

Enrolled
House Bill 3084

Sponsored by Representatives FAGAN, KENNEMER

CHAPTER

AN ACT

Relating to withdrawal of property from newly incorporated city; creating new provisions; amending sections 1 and 4, chapter 75, Oregon Laws 2014; repealing sections 2 and 3, chapter 75, Oregon Laws 2014; and declaring an emergency.

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

SECTION 1. Section 1, chapter 75, Oregon Laws 2014, is amended to read:

Sec. 1. (1) As used in [sections 1 and 2 of this 2014 Act] **this section:**

(a) **“Contiguous lots or parcels of land under the same ownership” includes lots or parcels that are separated only by a public or private right of way.**

(b) **“Located on the boundary of the city” includes the circumstance in which a tract is:**

(A) **Contiguous to the corporate boundary of the city or separated from the corporate boundary only by a public right of way or a stream, bay, lake or other body of water, as described in ORS 222.111;**

(B) **Separated from the corporate boundary only by real property that is owned by a public body, as defined in ORS 174.109; or**

(C) **Separated from the corporate boundary only by real property that the owner of the tract is entitled to use pursuant to an easement.**

[(a)] (c) **“Same ownership” includes ownership, singly or in any combination, by an individual, other individuals related to the individual by blood, marriage or adoption, and entities owned, directly or indirectly, by the individual or such related individuals.**

[(b)] (d) **“Tract” means one or more contiguous lots or parcels of land under the same ownership and includes any portion of the contiguous lots or parcels of land under the same ownership less than the whole.**

(2) Notwithstanding ORS 222.460, the owner of a tract within the [boundaries of a city] **corporate boundaries of the City of Damascus** may withdraw the tract from the city if:

[(a)] *The city is located within Metro and was incorporated after January 1, 2000, and before January 1, 2005;*

[(b)] (a) The comprehensive plan and land use regulations of the city [were] **are** not acknowledged [within four years after incorporation], as required under ORS 197.757, [and remain unacknowledged at the time] **when** the owner makes the filing for withdrawal required under subsection (3) of this section; and

[(c)] (b) Any portion of the tract is located on the boundary of the city [and is within one-half mile of another city].

[(3)(a)] (3) To withdraw a tract from the City of **Damascus** under this section, the owner must[:]

[(A) Obtain a letter from the Department of Land Conservation and Development confirming that the city's comprehensive plan and land use regulations were not acknowledged in the four-year period following incorporation. The department shall provide the letter within 30 days after the department receives a written request from the owner of the tract.]

[(B) File a written statement with the city in person or by registered mail, return receipt requested, and a copy of the written statement with Metro and the department.] **file with the mayor and the governing body of the city, in person or by registered mail, return receipt requested, with a copy to Metro and the Department of Land Conservation and Development:**

[(b) The written statement must include:]

[(A) The name of the City from which the tract is to be withdrawn];

[(B)] (a) [A declaration by the owner of the owner's intention] A request to withdraw the tract from the city;

[(C)] (b) A copy of a deed, preliminary title report, tax record or similar document showing ownership of the tract;

[(D)] (c) A legal description of the tract to be withdrawn; and

[(E)] (d) A copy of the cadastral map maintained by the county assessor that shows the location of the tract; and].

[(F) A copy of the letter from the department obtained pursuant to paragraph (a)(A) of this subsection.]

[(4) An enforcement order under ORS 197.319 to 197.335 is not a prerequisite for the provision of the letter by the department as required under subsection (3)(a)(A) of this section or to the withdrawal of the tract under this section.]

SECTION 2. (1) For purposes of this section, the question of whether the withdrawal of a tract will cause an undue hardship on the continued operation of the City of Damascus must be based on the operation of the city at the time the request for withdrawal of the tract is filed under section 1 (3), chapter 75, Oregon Laws 2014.

(2)(a) Within 10 days after receipt of a request for withdrawal filed under section 1 (3), chapter 75, Oregon Laws 2014, the governing body of the City of Damascus shall cause notice of a public hearing on the withdrawal of the tract to be held within 30 days after receipt of the request.

(b) For two successive weeks before the date of the public hearing, the notice shall be published once each week in a newspaper of general circulation in the city and posted in four public places in the city.

(3) At the public hearing, the public may appear and be heard on the questions of whether:

(a) The requirements of section 1 (2), chapter 75, Oregon Laws 2014, have been met with respect to the tract; and

(b) The withdrawal of the tract will cause an undue hardship on the continued operation of the City of Damascus.

(4)(a) Within 30 days after receiving testimony at the public hearing, the governing body of the City of Damascus shall consider and make determinations on the questions described in subsection (3) of this section.

(b) If the governing body determines that the requirements of section 1 (2), chapter 75, Oregon Laws 2014, have been met and the withdrawal of the tract will not cause an undue hardship on the continued operation of the city, the governing body shall:

(A) Adopt an ordinance or resolution declaring the tract withdrawn from the city and causing the corporate boundaries of the city to be amended to reflect the withdrawal.

(B) Cause the amended corporate boundaries of the city to be reported to:

(i) The owner of the tract;

(ii) Metro;

(iii) The county clerk and county assessor of Clackamas County, in the manner required of a city under ORS 222.010; and

- (iv) The Department of Revenue, as required under ORS 308.225.
- (c) If the governing body determines that the requirements of section 1 (2), chapter 75, Oregon Laws 2014, have not been met or the withdrawal of the tract will cause an undue hardship on the continued operation of the city, the governing body shall:
 - (A) Adopt an ordinance or resolution rejecting the withdrawal of the tract from the city.
 - (B) Cause the determination to be reported to:
 - (i) The owner of the tract; and
 - (ii) Metro.
 - (d) If the governing body does not make a determination on the questions described in subsection (3) of this section within 30 days after receiving testimony at the public hearing, the withdrawal shall be deemed complete and, upon request of the owner of the tract, the governing body shall cause:
 - (A) The corporate boundaries of the city to be amended to reflect the withdrawal.
 - (B) The amended corporate boundaries of the city to be reported to:
 - (i) The owner of the tract;
 - (ii) Metro;
 - (iii) The county clerk and county assessor of Clackamas County, in the manner required of a city under ORS 222.010; and
 - (iv) The Department of Revenue, as required under ORS 308.225.
 - (5) The withdrawal of a tract under this section:
 - (a) Is not a land use decision or a limited land use decision subject to the exclusive jurisdiction of the Land Use Board of Appeals under ORS 197.805 to 197.855.
 - (b) Is not subject to referral to the electors.
 - (c) Is not subject to ORS 222.040.
 - (6)(a) A determination by the governing body under subsection (4)(b) or (c) of this section, or the withdrawal of a tract due to the failure of the governing body to make a timely determination under subsection (4)(d) of this section, may be appealed to the circuit court of the county in which the City of Damascus is located.
 - (b) The court shall hear the matter de novo.
 - (c) The court may reverse or remand the determination of the governing body or the withdrawal of the tract due to the failure of the governing body to make a timely determination only if the court finds that:
 - (A) The withdrawn tract did not meet the requirements for withdrawal under section 1 (2), chapter 75, Oregon Laws 2014;
 - (B) The withdrawal was clearly in error;
 - (C) There is a basis to vacate the withdrawal for the reasons for which an arbitration award may be vacated, modified or corrected under ORS 36.705 (1)(a) to (d) or 36.710; or
 - (D) The withdrawal was unconstitutional.
 - (7) The City of Damascus may not annex a tract withdrawn from the city under this section for a period of 10 years after the withdrawal unless the owner of the tract submits a petition to the governing body of the city seeking annexation of the tract.

SECTION 3. Section 4, chapter 75, Oregon Laws 2014, is amended to read:

Sec. 4. *[Sections 1 to 3 of this 2014 Act are]* **Section 1, chapter 75, Oregon Laws 2014, and section 2 of this 2015 Act, are repealed on January 2, 2025.**

SECTION 4. Sections 2 and 3, chapter 75, Oregon Laws 2014, are repealed.

SECTION 5. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House April 2, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 17, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State