

# House Bill 3218

Sponsored by Representative RICHARDSON; Representatives BOONE, GARRARD, KRIEGER, SCHAUFLE, P SMITH

## 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**.

Authorizes construction of single family dwelling on lot or parcel on which land use restriction or reinterpretation prevents construction of dwelling that could have been constructed when owner acquired lot or parcel. Requires landowner to apply to governing body of city or county, or its designee, for approval to construct dwelling. Requires governing body of city or county, or its designee, to approve or deny application within 120 days of date application is submitted. Provides for judicial review of denial of application. Specifies regulations that apply to siting and construction of dwelling. Allows landowner to convey property with right to build single family dwelling.

## A BILL FOR AN ACT

1  
2 Relating to approval of single family dwelling.

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

4 **SECTION 1. Sections 2 to 7 of this 2007 Act are added to and made a part of ORS chapter**  
5 **197.**

6 **SECTION 2. As used in sections 2 to 7 of this 2007 Act:**

7 (1) **"Government entity" means a state agency, board or commission in the executive**  
8 **branch of state government or a local government or other political subdivision of the state.**

9 (2) **"Land use restriction" means:**

10 (a) **A law, a statewide land use planning goal or an administrative rule establishing**  
11 **standards or requirements relating to land use planning under ORS chapter 195, 196, 197, 215,**  
12 **227 or 268.**

13 (b) **A comprehensive plan acknowledged under ORS 197.251 or a land use regulation.**

14 (c) **Regional goals and objectives, a regional framework plan or a land use ordinance**  
15 **adopted by a metropolitan service district to implement a regional framework plan.**

16 (3) **"Owner" means:**

17 (a) **The record holder of fee title interest in real property;**

18 (b) **The contract purchaser of real property; or**

19 (c) **A legal entity created in whole or in part by the preceding owner to which the pre-**  
20 **ceding owner transferred fee title interest in the real property before, on or after the effec-**  
21 **tive date of this 2005 Act.**

22 (4) **"Reinterpretation" means the application of a land use restriction by a government**  
23 **entity in a manner that differs from the established interpretation of the land use restriction**  
24 **on the date the owner acquired the real property.**

25 **SECTION 3. (1) If a government entity enacts or adopts a land use restriction after the**  
26 **effective date of this 2007 Act or enforces or applies a reinterpretation of a land use re-**  
27 **striction adopted prior to the effective date of this 2007 Act that prevents the owner of a**

**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 lawfully established lot or parcel from building a single family dwelling on the lot or parcel,  
 2 the governing body of the city or county with jurisdiction over the lot or parcel, or its  
 3 designee, shall, upon application by the owner, approve the siting of a single family dwelling  
 4 on the lot or parcel provided:

5 (a) The owner had the right to build a single family dwelling on the lot or parcel when  
 6 the owner acquired the lot or parcel; and

7 (b) The owner demonstrates that, except as required in section 5 of this 2007 Act, the  
 8 single family dwelling will be built in compliance with the laws that applied when the owner  
 9 acquired the lot or parcel.

10 (2) For purposes of subsection (1) of this section, an owner described in section 2 (3)(c)  
 11 of this 2007 Act is deemed to have acquired the lot or parcel on the date that the immediately  
 12 preceding owner obtained fee title interest in the lot or parcel.

13 (3) An owner is not entitled to approval under subsection (1) of this section if a govern-  
 14 ment entity establishes:

15 (a) The single family dwelling would constitute a public or private nuisance under com-  
 16 mon law;

17 (b) The land use restriction or reinterpretation implements a federal law;

18 (c) The land use restriction or reinterpretation provides access to public beaches and it  
 19 is not reasonably feasible to site a single family dwelling on the lot or parcel because of the  
 20 access; or

21 (d) The land use restriction was enacted, adopted or reinterpreted before the date the  
 22 owner acquired the real property.

23 (4) An owner, or a contractor, as defined in ORS 701.005, on behalf of the owner, seeking  
 24 to establish a single family dwelling under this section shall submit an application to the  
 25 governing body of the city or county with jurisdiction over the lot or parcel, or its designee,  
 26 according to procedures adopted by the city or county. The governing body of the city or  
 27 county, or its designee, shall approve or deny the application within 120 days of the date the  
 28 application is submitted.

29 **SECTION 4.** (1) Notwithstanding ORS 197.830 to 197.845 or any provision of ORS 34.020  
 30 and 34.102 to the contrary, if an application to establish a single family dwelling under sec-  
 31 tion 3 of this 2007 Act is denied by the governing body of the city or county, or its designee,  
 32 the owner may seek review of the decision as provided under ORS 34.010 to 34.100. Except  
 33 as provided in this section, the provisions of ORS 34.010 to 34.100 apply to an action filed  
 34 under this section.

35 (2) An owner who files an action under this section:

36 (a) Shall seek review in the circuit court for the county that denied approval of the ap-  
 37 plication or, if a city denied approval, the county that contains the city that denied approval;

38 (b) Shall serve process on each government entity that is potentially responsible for the  
 39 land use restriction or the reinterpretation if the land use restriction or the reinterpretation  
 40 appears to be necessary for the government entity's land use planning to comply with a land  
 41 use restriction defined in section 2 (2)(a) or (c) of this 2007 Act; and

42 (c) Is entitled to a trial by jury.

43 (3) If a judgment is entered authorizing the owner to build the single family dwelling, the  
 44 court shall:

45 (a) If more than one government entity is responsible for the land use restriction or re-

1 interpretation that prevents the siting of a single family dwelling on the lot or parcel, order  
2 each responsible government entity to take whatever action is necessary to authorize the  
3 construction and use of the dwelling, including issuing any necessary permits.

4 (b) Award attorney fees, costs and disbursements and the reasonable expenses incurred  
5 in the preparation and prosecution of the action to the owner.

6 **SECTION 5.** (1) A single family dwelling authorized under section 3 or 4 of this 2007 Act:

7 (a) Must comply with applicable siting standards for fire, health and safety;

8 (b) Is subject to ORS 223.297 to 223.314 and local ordinances adopted under ORS 223.297  
9 to 223.314;

10 (c) May be maintained, improved, replaced or transferred in the same manner as a single  
11 family dwelling authorized without reference to sections 2 to 7 of this 2007 Act; and

12 (d) Is not a nonconforming use.

13 (2) A government entity may not impose any requirements on the construction and use  
14 of a single family dwelling authorized under section 3 or 4 of this 2007 Act that do not apply  
15 generally to dwellings authorized without reference to sections 2 to 7 of this 2007 Act.

16 (3) If a single family dwelling is authorized under section 3 or 4 of this 2007 Act:

17 (a) The owner may convey the property with the right to build the single family dwelling.

18 (b) A building permit issued for the dwelling is subject to the same costs, timetables and  
19 other provisions of a building permit issued without reference to sections 2 to 7 of this 2007  
20 Act.

21 (4) A government entity may not impose standards under subsection (1)(a) of this section  
22 in a manner that prevents the siting of the single family dwelling unless the governing body  
23 establishes that the lot or parcel does not have emergency access, potable water or adequate  
24 capacity to dispose of sewage.

25 (5) The governing body of a city or county with jurisdiction over the lot or parcel, or its  
26 designee, may purchase the right granted by section 3 or 4 of this 2007 Act in lieu of au-  
27 thorizing the uses allowed by section 3 or 4 of this 2007 Act.

28 **SECTION 6.** A government entity may not implement or interpret sections 2 to 7 of this  
29 2007 Act by enacting or adopting an administrative rule, a statewide land use planning goal,  
30 a comprehensive plan provision, a land use regulation, a regional goal or objective, a regional  
31 framework plan provision or a land use ordinance adopted to implement a regional frame-  
32 work plan that is inconsistent with sections 2 to 7 of this 2007 Act.

33 **SECTION 7.** Sections 2 to 7 of this 2007 Act are cumulative and do not abrogate other  
34 lawful remedies available, including any remedies available for government actions under the  
35 Oregon Constitution or the United States Constitution.

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