

House Bill 3465

Sponsored by Representative CLEM (at the request of Oregon Farm Bureau)

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**.

Prohibits cities from establishing parks in exclusive farm use zones.

A BILL FOR AN ACT

1
2 Relating to uses in areas zoned for exclusive farm use; creating new provisions; and amending ORS
3 215.213, 215.283, 223.005, 226.210 and 226.320.

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

5 **SECTION 1.** ORS 215.213 is amended to read:

6 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
7 Edition), the following uses may be established in any area zoned for exclusive farm use:

8 (a) Public or private schools, including all buildings essential to the operation of a school.

9 (b) Churches and cemeteries in conjunction with churches.

10 (c) The propagation or harvesting of a forest product.

11 (d) Utility facilities necessary for public service, including wetland waste treatment systems but
12 not including commercial facilities for the purpose of generating electrical power for public use by
13 sale or transmission towers over 200 feet in height. A utility facility necessary for public service
14 may be established as provided in ORS 215.275.

15 (e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
16 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
17 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
18 operator does or will require the assistance of the relative in the management of the farm use and
19 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
20 Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS
21 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
22 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
23 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
24 shall operate as a partition of the homesite to create a new parcel.

25 (f) Nonresidential buildings customarily provided in conjunction with farm use.

26 (g) Primary or accessory dwellings customarily provided in conjunction with farm use. For a
27 primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm opera-
28 tion and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowl-
29 edged under ORS 197.251.

30 (h) Operations for the exploration for and production of geothermal resources as defined by ORS
31 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
32 compressors, separators and other customary production equipment for an individual well adjacent

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 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
2 an exception under ORS 197.732 (1)(a) or (b).

3 (i) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or
4 construction relating to such operations shall not be a basis for an exception under ORS 197.732
5 (1)(a) or (b).

6 (j) A site for the disposal of solid waste that has been ordered to be established by the Envi-
7 ronmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings
8 necessary for its operation.

9 (k) One manufactured dwelling or recreational vehicle, or the temporary residential use of an
10 existing building, in conjunction with an existing dwelling as a temporary use for the term of a
11 hardship suffered by the existing resident or a relative of the resident. Within three months of the
12 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-
13 ished or, in the case of an existing building, the building shall be removed, demolished or returned
14 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-
15 view of the hardship claimed under this paragraph. A temporary residence approved under this
16 paragraph is not eligible for replacement under paragraph (t) of this subsection.

17 (L) The breeding, kenneling and training of greyhounds for racing in any county with a popu-
18 lation of more than 200,000 in which there is located a greyhound racing track or in a county with
19 a population of more than 200,000 that is contiguous to such a county.

20 (m) Climbing and passing lanes within the right of way existing as of July 1, 1987.

21 (n) Reconstruction or modification of public roads and highways, including the placement of
22 utility facilities overhead and in the subsurface of public roads and highways along the public right
23 of way, but not including the addition of travel lanes, where no removal or displacement of buildings
24 would occur, or no new land parcels result.

25 (o) Temporary public road and highway detours that will be abandoned and restored to original
26 condition or use at such time as no longer needed.

27 (p) Minor betterment of existing public road and highway related facilities, such as maintenance
28 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous
29 public-owned property utilized to support the operation and maintenance of public roads and high-
30 ways.

31 (q) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has
32 been listed in a county inventory as historic property as defined in ORS 358.480.

33 (r) Creation of, restoration of or enhancement of wetlands.

34 (s) A winery, as described in ORS 215.452.

35 (t) Alteration, restoration or replacement of a lawfully established dwelling that:

36 (A) Has intact exterior walls and roof structure;

37 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to
38 a sanitary waste disposal system;

39 (C) Has interior wiring for interior lights;

40 (D) Has a heating system; and

41 (E) In the case of replacement:

42 (i) Is removed, demolished or converted to an allowable nonresidential use within three months
43 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of
44 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable
45 siting standards. However, the standards shall not be applied in a manner that prohibits the siting

1 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned
 2 for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the
 3 deed records for the county where the property is located a deed restriction prohibiting the siting
 4 of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless
 5 a statement of release is placed in the deed records for the county. The release shall be signed by
 6 the county or its designee and state that the provisions of this paragraph regarding replacement
 7 dwellings have changed to allow the siting of another dwelling. The county planning director or the
 8 director's designee shall maintain a record of the lots and parcels that do not qualify for the siting
 9 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions
 10 and release statements filed under this paragraph; and

11 (ii) For which the applicant has requested a deferred replacement permit, is removed or demol-
 12 ished within three months after the deferred replacement permit is issued. A deferred replacement
 13 permit allows construction of the replacement dwelling at any time. If, however, the established
 14 dwelling is not removed or demolished within three months after the deferred replacement permit
 15 is issued, the permit becomes void. The replacement dwelling must comply with applicable building
 16 codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to
 17 siting at the time of construction. A deferred replacement permit may not be transferred, by sale
 18 or otherwise, except by the applicant to the spouse or a child of the applicant.

19 (u) Farm stands if:

20 (A) The structures are designed and used for the sale of farm crops or livestock grown on the
 21 farm operation, or grown on the farm operation and other farm operations in the local agricultural
 22 area, including the sale of retail incidental items and fee-based activity to promote the sale of farm
 23 crops or livestock sold at the farm stand if the annual sale of incidental items and fees from pro-
 24 motional activity do not make up more than 25 percent of the total annual sales of the farm stand;
 25 and

26 (B) The farm stand does not include structures designed for occupancy as a residence or for
 27 activity other than the sale of farm crops or livestock and does not include structures for banquets,
 28 public gatherings or public entertainment.

29 (v) An armed forces reserve center, if the center is within one-half mile of a community college.
 30 For purposes of this paragraph, "armed forces reserve center" includes an armory or National
 31 Guard support facility.

32 (w) A site for the takeoff and landing of model aircraft, including such buildings or facilities as
 33 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor
 34 area or placed on a permanent foundation unless the building or facility preexisted the use approved
 35 under this paragraph. The site shall not include an aggregate surface or hard surface area unless
 36 the surface preexisted the use approved under this paragraph. As used in this paragraph, "model
 37 aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is
 38 used or intended to be used for flight and is controlled by radio, lines or design by a person on the
 39 ground.

40 (x) A facility for the processing of farm crops located on a farm operation that provides at least
 41 one-quarter of the farm crops processed at the facility. The building established for the processing
 42 facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for
 43 preparation, storage or other farm use or devote more than 10,000 square feet to the processing
 44 activities within another building supporting farm uses. A processing facility shall comply with all
 45 applicable siting standards but the standards shall not be applied in a manner that prohibits the

1 siting of the processing facility.

2 (y) Fire service facilities providing rural fire protection services.

3 (z) Irrigation canals, delivery lines and those structures and accessory operational facilities as-
4 sociated with a district as defined in ORS 540.505.

5 (aa) Utility facility service lines. Utility facility service lines are utility lines and accessory fa-
6 cilities or structures that end at the point where the utility service is received by the customer and
7 that are located on one or more of the following:

8 (A) A public right of way;

9 (B) Land immediately adjacent to a public right of way, provided the written consent of all ad-
10 jacent property owners has been obtained; or

11 (C) The property to be served by the utility.

12 (bb) Subject to the issuance of a license, permit or other approval by the Department of Envi-
13 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with
14 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application
15 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,
16 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an
17 exclusive farm use zone under this chapter.

18 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
19 the following uses may be established in any area zoned for exclusive farm use subject to ORS
20 215.296:

21 (a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest
22 product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm op-
23 eration or woodlot:

24 (A) Consists of 20 or more acres; and

25 (B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in
26 annual gross income from the crops, livestock or forest products to be raised on the farm operation
27 or woodlot.

28 (b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest
29 product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than re-
30 quired under paragraph (a) of this subsection, if the lot or parcel:

31 (A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar
32 years out of the three calendar years before the year in which the application for the dwelling was
33 made or is planted in perennials capable of producing upon harvest an average of at least \$20,000
34 in annual gross farm income; or

35 (B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross an-
36 nual income.

37 (c) Commercial activities that are in conjunction with farm use but not including the processing
38 of farm crops as described in subsection (1)(x) of this section.

39 (d) Operations conducted for:

40 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas
41 as defined by ORS 520.005, not otherwise permitted under subsection (1)(h) of this section;

42 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-
43 sources subject to ORS 215.298;

44 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

45 (D) Processing of other mineral resources and other subsurface resources.

1 (e) Community centers owned by a governmental agency or a nonprofit community organization
2 and operated primarily by and for residents of the local rural community, hunting and fishing pre-
3 serves, *[public and]* **state or county parks**, private parks, playgrounds and campgrounds. Subject
4 to the approval of the county governing body or its designee, a private campground may provide
5 yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is
6 smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no
7 permanent foundation. Upon request of a county governing body, the Land Conservation and De-
8 velopment Commission may provide by rule for an increase in the number of yurts allowed on all
9 or a portion of the campgrounds in a county if the commission determines that the increase will
10 comply with the standards described in ORS 215.296 (1). A *[public]* **state or county** park or
11 campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt"
12 means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage
13 disposal hookup or internal cooking appliance.

14 (f) Golf courses.

15 (g) Commercial utility facilities for the purpose of generating power for public use by sale.

16 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-
17 tenance and service facilities. A personal-use airport as used in this section means an airstrip re-
18 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional
19 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-
20 erations. No aircraft may be based on a personal-use airport other than those owned or controlled
21 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be
22 granted through waiver action by the Oregon Department of Aviation in specific instances. A
23 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-
24 ject to any applicable rules of the Oregon Department of Aviation.

25 (i) A facility for the primary processing of forest products, provided that such facility is found
26 to not seriously interfere with accepted farming practices and is compatible with farm uses de-
27 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is
28 renewable. These facilities are intended to be only portable or temporary in nature. The primary
29 processing of a forest product, as used in this section, means the use of a portable chipper or stud
30 mill or other similar methods of initial treatment of a forest product in order to enable its shipment
31 to market. Forest products, as used in this section, means timber grown upon a parcel of land or
32 contiguous land where the primary processing facility is located.

33 (j) A site for the disposal of solid waste approved by the governing body of a city or county or
34 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-
35 mental Quality together with equipment, facilities or buildings necessary for its operation.

36 (k) Dog kennels not described in subsection (1)(L) of this section.

37 (L) Residential homes as defined in ORS 197.660, in existing dwellings.

38 (m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not
39 under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species
40 shall not include any species under quarantine by the State Department of Agriculture or the United
41 States Department of Agriculture. The county shall provide notice of all applications under this
42 paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the
43 county's land use regulations but shall be mailed at least 20 calendar days prior to any administra-
44 tive decision or initial public hearing on the application.

45 (n) Home occupations as provided in ORS 215.448.

1 (o) Transmission towers over 200 feet in height.

2 (p) Construction of additional passing and travel lanes requiring the acquisition of right of way
3 but not resulting in the creation of new land parcels.

4 (q) Reconstruction or modification of public roads and highways involving the removal or dis-
5 placement of buildings but not resulting in the creation of new land parcels.

6 (r) Improvement of public road and highway related facilities such as maintenance yards, weigh
7 stations and rest areas, where additional property or right of way is required but not resulting in
8 the creation of new land parcels.

9 (s) A destination resort that is approved consistent with the requirements of any statewide
10 planning goal relating to the siting of a destination resort.

11 (t) Room and board arrangements for a maximum of five unrelated persons in existing resi-
12 dences.

13 (u) A living history museum related to resource based activities owned and operated by a gov-
14 ernmental agency or a local historical society, together with limited commercial activities and fa-
15 cilities that are directly related to the use and enjoyment of the museum and located within
16 authentic buildings of the depicted historic period or the museum administration building, if areas
17 other than an exclusive farm use zone cannot accommodate the museum and related activities or if
18 the museum administration buildings and parking lot are located within one quarter mile of the
19 metropolitan urban growth boundary. As used in this paragraph:

20 (A) "Living history museum" means a facility designed to depict and interpret everyday life and
21 culture of some specific historic period using authentic buildings, tools, equipment and people to
22 simulate past activities and events; and

23 (B) "Local historical society" means the local historical society, recognized as such by the
24 county governing body and organized under ORS chapter 65.

25 (v) Operations for the extraction and bottling of water.

26 (w) An aerial fireworks display business that has been in continuous operation at its current
27 location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's
28 permit to sell or provide fireworks.

29 (x) A landscaping business, as defined in ORS 671.520, or a business providing landscape archi-
30 tecture services, as described in ORS 671.318, if the business is pursued in conjunction with the
31 growing and marketing of nursery stock on the land that constitutes farm use.

32 (3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
33 a single-family residential dwelling not provided in conjunction with farm use may be established
34 on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by
35 the Agricultural Capability Classification System in use by the United States Department of Agri-
36 culture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval
37 of the governing body or its designee in any area zoned for exclusive farm use upon written findings
38 showing all of the following:

39 (a) The dwelling or activities associated with the dwelling will not force a significant change in
40 or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

41 (b) The dwelling is situated upon generally unsuitable land for the production of farm crops and
42 livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location
43 and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size
44 or location if it can reasonably be put to farm use in conjunction with other land.

45 (c) Complies with such other conditions as the governing body or its designee considers neces-

1 sary.

2 (4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
 3 one single-family dwelling, not provided in conjunction with farm use, may be established in any
 4 area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that
 5 is not larger than three acres upon written findings showing:

6 (a) The dwelling or activities associated with the dwelling will not force a significant change in
 7 or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

8 (b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a
 9 geological hazard area, the dwelling complies with conditions imposed by local ordinances relating
 10 specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is
 11 applicable; and

12 (c) The dwelling complies with other conditions considered necessary by the governing body or
 13 its designee.

14 (5) Upon receipt of an application for a permit under subsection (4) of this section, the governing
 15 body shall notify:

16 (a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be es-
 17 tablished; and

18 (b) Persons who have requested notice of such applications and who have paid a reasonable fee
 19 imposed by the county to cover the cost of such notice.

20 (6) The notice required in subsection (5) of this section shall specify that persons have 15 days
 21 following the date of postmark of the notice to file a written objection on the grounds only that the
 22 dwelling or activities associated with it would force a significant change in or significantly increase
 23 the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is re-
 24 ceived, the governing body or its designee shall approve or disapprove the application. If an ob-
 25 jection is received, the governing body shall set the matter for hearing in the manner prescribed in
 26 ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required
 27 by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of
 28 this section.

29 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
 30 1948, and July 1, 1983. For the purposes of this section:

31 (a) Only one lot or parcel exists if:

32 (A) A lot or parcel described in this section is contiguous to one or more lots or parcels de-
 33 scribed in this section; and

34 (B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels
 35 or lots and parcels by the same person, spouses or a single partnership or business entity, separately
 36 or in tenancy in common.

37 (b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including
 38 but not limited to, lots, parcels or lots and parcels separated only by a public road.

39 (8) A person who sells or otherwise transfers real property in an exclusive farm use zone may
 40 retain a life estate in a dwelling on that property and in a tract of land under and around the
 41 dwelling.

42 (9) No final approval of a nonfarm use under this section shall be given unless any additional
 43 taxes imposed upon the change in use have been paid.

44 (10) Roads, highways and other transportation facilities and improvements not allowed under
 45 subsections (1) and (2) of this section may be established, subject to the approval of the governing

1 body or its designee, in areas zoned for exclusive farm use subject to:

2 (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable
3 goal with which the facility or improvement does not comply; or

4 (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development
5 Commission as provided in section 3, chapter 529, Oregon Laws 1993.

6 **SECTION 2.** ORS 215.283 is amended to read:

7 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

8 (a) Public or private schools, including all buildings essential to the operation of a school.

9 (b) Churches and cemeteries in conjunction with churches.

10 (c) The propagation or harvesting of a forest product.

11 (d) Utility facilities necessary for public service, including wetland waste treatment systems but
12 not including commercial facilities for the purpose of generating electrical power for public use by
13 sale or transmission towers over 200 feet in height. A utility facility necessary for public service
14 may be established as provided in ORS 215.275.

15 (e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
16 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
17 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
18 operator does or will require the assistance of the relative in the management of the farm use and
19 the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS
20 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
21 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
22 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
23 shall operate as a partition of the homesite to create a new parcel.

24 (f) Primary or accessory dwellings and other buildings customarily provided in conjunction with
25 farm use.

26 (g) Operations for the exploration for and production of geothermal resources as defined by ORS
27 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
28 compressors, separators and other customary production equipment for an individual well adjacent
29 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
30 an exception under ORS 197.732 (1)(a) or (b).

31 (h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or
32 construction relating to such operations shall not be a basis for an exception under ORS 197.732
33 (1)(a) or (b).

34 (i) A site for the disposal of solid waste that has been ordered to be established by the Envi-
35 ronmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings
36 necessary for its operation.

37 (j) The breeding, kenneling and training of greyhounds for racing.

38 (k) Climbing and passing lanes within the right of way existing as of July 1, 1987.

39 (L) Reconstruction or modification of public roads and highways, including the placement of
40 utility facilities overhead and in the subsurface of public roads and highways along the public right
41 of way, but not including the addition of travel lanes, where no removal or displacement of buildings
42 would occur, or no new land parcels result.

43 (m) Temporary public road and highway detours that will be abandoned and restored to original
44 condition or use at such time as no longer needed.
45

1 (n) Minor betterment of existing public road and highway related facilities such as maintenance
 2 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous
 3 public-owned property utilized to support the operation and maintenance of public roads and high-
 4 ways.

5 (o) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has
 6 been listed in a county inventory as historic property as defined in ORS 358.480.

7 (p) Creation of, restoration of or enhancement of wetlands.

8 (q) A winery, as described in ORS 215.452.

9 (r) Farm stands if:

10 (A) The structures are designed and used for the sale of farm crops or livestock grown on the
 11 farm operation, or grown on the farm operation and other farm operations in the local agricultural
 12 area, including the sale of retail incidental items and fee-based activity to promote the sale of farm
 13 crops or livestock sold at the farm stand if the annual sale of incidental items and fees from pro-
 14 motional activity do not make up more than 25 percent of the total annual sales of the farm stand;
 15 and

16 (B) The farm stand does not include structures designed for occupancy as a residence or for
 17 activity other than the sale of farm crops or livestock and does not include structures for banquets,
 18 public gatherings or public entertainment.

19 (s) Alteration, restoration or replacement of a lawfully established dwelling that:

20 (A) Has intact exterior walls and roof structure;

21 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to
 22 a sanitary waste disposal system;

23 (C) Has interior wiring for interior lights;

24 (D) Has a heating system; and

25 (E) In the case of replacement:

26 (i) Is removed, demolished or converted to an allowable nonresidential use within three months
 27 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of
 28 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable
 29 siting standards. However, the standards shall not be applied in a manner that prohibits the siting
 30 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned
 31 for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the
 32 deed records for the county where the property is located a deed restriction prohibiting the siting
 33 of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless
 34 a statement of release is placed in the deed records for the county. The release shall be signed by
 35 the county or its designee and state that the provisions of this paragraph regarding replacement
 36 dwellings have changed to allow the siting of another dwelling. The county planning director or the
 37 director's designee shall maintain a record of the lots and parcels that do not qualify for the siting
 38 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions
 39 and release statements filed under this paragraph; and

40 (ii) For which the applicant has requested a deferred replacement permit, is removed or demol-
 41 ished within three months after the deferred replacement permit is issued. A deferred replacement
 42 permit allows construction of the replacement dwelling at any time. If, however, the established
 43 dwelling is not removed or demolished within three months after the deferred replacement permit
 44 is issued, the permit becomes void. The replacement dwelling must comply with applicable building
 45 codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to

1 siting at the time of construction. A deferred replacement permit may not be transferred, by sale
 2 or otherwise, except by the applicant to the spouse or a child of the applicant.

3 (t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as
 4 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor
 5 area or placed on a permanent foundation unless the building or facility preexisted the use approved
 6 under this paragraph. The site shall not include an aggregate surface or hard surface area unless
 7 the surface preexisted the use approved under this paragraph. As used in this paragraph, “model
 8 aircraft” means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is
 9 used or intended to be used for flight and is controlled by radio, lines or design by a person on the
 10 ground.

11 (u) A facility for the processing of farm crops located on a farm operation that provides at least
 12 one-quarter of the farm crops processed at the facility. The building established for the processing
 13 facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for
 14 preparation, storage or other farm use or devote more than 10,000 square feet to the processing
 15 activities within another building supporting farm uses. A processing facility shall comply with all
 16 applicable siting standards but the standards shall not be applied in a manner that prohibits the
 17 siting of the processing facility.

18 (v) Fire service facilities providing rural fire protection services.

19 (w) Irrigation canals, delivery lines and those structures and accessory operational facilities
 20 associated with a district as defined in ORS 540.505.

21 (x) Utility facility service lines. Utility facility service lines are utility lines and accessory fa-
 22 cilities or structures that end at the point where the utility service is received by the customer and
 23 that are located on one or more of the following:

24 (A) A public right of way;

25 (B) Land immediately adjacent to a public right of way, provided the written consent of all ad-
 26 jacent property owners has been obtained; or

27 (C) The property to be served by the utility.

28 (y) Subject to the issuance of a license, permit or other approval by the Department of Envi-
 29 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with
 30 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application
 31 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,
 32 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an
 33 exclusive farm use zone under this chapter.

34 (z) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to
 35 provide rural law enforcement services primarily in rural areas, including parole and post-prison
 36 supervision, but not including a correctional facility as defined under ORS 162.135.

37 (2) The following nonfarm uses may be established, subject to the approval of the governing body
 38 or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

39 (a) Commercial activities that are in conjunction with farm use but not including the processing
 40 of farm crops as described in subsection (1)(u) of this section.

41 (b) Operations conducted for:

42 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas
 43 as defined by ORS 520.005 not otherwise permitted under subsection (1)(g) of this section;

44 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-
 45 sources subject to ORS 215.298;

1 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

2 (D) Processing of other mineral resources and other subsurface resources.

3 (c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the
4 approval of the county governing body or its designee, a private campground may provide yurts for
5 overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller,
6 may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent
7 foundation. Upon request of a county governing body, the Land Conservation and Development
8 Commission may provide by rule for an increase in the number of yurts allowed on all or a portion
9 of the campgrounds in a county if the commission determines that the increase will comply with the
10 standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed
11 shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or
12 internal cooking appliance.

13 (d) **State or county** parks and playgrounds. A [*public*] **state or county** park may be established
14 consistent with the provisions of ORS 195.120.

15 (e) Community centers owned by a governmental agency or a nonprofit community organization
16 and operated primarily by and for residents of the local rural community. A community center au-
17 thorized under this paragraph may provide services to veterans, including but not limited to emer-
18 gency and transitional shelter, preparation and service of meals, vocational and educational
19 counseling and referral to local, state or federal agencies providing medical, mental health, disability
20 income replacement and substance abuse services, only in a facility that is in existence on January
21 1, 2006. The services may not include direct delivery of medical, mental health, disability income
22 replacement or substance abuse services.

23 (f) Golf courses.

24 (g) Commercial utility facilities for the purpose of generating power for public use by sale.

25 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-
26 tenance and service facilities. A personal-use airport, as used in this section, means an airstrip re-
27 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional
28 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-
29 erations. No aircraft may be based on a personal-use airport other than those owned or controlled
30 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be
31 granted through waiver action by the Oregon Department of Aviation in specific instances. A
32 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-
33 ject to any applicable rules of the Oregon Department of Aviation.

34 (i) Home occupations as provided in ORS 215.448.

35 (j) A facility for the primary processing of forest products, provided that such facility is found
36 to not seriously interfere with accepted farming practices and is compatible with farm uses de-
37 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is
38 renewable. These facilities are intended to be only portable or temporary in nature. The primary
39 processing of a forest product, as used in this section, means the use of a portable chipper or stud
40 mill or other similar methods of initial treatment of a forest product in order to enable its shipment
41 to market. Forest products, as used in this section, means timber grown upon a parcel of land or
42 contiguous land where the primary processing facility is located.

43 (k) A site for the disposal of solid waste approved by the governing body of a city or county or
44 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-
45 mental Quality together with equipment, facilities or buildings necessary for its operation.

1 (L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an
2 existing building, in conjunction with an existing dwelling as a temporary use for the term of a
3 hardship suffered by the existing resident or a relative of the resident. Within three months of the
4 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-
5 ished or, in the case of an existing building, the building shall be removed, demolished or returned
6 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-
7 view of the hardship claimed under this paragraph. A temporary residence approved under this
8 paragraph is not eligible for replacement under subsection (1)(s) of this section.

9 (m) Transmission towers over 200 feet in height.

10 (n) Dog kennels not described in subsection (1)(j) of this section.

11 (o) Residential homes as defined in ORS 197.660, in existing dwellings.

12 (p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not
13 under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species
14 shall not include any species under quarantine by the State Department of Agriculture or the United
15 States Department of Agriculture. The county shall provide notice of all applications under this
16 paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the
17 county's land use regulations but shall be mailed at least 20 calendar days prior to any administra-
18 tive decision or initial public hearing on the application.

19 (q) Construction of additional passing and travel lanes requiring the acquisition of right of way
20 but not resulting in the creation of new land parcels.

21 (r) Reconstruction or modification of public roads and highways involving the removal or dis-
22 placement of buildings but not resulting in the creation of new land parcels.

23 (s) Improvement of public road and highway related facilities, such as maintenance yards, weigh
24 stations and rest areas, where additional property or right of way is required but not resulting in
25 the creation of new land parcels.

26 (t) A destination resort that is approved consistent with the requirements of any statewide
27 planning goal relating to the siting of a destination resort.

28 (u) Room and board arrangements for a maximum of five unrelated persons in existing resi-
29 dences.

30 (v) Operations for the extraction and bottling of water.

31 (w) Expansion of existing county fairgrounds and activities directly relating to county
32 fairgrounds governed by county fair boards established pursuant to ORS 565.210.

33 (x) A living history museum related to resource based activities owned and operated by a gov-
34 ernmental agency or a local historical society, together with limited commercial activities and fa-
35 cilities that are directly related to the use and enjoyment of the museum and located within
36 authentic buildings of the depicted historic period or the museum administration building, if areas
37 other than an exclusive farm use zone cannot accommodate the museum and related activities or if
38 the museum administration buildings and parking lot are located within one quarter mile of an ur-
39 ban growth boundary. As used in this paragraph:

40 (A) "Living history museum" means a facility designed to depict and interpret everyday life and
41 culture of some specific historic period using authentic buildings, tools, equipment and people to
42 simulate past activities and events; and

43 (B) "Local historical society" means the local historical society recognized by the county gov-
44 erning body and organized under ORS chapter 65.

45 (y) An aerial fireworks display business that has been in continuous operation at its current

1 location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's
 2 permit to sell or provide fireworks.

3 (z) A landscaping business, as defined in ORS 671.520, or a business providing landscape archi-
 4 tecture services, as described in ORS 671.318, if the business is pursued in conjunction with the
 5 growing and marketing of nursery stock on the land that constitutes farm use.

6 (3) Roads, highways and other transportation facilities and improvements not allowed under
 7 subsections (1) and (2) of this section may be established, subject to the approval of the governing
 8 body or its designee, in areas zoned for exclusive farm use subject to:

9 (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable
 10 goal with which the facility or improvement does not comply; or

11 (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development
 12 Commission as provided in section 3, chapter 529, Oregon Laws 1993.

13 **SECTION 3.** ORS 226.210 is amended to read:

14 226.210. (1) The board shall have full and exclusive control of all parks within or connected with
 15 its respective city. For that purpose it may:

16 (a) Lay out and improve such parks.

17 (b) Appoint all necessary engineers, surveyors and all other employees, including a police force
 18 to act in the parks and fix the amount of their compensation.

19 (c) Do all acts needful and proper for the protection, care or improvement of the parks.

20 (d) Make all necessary rules or regulations for the use or government of the parks.

21 (e) Affix penalties for breaches of the rules or regulations made under paragraph (d) of this
 22 subsection. These penalties shall not exceed \$20 for any one offense and shall be collected as other
 23 fines and penalties are collected in the city where such offense is committed.

24 (f) Acquire title by purchase, gift, devise or otherwise, to any land it deems desirable for parks
 25 **except land zoned for exclusive farm use**, the title to be taken in the name of the city.

26 (2) The board shall disburse all moneys appropriated, given, received or collected for the im-
 27 provement or use of the parks.

28 (3) All contracts for the purchase of land for park purposes shall be made by the board.

29 (4) If the board, being desirous of acquiring any land for any park, cannot agree with the owner
 30 as to the amount to be paid therefor, the board may proceed in the circuit court of the county in
 31 which the land is situated, as provided in ORS 223.005 to 223.020 for the appropriation of such land
 32 for park purposes.

33 **SECTION 4.** ORS 226.320 is amended to read:

34 226.320. (1) **Except as provided in subsection (2) of this section**, whenever the municipal
 35 authorities determine by ordinance to do so, the city may purchase, acquire, take, use, enter upon
 36 and appropriate land and property within or without its corporate limits for the purpose of:

37 [(1)] (a) Public squares, parks, memorial monuments or buildings, pioneer memorials, pioneer
 38 museums, memorials and monuments to United States war veterans, sites or buildings for meeting
 39 places for such war veterans, auto campgrounds, playgrounds or comfort stations.

40 [(2)] (b) Enlarging any public square, park, auto campground, playground or comfort station.

41 **(2) A city may not establish a city park on lands zoned for exclusive farm use.**

42 **SECTION 5.** ORS 223.005 is amended to read:

43 223.005. Any incorporated city may:

44 (1) Appropriate any private real property, water, watercourse and riparian rights to any public
 45 or municipal use or for the general benefit and use of the people of the city, including but not lim-

1 ited to appropriation for an aviation field, [park,] city hall, city buildings, jail, or to protect the city
2 from overflow by freshets.

3 (2) Appropriate any real property, water, watercourse and water and riparian rights, including
4 power sites, to any public or municipal use or for the general benefit and use of the people within
5 or without the city, and to build dams, reservoirs and conduits for the purpose of storing and using
6 water to aid in developing the necessary power to generate electricity for the use and benefit of the
7 people within or without the city.

8 (3) Condemn for its use private property for the purpose of erecting and maintaining electric
9 lines thereon for the purpose of generating and conveying power to light and heat the city, and to
10 be used and sold by the city for manufacturing, transportation, domestic and other purposes, either
11 within or without the corporate limits of the city, and for the purpose of constructing electrical
12 systems for municipal uses.

13 **(4) Notwithstanding subsections (1) to (3) of this section, a city may not appropriate lands**
14 **for a city park that are zoned for exclusive farm use.**

15 **SECTION 6. The amendments to ORS 215.213, 215.283, 223.005, 226.210 and 226.320 by**
16 **sections 1 to 5 of this 2007 Act apply to land acquired by a city on or after the effective date**
17 **of this 2007 Act.**

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