

House Bill 2714

Sponsored by Representatives ZIKA, SMITH DB; Representatives BREESE-IVERSON, LEIF (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**.

Requires local governments to approve certain reconstruction after 2020 wildfires. Limits requirements for building permits or septic permits for reconstruction. Sunsets January 2, 2030.

Tolls time that city or county may consider nonconforming use discontinued during emergency that limits resumption of use.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to resuming uses after emergencies; creating new provisions; amending ORS 215.130, 215.215 and 215.297; and declaring an emergency.

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

WILDFIRE RECONSTRUCTION

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 197.

SECTION 2. (1) As used in this section:

(a) **"2020 wildfires"** includes all wildfires that were identified in an executive order issued by the Governor in accordance with the Emergency Conflagration Act under ORS 476.510 to 476.610 between August 1 and September 31, 2020.

(b) **"Wildfire reconstruction"** means the restoration or replacement of a building or structure or the resumption of a use that existed on June 30, 2020, and that was damaged, destroyed or interrupted by the 2020 wildfires.

(2) Notwithstanding any land use regulation, statewide land use planning goal or Land Conservation and Development Commission rule or ORS 215.130 (5) to (11), a local government shall approve an application for wildfire reconstruction except as provided in this section.

(3) At the election of the applicant and subject to the requirements of this section, wildfire reconstruction may expand the floor area of the building, structure or use by up to 10 percent.

(4) A local government may require an applicant to prove:

(a) That the destroyed building or structure was assessed as a building or structure for purposes of ad valorem taxation for the property tax year beginning July 1, 2019; or

(b) If the destroyed building or structure was an accessory building or structure, that the building or structure was established on or prior to September 7, 2020.

(5) In reviewing an application for wildfire reconstruction, a local government may not:

(a) Except as provided in subsection (4) of this section, require that an applicant prove that the destroyed building or structure or interrupted use was lawful under the existing

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 land use regulations at any time, including when the building, structure or use was estab-
2 lished, at the time of interruption or destruction or at the time of the application;

3 (b) Apply criteria other than clear and objective standards of approval;

4 (c) Charge a fee of the applicant for approval under this section, except those fees al-
5 lowed for a permit as described in ORS chapter 455; or

6 (d) Require a public hearing or public notice.

7 (6) A local government may not deny an application for wildfire reconstruction unless the
8 government determines based on evidence in the record that:

9 (a) The property will not be adequately served by water, sanitation or roads necessary
10 for the building, structure or use; or

11 (b) The wildfire reconstruction is not located on or near the footprint of the destroyed
12 building, structure or use.

13 (7) A local government may delegate the approval of an application for wildfire recon-
14 struction, subject to appeal to the governing body of the local government, to:

15 (a) A hearings officer, as defined in ORS 215.402 or 227.160;

16 (b) A planning commission, as described in ORS 215.020; or

17 (c) A building official, as defined in ORS 455.715.

18 (8) The findings of the governing body of a local government in approving an application
19 for wildfire reconstruction are entitled to deference if there is any evidence to support the
20 findings. The approval of an application under this section is not a land use decision and is
21 subject to review only under ORS 34.010 to 34.100.

22 (9) Approval of an application for wildfire reconstruction under this section does not ex-
23 pire.

24 **SECTION 3.** Section 4 of this 2021 Act is added to and made a part of ORS 455.715 to
25 455.740.

26 **SECTION 4.** (1) Notwithstanding any other part of this chapter or any specialty code, a
27 building official shall issue a building permit for an approved wildfire reconstruction, as de-
28 fined in section 2 of this 2021 Act, of a residential dwelling if the dwelling could be approved
29 under a residential specialty code that was in effect on the latter of:

30 (a) The date that the residential dwelling being replaced was originally constructed; or

31 (b) April 1, 2000.

32 (2) A building permit issued under this chapter for an approved wildfire reconstruction
33 does not expire.

34 **SECTION 5.** Section 6 of this 2021 Act is added to and made a part of ORS 454.605 to
35 454.755.

36 **SECTION 6.** (1) The Department of Environmental Quality shall issue a permit to con-
37 struct or reconnect a subsurface sewage disposal system that serves wildfire reconstruction
38 approved under section 2 of this 2021 Act:

39 (a) If a subsurface sewage disposal system served the building, structure or use on July
40 30, 2020;

41 (b) Notwithstanding ORS 454.655 (4), without regard to availability of a community or
42 area-wide sewerage system for the structure; and

43 (c) Without requiring the submission of a land use compatibility statement other than
44 the approval under section 2 of this 2021 Act;

45 (2) A permit issued under this section does not expire.

SUNSET

SECTION 7. Sections 2, 4 and 6 of this 2021 Act are repealed January 2, 2030.

RESTORATION OF USES

SECTION 8. Section 9 of this 2021 Act is added to and made a part of ORS chapter 227.

SECTION 9. City land use regulations that allow the resumption of a nonconforming use after its interruption or abandonment may not consider a use interrupted or abandoned during the time that a federal, state or local emergency order limits or prohibits the use or the repair or replacement of the use.

SECTION 10. 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 disaster. Restoration or replacement *[shall]* **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 *[shall]* **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)

1 of this section [*shall not be deemed to be*] **is not considered** interrupted or abandoned for any period
 2 after July 1, 1972, provided:

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

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

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

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

11 (8) Any proposal for the verification or alteration of a use under subsection (5) of this section,
 12 except an alteration necessary to comply with a lawful requirement, for the restoration or replace-
 13 ment of a use under subsection (6) of this section or for the resumption of a use under subsection
 14 (7) of this section shall be subject to the provisions of ORS 215.416. An initial decision by the county
 15 or its designate on a proposal for the alteration of a use described in subsection (5) of this section
 16 shall be made as an administrative decision without public hearing in the manner provided in ORS
 17 215.416 (11).

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

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

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

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

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

31 (b) Establishing criteria to determine when a use has been interrupted or abandoned under
 32 subsection (7) of this section[; *or*].

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

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

38 **SECTION 11. Section 9 of this 2021 Act and the amendments to ORS 215.130 by section**
 39 **10 of this 2021 Act apply to uses interrupted on or after January 1, 2020.**

40
 41 **CONFORMING AMENDMENTS**

42
 43 **SECTION 12.** ORS 215.215 is amended to read:

44 215.215. (1) Notwithstanding ORS 215.130 [(6)] (5) to (11), if a nonfarm use exists in an exclusive
 45 farm use zone and is unintentionally destroyed by fire, other casualty or natural disaster, the county

1 may allow by its zoning regulations such use to be reestablished to its previous nature and extent,
2 but the reestablishment shall meet all other building, plumbing, sanitation and other codes, ordi-
3 nances and permit requirements.

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

8 **SECTION 13.** ORS 215.297 is amended to read:

9 215.297. (1) As part of the conditional use approval process under ORS 215.296, for the purpose
10 of verifying the existence, continuity and nature of the business described in ORS 215.213 (2)(w) or
11 215.283 (2)(y), representatives of the business may apply to the county and submit evidence includ-
12 ing, but not limited to, sworn affidavits or other documentary evidence that the business qualifies.

13 (2) [*Alteration, restoration or replacement of*] A use authorized in ORS 215.213 (2)(w) or 215.283
14 (2)(y) may be altered, restored or replaced pursuant to ORS 215.130 [(5), (6) and (9)] **(5) to (11)**.

15
16 **UNIT CAPTIONS**

17
18 **SECTION 14.** The unit captions used in this 2021 Act are provided only for the conven-
19 ience of the reader and do not become part of the statutory law of this state or express any
20 legislative intent in the enactment of this 2021 Act.

21
22 **EMERGENCY CLAUSE**

23
24 **SECTION 15.** This 2021 Act being necessary for the immediate preservation of the public
25 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
26 on its passage.
27