

A-Engrossed
Senate Bill 405

Ordered by the Senate March 23
Including Senate Amendments dated March 23

Sponsored by Senators PROZANSKI, GIROD (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.

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

Until September 30, 2025, requires **cities and** counties to allow commencement of restoration or replacement of nonconforming uses damaged or destroyed by certain wildfires.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to nonconforming uses; creating new provisions; amending ORS 215.130, 215.215 and
3 215.297; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 227.**

6 **SECTION 2. City land use regulations that allow the resumption of a nonconforming use**
7 **after its interruption or abandonment may not consider a use interrupted or abandoned**
8 **during the time that a federal, state or local emergency order limits or prohibits the use or**
9 **the repair or replacement of the use.**

10 **SECTION 3. ORS 215.130 is amended to read:**

11 215.130. (1) Any legislative ordinance relating to land use planning or zoning shall be a local law
12 within the meaning of, and subject to, ORS 250.155 to 250.235.

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

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

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

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23 withdrawn from the city or an area within a city that disincorporates shall remain subject to such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

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

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

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

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

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

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

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

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

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

28 (8) Any proposal for the verification or alteration of a use under subsection (5) of this section,
29 except an alteration necessary to comply with a lawful requirement, for the restoration or replace-
30 ment of a use under subsection (6) of this section or for the resumption of a use under subsection
31 (7) of this section shall be subject to the provisions of ORS 215.416. An initial decision by the county
32 or its designate on a proposal for the alteration of a use described in subsection (5) of this section
33 shall be made as an administrative decision without public hearing in the manner provided in ORS
34 215.416 (11).

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

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

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

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

41 (a) For purposes of verifying a use under subsection (5) of this section, a county may adopt
42 procedures that allow an applicant for verification to prove the existence, continuity, nature and
43 extent of the use only for the 10-year period immediately preceding the date of application. Evidence
44 proving the existence, continuity, nature and extent of the use for the 10-year period preceding ap-
45 plication creates a rebuttable presumption that the use, as proven, lawfully existed at the time the

1 applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the
2 date of application[;].

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

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

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

10 **SECTION 4. Section 2 of this 2021 Act and the amendments to ORS 215.130 by section 3
11 of this 2021 Act apply to uses limited or prohibited by federal, state or local emergency or-
12 ders issued on or after January 1, 2020.**

13 **SECTION 5. Restoration or replacement of a use under ORS 215.130 (5) or under city land
14 use regulations that allow the restoration or reestablishment of a nonconforming use, in-
15 cluding under section 2 of this 2021 Act, must commence no later than September 30, 2025,
16 notwithstanding the time limitation under ORS 215.130 (6) or any other local land use regu-
17 lation if the restoration is for uses that between September 1 and September 30, 2020, were
18 damaged or destroyed by wildfires that were:**

19 (1) **The subject of a federal or state major disaster declaration; or**

20 (2) **Subject to a Governor's executive order invoking the Emergency Conflagration Act
21 under ORS 476.510 to 476.610.**

22 **SECTION 6. Section 5 of this 2021 Act is repealed January 2, 2026.**

23 **SECTION 7.** ORS 215.215 is amended to read:

24 215.215. (1) Notwithstanding ORS 215.130 [(6)] (5) to (11), if a nonfarm use exists in an exclusive
25 farm use zone and is unintentionally destroyed by fire, other casualty or natural disaster, the county
26 may allow by its zoning regulations such use to be reestablished to its previous nature and extent,
27 but the reestablishment shall meet all other building, plumbing, sanitation and other codes, ordi-
28 nances and permit requirements.

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

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

34 215.297. (1) As part of the conditional use approval process under ORS 215.296, for the purpose
35 of verifying the existence, continuity and nature of the business described in ORS 215.213 (2)(w) or
36 215.283 (2)(y), representatives of the business may apply to the county and submit evidence includ-
37 ing, but not limited to, sworn affidavits or other documentary evidence that the business qualifies.

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

40 **SECTION 9. This 2021 Act being necessary for the immediate preservation of the public
41 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
42 on its passage.**