

D R A F T

SUMMARY

Requires that person seeking to appeal land use decision or limited land use decision to Land Use Board of Appeals must own, or have ownership interest in, real property within _____ miles of real property that is object of decision and must be adversely affected by decision.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to basis for appeal to Land Use Board of Appeals; creating new
3 provisions; amending ORS 197.830; and declaring an emergency.

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

5 **SECTION 1.** ORS 197.830 is amended to read:

6 197.830. (1) Review of land use decisions or limited land use decisions
7 under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent
8 to appeal with the Land Use Board of Appeals.

9 (2) Except as provided in ORS 197.620, a person **who owns, or has an**
10 **ownership interest in, real property that is within _____ miles of**
11 **real property that is an object of a land use decision or limited land**
12 **use decision and who is adversely affected by the land use decision or**
13 **limited land use decision** may petition the board for review of [a] **the land**
14 use decision or limited land use decision if the person:

15 (a) Filed a notice of intent to appeal the decision as provided in sub-
16 section (1) of this section; and

17 (b) Appeared before the local government, special district or state agency
18 orally or in writing.

19 (3) If a local government makes a land use decision without providing a

1 hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the
2 local government makes a land use decision that is different from the pro-
3 posal described in the notice of hearing to such a degree that the notice of
4 the proposed action did not reasonably describe the local government's final
5 actions, a person **who owns, or has an ownership interest in, real prop-**
6 **erty that is within _____ miles of real property that is an object**
7 **of the land use decision and who is** adversely affected by the decision may
8 appeal the decision to the board under this section:

9 (a) Within 21 days of actual notice [*where*] **when** notice is required; or

10 (b) Within 21 days of the date [*a*] **the** person knew or should have known
11 of the decision [*where no notice is*] **when notice is not** required.

12 (4) If a local government makes a land use decision without a hearing
13 pursuant to ORS 215.416 (11) or 227.175 (10):

14 (a) A person who **owns, or has an ownership interest in, real property**
15 **that is within _____ miles of real property that is an object of the**
16 **decision and who** was not provided notice of the decision as required under
17 ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board
18 under this section within 21 days of receiving actual notice of the decision.

19 (b) A person who is not entitled to notice under ORS 215.416 (11)(c) or
20 227.175 (10)(c) but who **owns, or has an ownership interest in, real**
21 **property that is within _____ miles of real property that is an ob-**
22 **ject of the decision and who** is adversely affected or aggrieved by the de-
23 cision may appeal the decision to the board under this section within 21 days
24 after the expiration of the period for filing a local appeal of the decision
25 established by the local government under ORS 215.416 (11)(a) or 227.175
26 (10)(a).

27 (c) A person who receives notice of a decision made without a hearing
28 under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board
29 under this section within 21 days of receiving actual notice of the nature of
30 the decision, if the notice of the decision did not reasonably describe the
31 nature of the decision **and the person owns, or has an ownership interest**

1 **in, real property that is within _____ miles of real property that**
2 **is an object of the decision and the person is adversely affected or**
3 **aggrieved by the decision.**

4 (d) Except as provided in paragraph (c) of this subsection, a person who
5 receives notice of a decision made without a hearing under ORS 215.416 (11)
6 or 227.175 (10) may not appeal the decision to the board under this section.

7 (5) If a local government makes a limited land use decision which is dif-
8 ferent from the proposal described in the notice to such a degree that the
9 notice of the proposed action did not reasonably describe the local
10 government's final actions, a person **who owns, or has an ownership in-**
11 **terest in, real property that is within _____ miles of real property**
12 **that is an object of the limited land use decision and who is** adversely
13 affected by the decision may appeal the decision to the board under this
14 section:

15 (a) Within 21 days of actual notice [*where*] **when** notice is required; or

16 (b) Within 21 days of the date [*a*] **the** person knew or should have known
17 of the decision [*where no notice is*] **when notice is not** required.

18 (6) The appeal periods described in subsections (3), (4) and (5) of this
19 section:

20 (a) May not exceed three years after the date of the decision, except as
21 provided in paragraph (b) of this subsection.

22 (b) May not exceed 10 years after the date of the decision if notice of a
23 hearing or an administrative decision made pursuant to ORS 197.195 or
24 197.763 is required but has not been provided.

25 (7)(a) Within 21 days after a notice of intent to appeal has been filed with
26 the board under subsection (1) of this section, any person described in para-
27 graph (b) of this subsection may intervene in and be made a party to the
28 review proceeding by filing a motion to intervene and by paying a filing fee
29 of \$100.

30 (b) Persons who may intervene in and be made a party to the review
31 proceedings, as set forth in subsection (1) of this section, are:

1 (A) The applicant who initiated the action before the local government,
2 special district or state agency; or

3 (B) Persons who **own, or have an ownership interest in, real property**
4 **that is within _____ miles of real property that is an object of the**
5 **land use decision or limited land use decision and who** appeared before
6 the local government, special district or state agency, orally or in writing.

7 (c) Failure to comply with the deadline or to pay the filing fee set forth
8 in paragraph (a) of this subsection shall result in denial of a motion to in-
9 tervene.

10 (8) If a state agency whose order, rule, ruling, policy or other action is
11 at issue is not a party to the proceeding, it may file a brief with the board
12 as if it were a party. The brief shall be due on the same date the respondent's
13 brief is due and shall be accompanied by a filing fee of \$100.

14 (9) A notice of intent to appeal a land use decision or limited land use
15 decision shall be filed not later than 21 days after the date the decision
16 sought to be reviewed becomes final. A notice of intent to appeal plan and
17 land use regulation amendments processed pursuant to ORS 197.610 to
18 197.625 shall be filed not later than 21 days after notice of the decision
19 sought to be reviewed is mailed or otherwise submitted to parties entitled
20 to notice under ORS 197.615. Failure to include a statement identifying when,
21 how and to whom notice was provided under ORS 197.615 does not render the
22 notice defective. Copies of the notice of intent to appeal shall be served upon
23 the local government, special district or state agency and the applicant of
24 record, if any, in the local government, special district or state agency pro-
25 ceeding. The notice shall be served and filed in the form and manner pre-
26 scribed by rule of the board and shall be accompanied by a filing fee of \$200
27 and a deposit for costs to be established by the board. If a petition for review
28 is not filed with the board as required in subsections (10) and (11) of this
29 section, the filing fee and deposit shall be awarded to the local government,
30 special district or state agency as cost of preparation of the record.

31 (10)(a) Within 21 days after service of the notice of intent to appeal, the

1 local government, special district or state agency shall transmit to the board
2 the original or a certified copy of the entire record of the proceeding under
3 review. By stipulation of all parties to the review proceeding the record may
4 be shortened. The board may require or permit subsequent corrections to the
5 record; however, the board shall issue an order on a motion objecting to the
6 record within 60 days of receiving the motion.

7 (b) Within 10 days after service of a notice of intent to appeal, the board
8 shall provide notice to the petitioner and the respondent of their option to
9 enter into mediation pursuant to ORS 197.860. Any person moving to inter-
10 vene shall be provided such notice within seven days after a motion to in-
11 tervene is filed. The notice required by this paragraph shall be accompanied
12 by a statement that mediation information or assistance may be obtained
13 from the Department of Land Conservation and Development.

14 (11) A petition for review of the land use decision or limited land use
15 decision and supporting brief shall be filed with the board as required by the
16 board under subsection (13) of this section.

17 (12) The petition shall include a copy of the decision sought to be re-
18 viewed and shall state:

19 (a) The facts that establish that the petitioner has standing.

20 (b) The date of the decision.

21 (c) The issues the petitioner seeks to have reviewed.

22 (13)(a) The board shall adopt rules establishing deadlines for filing pe-
23 titions and briefs and for oral argument.

24 (b) At any time subsequent to the filing of a notice of intent and prior
25 to the date set for filing the record, or, on appeal of a decision under ORS
26 197.610 to 197.625, prior to the filing of the respondent's brief, the local
27 government or state agency may withdraw its decision for purposes of re-
28 consideration. If a local government or state agency withdraws an order for
29 purposes of reconsideration, it shall, within such time as the board may al-
30 low, affirm, modify or reverse its decision. If the petitioner is dissatisfied
31 with the local government or agency action after withdrawal for purposes

1 of reconsideration, the petitioner may refile the notice of intent and the re-
2 view shall proceed upon the revised order. An amended notice of intent shall
3 not be required if the local government or state agency, on reconsideration,
4 affirms the order or modifies the order with only minor changes.

5 (14) The board shall issue a final order within 77 days after the date of
6 transmittal of the record. If the order is not issued within 77 days the ap-
7 plicant may apply in Marion County or the circuit court of the county where
8 the application was filed for a writ of mandamus to compel the board to issue
9 a final order.

10 (15)(a) Upon entry of its final order the board may, in its discretion,
11 award costs to the prevailing party including the cost of preparation of the
12 record if the prevailing party is the local government, special district or
13 state agency whose decision is under review. The deposit required by sub-
14 section (9) of this section shall be applied to any costs charged against the
15 petitioner.

16 (b) The board shall also award reasonable attorney fees and expenses to
17 the prevailing party against any other party who the board finds presented
18 a position without probable cause to believe the position was well-founded
19 in law or on factually supported information.

20 (16) Orders issued under this section may be enforced in appropriate ju-
21 dicial proceedings.

22 (17)(a) The board shall provide for the publication of its orders that are
23 of general public interest in the form it deems best adapted for public con-
24 venience. The publications shall constitute the official reports of the board.

25 (b) Any moneys collected or received from sales by the board shall be paid
26 into the Board Publications Account established by ORS 197.832.

27 (18) Except for any sums collected for publication of board opinions, all
28 fees collected by the board under this section that are not awarded as costs
29 shall be paid over to the State Treasurer to be credited to the General Fund.

30 **SECTION 2. The amendments to ORS 197.830 by section 1 of this**
31 **2012 Act apply to persons filing notices of intent to appeal on and after**

1 **the effective date of this 2012 Act.**

2 **SECTION 3. This 2012 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 2012 Act takes effect on its passage.**

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