



OREGON PROPERTY OWNERS ASSOCIATION

House Committee on Agriculture and Natural Resource OPOA Testimony in Support of House Bill 2645

February 10, 2021

Chair Witt and Committee Members:

The Oregon Property Owners Association (OPOA) submits this testimony in support of House Bill 2645, the exact same bill as House Bill 4014-A, which was approved by the House last session on a 59-0 vote, but which did not pass due to the session ending prematurely.

WHAT THE BILL DOES:

The bill does two things:

1. **Treats dog training facilities the same as horse training facilities for purposes of the building code only – not land use law.** Section 1 adds a definition of “dog training facility” to ORS 455.315. This statute contains an exemption from the state commercial building code for buildings used as “equine training facilities.” The exemption only applies if the farm building is:
 - A. Located on a farm;
 - B. Occupied by 10 or fewer people at all times;
 - C. Not a building regulated by the State Fire Marshal; and
 - D. Not within a floodplain.

If all of these criteria are met, then a farm building used to train horses is not subject to the commercial building code. If the farm is within an incorporated city, which is unlikely, the city can disregard the statute and apply building code regulations.

Unfortunately, the statutory exemption applies specifically to “equines”, not dogs. Consequently, a farm building used by a farmer to train horses is exempt, but the same building used in the exact same manner by the exact same people at the exact same time to train dogs is not exempt. As long as all of the other sideboards remain the same for horses and dogs, so that one type of training is not favored over the other, there is no reason to hold dog trainers to a different standard than horse trainers for purposes of the commercial building code. Section 1 of this bill fixes that, so that dog training facilities are treated the same as horse training facilities for building code purposes. It does nothing more.

2. **Ensures that a court judgment changing the boundaries of two units of land does not make either unit of land illegal.**

The second change created by the bill is completely unrelated to the commercial building code and dog training. Section 2 of the bill amends ORS 92.017 to specify that a lawfully created unit of land does not become illegal as a result of a decision by an Oregon court that changes the property boundary. The purpose of this section is to ensure that if two neighbors have a dispute over the proper location of a boundary line, and the dispute winds up in court, a decision by the court that shifts the boundary line will not be considered by a county as an illegal property line adjustment.

That is exactly what happened in 2019 in Multnomah County, where the County told a rural property owner who lost approximately ½ an acre of land in a boundary line dispute that his property was no longer considered a legal parcel because the boundary had shifted without County approval. The County determined that because of the court judgment changing the boundaries of the property without County approval, the parcel was no longer legal.

Since that time, the County crafted a new way to find that the court judgment did not result in the creation of an illegal parcel based on facts peculiar to that property owner, but the County did not change its position that a court judgment changing boundaries creates an illegal parcel. More importantly, the County's position highlighted an ambiguity in the law that can be resolved before it occurs again in the future. There is no opposition to this portion of the bill.

WHAT THE BILL DOES NOT DO:

1. **Change any land use law.** Dog training facilities on farms are regulated under ORS 215.213, ORS 215.283, and ORS 215.296. The 2012 Oregon legislature unanimously approved House Bill 4170 to specifically authorize dog training facilities in EFU zones. Dog training facilities are allowed as a conditional use in all counties, and require a property owner to obtain land use approval from the County in which the facility will be located.

Under the 2012 bill, dog training is allowed anywhere on the property, either outside or within existing farm buildings. In Washington and Lane Counties, the building must have been in existence prior to 2019. In the other 34 counties, the building must have been in existence prior to 2015.

Since its approval in 2012, the dog training facilities law has proven to be completely non-controversial. There are no reported LUBA cases challenging a proposed dog training facility.

This bill does not propose any changes to the land use laws applicable to dog training facilities. If the bill passes, the land use laws will stay the same. If the bill fails, the land use laws will stay the same.

2. **Change any criteria relating to dog training facilities other than the building code.**

The only thing Section 1 of this bill does is to put dog training facilities on par with horse training facilities for purposes of the building code. It changes no other laws relating to dog training facilities.

PROPOSED OPPOSITION AMENDMENTS

There is no opposition to this bill from any organization. However, a couple who live next to a dog training facility are opposed to Section 1 of the bill, and have asked for two amendments to that section of the bill. We urge the Committee to reject these amendments.

The first amendment would make non-farm uses in farm buildings subordinate to the farm uses. We are working on this issue in House Bill 2611, which your committee heard last week, and which we hope you will move and pass. That bill, unfortunately, has opposition, which we do not wish to introduce in this bill.

The second amendment would require any farmer seeking to establish any non-farm use in a farm building, including a dog training facility, to prove that the use would not have significant impacts on neighboring farm or forest uses. That is a land use standard that currently applies to some non-farm uses, but not all of them. If you were to entertain that amendment, this bill would immediately become highly controversial, and you would be injecting land use standards into a bill that doesn't have anything to do with land use.

More importantly, when the 2012 legislature approved House Bill 4170 , it considered whether dog training facilities should be subject to the farm impacts test. Smaller proposed facilities with more limited uses and smaller groups are not subject to the farm impacts test (see ORS 215.213(1)(z)). Larger facilities are subject to the farm impacts test (see ORS 215.213(2)(k)(B)). The legislative policy choice that the opponents seek has already been made, and it was made in the context of the original land use bill that first authorized dog training facilities as a land use, where it should be considered, and not as an add-on to this bill that has nothing to do with land use.

In short, if this bill is amended to add land use components and revisit the settled land use provisions for non-farm uses, including dog training facilities, it becomes a completely different bill with significant opposition. Since this bill only addresses building code standards to treat dog training on farms in the exact same manner as horse training on farms, it is not controversial. We're hoping that you'll keep it that way. If it becomes a land use bill, it becomes controversial. Passage of the bill won't change any criteria for whether the dog training facility will be permitted on the opponents' neighboring property or change any of the arguments they can make to the County should the neighbor apply for approval for a training facility.

Thank you for hearing this bill. We hope that you will move it forward.

Very Truly Yours,



David J. Hunnicutt
President