House Bill 3381

Sponsored by Representative GOMBERG

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.

Allows counties to not consider vacation occupancies as nonconforming uses. Prohibits review of business regulations or licenses as land use regulations.

A BILL FOR AN ACT


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

SECTION 1. ORS 215.130 is amended to read:

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

(2) An ordinance designed to carry out a county comprehensive plan and a county comprehensive plan shall apply to:

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

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

(3) An area within the jurisdiction of city land use planning and regulatory provisions that is withdrawn from the city or an area within a city that disincorporates shall remain subject to such plans and regulations which shall be administered by the county until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

(4) County ordinances designed to implement a county comprehensive plan shall apply to publicly owned property.

(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.

(6) Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration or replacement is made necessary by fire, other casualty or natural

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.

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disaster. Restoration or replacement must be commenced within one year from the occurrence of the fire, casualty or natural disaster. If restoration or replacement is necessary under this subsection, restoration or replacement must be done in compliance with ORS 195.260 (1)(c).

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

(b) Notwithstanding any local ordinance, a surface mining use continued under subsection (5) of this section is not considered interrupted or abandoned for any period after July 1, 1972, provided:

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

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

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

(d) A use continued under subsection (5) of this section is not considered interrupted or abandoned for any period while a federal, state or local emergency order temporarily limits or prohibits the use or the restoration or replacement of the use.

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

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

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

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

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

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

(b) Establishing criteria to determine when a use has been interrupted or abandoned under subsection (7) of this section.

(c) Conditioning approval of the alteration of a use in a manner calculated to ensure mitigation of adverse impacts as described in subsection (9) of this section.

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

(12) Except as otherwise provided by the land use regulations of a county, the use of a dwelling as vacation occupancy, as defined in ORS 90.100, is not a use that may be continued
under subsection (5) of this section.

(13) Nothing in subsections (5) to (12) of this section prohibits a county from adopting or amending a generally applicable licensing ordinance or program regulating commercial activities, including short-term rental of property for vacation occupancy, or limiting the available quantity or transferability of such licenses, provided the ordinance or program is not a land use regulation as defined in ORS 197.015.

SECTION 2. ORS 197.488 is amended to read:

197.488. (1) As used in this section, “natural disaster” includes any disaster resulting in the declaration of a state of emergency under ORS 401.165 or 401.309 for wildfires, floods, tsunamis, earthquakes or similar events, including disasters began by negligent or intentional acts.

(2) Notwithstanding ORS 215.130 (5) to [(I)](13) or any land use regulation, statewide land use planning goal or Land Conservation and Development Commission rule, a local government:

(a) Shall, if the development complies with the local government’s floodplain and other natural hazard land use regulations, approve an application for the development of a manufactured dwelling park:

(A) To replace a park destroyed by a natural disaster; or

(B) That is in an area rezoned under paragraph (b) of this subsection.

(b) May, by approval of the governing body, approve a zoning change for an area within an urban growth boundary near the destroyed park to permit the development of a manufactured dwelling park where the destruction of manufactured dwellings from the natural disaster has contributed to a shortage in housing.

(3) A local government may require an applicant to prove that the destroyed park was assessed as a building or structure for purposes of ad valorem taxation for the most recent property tax year ending before the disaster.

(4) In reviewing an application under this section, a local government may not require that an applicant prove that the destroyed park was lawful under the existing land use regulations at any time, including when the building, structure or use was established, at the time of interruption or destruction or at the time of the application.

(5) The approval of an application for development of a park under this section does not expire.

SECTION 3. ORS 215.215 is amended to read:

215.215. (1) Notwithstanding ORS 215.130 (5) to [(I)](13), if a nonfarm use exists in an exclusive farm use zone and is unintentionally destroyed by fire, other casualty or natural disaster, the county may allow by its zoning regulations such use to be reestablished to its previous nature and extent, but the reestablishment shall meet all other building, plumbing, sanitation and other codes, ordinances and permit requirements.

(2) Consistent with ORS 215.243, the county governing body may zone for the appropriate nonfarm use one or more lots or parcels in the interior of an exclusive farm use zone if the lots or parcels were physically developed for the nonfarm use prior to the establishment of the exclusive farm use zone.

SECTION 4. ORS 215.297 is amended to read:

215.297. (1) As part of the conditional use approval process under ORS 215.296, for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213 (2)(w) or 215.283 (2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies.

(2) A use authorized in ORS 215.213 (2)(w) or 215.283 (2)(y) may be altered, restored or replaced
pursuant to ORS 215.130 (5) to [(11)] (13).

SECTION 5. ORS 215.799 is amended to read:

ORS 215.799. (1) New and existing dwellings may be allowed on a lot or parcel subject to wildlife
habitat special assessment under ORS 308A.403 to 308A.430 as follows:
(a) Lawfully existing dwellings, pursuant to ORS 215.130 (5) to [(11)] (13), may remain.
(b) For a lot or parcel without an existing dwelling, dwellings may be allowed if each dwelling
for which the landowner seeks approval complies with all applicable requirements under the
county’s acknowledged zoning ordinance.
(2) The fact that a lot or parcel is subject to wildlife habitat special assessment may not make
it easier or more difficult for a landowner to obtain approval for a dwelling on the lot or parcel.

SECTION 6. ORS 308A.462 is amended to read:
ORS 308A.462. Subject to the terms of the applicable conservation easement, new and existing
dwellings may be allowed on a lot or parcel subject to conservation easement special assessment
as follows:
(1) Lawfully existing dwellings, pursuant to ORS 215.130 (5) to [(11)] (13), may remain.
(2) For a lot or parcel without an existing dwelling, dwellings may be allowed if each dwelling
for which the landowner seeks approval complies with all applicable requirements under the
county’s acknowledged zoning ordinance.