

House Bill 2144

Sponsored by Representative JOHNSON (Pre-session filed.)

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**.

Permits owner of land to continue nonconforming land use if owner provides evidence that use qualified for all permits and approvals required by law when use commenced. Makes nonsubstantive technical changes.

A BILL FOR AN ACT

1
2 Relating to nonconforming land uses; amending ORS 215.130.

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

4 **SECTION 1.** ORS 215.130 is amended to read:

5 215.130. (1) Any legislative ordinance relating to land use planning or zoning shall be a local law
6 within the meaning of, and subject to, ORS 250.155 to 250.235.

7 (2) An ordinance designed to carry out a county comprehensive plan and a county comprehen-
8 sive plan shall apply to:

9 (a) The area within the county also within the boundaries of a city as a result of extending the
10 boundaries of the city or creating a new city unless, or until the city has by ordinance or other
11 provision provided otherwise; and

12 (b) The area within the county also within the boundaries of a city if the governing body of such
13 city adopts an ordinance declaring the area within its boundaries subject to the county's land use
14 planning and regulatory ordinances, officers and procedures and the county governing body consents
15 to the conferral of jurisdiction.

16 (3) An area within the jurisdiction of city land use planning and regulatory provisions that is
17 withdrawn from the city or an area within a city that disincorporates shall remain subject to such
18 plans and regulations which shall be administered by the county until the county provides otherwise.

19 (4) County ordinances designed to implement a county comprehensive plan shall apply to pub-
20 licly owned property.

21 (5)(a) The lawful use of any building, structure or land at the time of the enactment or amend-
22 ment of any zoning ordinance or regulation may be continued.

23 (b) Alteration of any [*such*] use **described in this subsection:**

24 (A) May be permitted subject to subsection (9) of this section.

25 (B) [*Alteration of any such use*] Shall be permitted when necessary to comply with any lawful
26 requirement for alteration in the use.

27 (c) Except as provided in ORS 215.215, a county shall not place conditions upon the continua-
28 tion or alteration of a use described [*under*] **in** this subsection when necessary to comply with state
29 or local health or safety requirements, or to maintain in good repair the existing structures associ-
30 ated with the use.

31 (d) A change of ownership or occupancy shall be permitted **in the continuation or alteration**

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 of a use described in this subsection.

2 (e) For the purposes of this subsection, the use of a building, a structure or land is a
3 lawful use if the owner:

4 (A) Obtained all permits and approvals required by law at the time the use commenced;
5 or

6 (B) Provides evidence that the use qualified for all permits and approvals required by law
7 at the time the use commenced.

8 (6) Restoration or replacement of any use described in subsection (5) of this section may be
9 permitted when the restoration is made necessary by fire, other casualty or natural disaster. Res-
10 toration or replacement shall be commenced within one year from the occurrence of the fire, casu-
11 alty or natural disaster. If restoration or replacement is necessary under this subsection, restoration
12 or replacement shall be done in compliance with ORS 195.260 (1)(c).

13 (7)(a) Any use described in subsection (5) of this section may not be resumed after a period of
14 interruption or abandonment unless the resumed use conforms with the requirements of zoning or-
15 dinances or regulations applicable at the time of the proposed resumption.

16 (b) Notwithstanding any local ordinance, a surface mining use continued under subsection (5)
17 of this section shall not be deemed to be interrupted or abandoned for any period after July 1, 1972,
18 provided:

19 (A) The owner or operator was issued and continuously renewed a state or local surface mining
20 permit, or received and maintained a state or local exemption from surface mining regulation; and

21 (B) The surface mining use was not inactive for a period of 12 consecutive years or more.

22 (c) For purposes of this subsection, "inactive" means no aggregate materials were excavated,
23 crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

24 (8) Any proposal for the verification or alteration of a use under subsection (5) of this section,
25 except an alteration necessary to comply with a lawful requirement, for the restoration or replace-
26 ment of a use under subsection (6) of this section or for the resumption of a use under subsection
27 (7) of this section shall be subject to the provisions of ORS 215.416. An initial decision by the county
28 or its designate on a proposal for the alteration of a use described in subsection (5) of this section
29 shall be made as an administrative decision without public hearing in the manner provided in ORS
30 215.416 (11).

31 (9) As used in this section, "alteration" of a nonconforming use includes:

32 (a) A change in the use of no greater adverse impact to the neighborhood; and

33 (b) A change in the structure or physical improvements of no greater adverse impact to the
34 neighborhood.

35 (10) A local government may adopt standards and procedures to implement the provisions of this
36 section. *The standards and procedures may include but are not limited to the following*, **including**
37 **but not limited to:**

38 *[(a) For purposes of verifying a use under subsection (5) of this section, a county may adopt pro-*
39 *cedures that allow an applicant for verification to prove the existence, continuity, nature and extent of*
40 *the use only for the 10-year period immediately preceding the date of application. Evidence proving the*
41 *existence, continuity, nature and extent of the use for the 10-year period preceding application creates*
42 *a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning*
43 *ordinance or regulation was adopted and has continued uninterrupted until the date of application;]*

44 *[(b)] (a) [Establishing] Criteria to determine when a use has been interrupted or abandoned un-*
45 *der subsection (7) of this section; [or]*

1 [(c)] **(b)** [*Conditioning*] **Conditions of** approval of the alteration of a use in a manner calculated
2 to ensure mitigation of adverse impacts as described in subsection (9) of this section[.]; **or**

3 **(c) County procedures that allow an applicant for verification of a use described in sub-**
4 **section (5) of this section to prove the existence, continuity, nature and extent of the use for**
5 **the 10-year period immediately preceding the date of application. Evidence proving the ex-**
6 **istence, continuity, nature and extent of the use for the 10-year period preceding the date**
7 **of application creates a rebuttable presumption that the use, as proven, lawfully existed at**
8 **the time the applicable zoning ordinance or regulation was adopted and has continued unin-**
9 **terrupted until the date of application.**

10 (11) For purposes of verifying a use under subsection (5) of this section, a county may not re-
11 quire an applicant for verification to prove the existence, continuity, nature and extent of the use
12 for a period exceeding 20 years immediately preceding the date of application.