collected in  
14      the fiscal quarter just ended to the Housing and Community Services  
15      Department for deposit in the Housing and Community Services De-  
16      partment Revolving Account established under ORS 456.574.

17      (2) Of the revenues transferred pursuant to subsection (1) of this  
18      section, the department may retain an amount not to exceed four  
19      percent as an administrative fee to recoup the expenses of the de-  
20      partment incurred in complying with the requirements of this section.

21      (3) After deducting the administrative fee authorized under sub-  
22      section (2) of this section and payment of refunds, the department  
23      shall distribute the remaining revenues as follows:

24      (a) Fifty percent to the local government, local service district or  
25      special government body that imposed the construction tax;

26      (b) Twenty-five percent for home ownership programs, including  
27      down payment assistance, and rental assistance programs of the de-  
28      partment; and

29      (c) Twenty-five percent to other programs related to affordable  
30      housing as defined by the Land Conservation and Development Com-  
31      mission pursuant to section 2 of this 2016 Act.

**SECTION 21. Section 9, chapter 829, Oregon Laws 2007, is repealed.**

**SECTION 22.** ORS 90.460 is amended to read:

90.460. (1) As used in this section[,]:

(a) “Bedroom” has the meaning given that term in ORS 90.262.

**(b) “Building” means a dwelling unit or a structure containing a dwelling unit.**

(2) A landlord shall provide at all times during the tenancy [*a route of exit from a bedroom, other than the main entrance to the bedroom, for use during an emergency. The secondary route of exit must conform to applicable law.*] **a route or routes of exit and, if required, a secondary route of exit from each bedroom, for use during an emergency, pursuant to law at the time of occupancy of the building or after a renovation or change of use of the building, whichever was more recent.**

(3)(a) If the landlord fails to comply with the requirements of this section, the tenant may recover actual damages, and the tenant may terminate the tenancy by providing the landlord actual notice and a description of the noncompliance 72 hours prior to the date of termination.

(b) If the landlord cures the noncompliance within the 72-hour period:

(A) The tenancy does not terminate; and

(B) The tenant may recover the tenant’s actual damages.

(c) If the landlord fails to cure the noncompliance within the 72-hour period:

(A) The tenancy terminates;

(B) The tenant may recover twice the tenant’s actual damages or twice the periodic rent, whichever is greater; and

(C) The landlord must return all security deposits and prepaid rent owed to the tenant under ORS 90.300 within four days after the termination.

**SECTION 23. This 2016 Act takes effect on the 91st day after the date on which the 2016 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**