

# 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

1  
2 Relating to continuance of nonconforming uses by counties; amending ORS 197.488, 215.130, 215.215,  
3 215.297, 215.799 and 308A.462.

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

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

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

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

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

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

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18 withdrawn from the city or an area within a city that disincorporates shall remain subject to such  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

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

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

30 (6) Restoration or replacement of any use described in subsection (5) of this section may be  
31 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.

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

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

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

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

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

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

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

17 (8) Any proposal for the verification or alteration of a use under subsection (5) of this section,  
 18 except an alteration necessary to comply with a lawful requirement, for the restoration or replace-  
 19 ment of a use under subsection (6) of this section or for the resumption of a use under subsection  
 20 (7) of this section shall be subject to the provisions of ORS 215.416. An initial decision by the county  
 21 or its designate on a proposal for the alteration of a use described in subsection (5) of this section  
 22 shall be made as an administrative decision without public hearing in the manner provided in ORS  
 23 215.416 (11).

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

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

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

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

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

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

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

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

44 **(12) Except as otherwise provided by the land use regulations of a county, the use of a**  
 45 **dwelling as vacation occupancy, as defined in ORS 90.100, is not a use that may be continued**

1 **under subsection (5) of this section.**

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

7 **SECTION 2.** ORS 197.488 is amended to read:

8 197.488. (1) As used in this section, “natural disaster” includes any disaster resulting in the  
 9 declaration of a state of emergency under ORS 401.165 or 401.309 for wildfires, floods, tsunamis,  
 10 earthquakes or similar events, including disasters began by negligent or intentional acts.

11 (2) Notwithstanding ORS 215.130 (5) to [(11)] **(13)** or any land use regulation, statewide land use  
 12 planning goal or Land Conservation and Development Commission rule, a local government:

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

- 16 (A) To replace a park destroyed by a natural disaster; or
- 17 (B) That is in an area rezoned under paragraph (b) of this subsection.

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

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

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

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

30 **SECTION 3.** ORS 215.215 is amended to read:

31 215.215. (1) Notwithstanding ORS 215.130 (5) to [(11)] **(13)**, if a nonfarm use exists in an exclusive  
 32 farm use zone and is unintentionally destroyed by fire, other casualty or natural disaster, the county  
 33 may allow by its zoning regulations such use to be reestablished to its previous nature and extent,  
 34 but the reestablishment shall meet all other building, plumbing, sanitation and other codes, ordi-  
 35 nances and permit requirements.

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

40 **SECTION 4.** ORS 215.297 is amended to read:

41 215.297. (1) As part of the conditional use approval process under ORS 215.296, for the purpose  
 42 of verifying the existence, continuity and nature of the business described in ORS 215.213 (2)(w) or  
 43 215.283 (2)(y), representatives of the business may apply to the county and submit evidence includ-  
 44 ing, but not limited to, sworn affidavits or other documentary evidence that the business qualifies.

45 (2) A use authorized in ORS 215.213 (2)(w) or 215.283 (2)(y) may be altered, restored or replaced

1 pursuant to ORS 215.130 (5) to [(11)] **(13)**.

2 **SECTION 5.** ORS 215.799 is amended to read:

3 215.799. (1) New and existing dwellings may be allowed on a lot or parcel subject to wildlife  
4 habitat special assessment under ORS 308A.403 to 308A.430 as follows:

5 (a) Lawfully existing dwellings, pursuant to ORS 215.130 (5) to [(11)] **(13)**, may remain.

6 (b) For a lot or parcel without an existing dwelling, dwellings may be allowed if each dwelling  
7 for which the landowner seeks approval complies with all applicable requirements under the  
8 county's acknowledged zoning ordinance.

9 (2) The fact that a lot or parcel is subject to wildlife habitat special assessment may not make  
10 it easier or more difficult for a landowner to obtain approval for a dwelling on the lot or parcel.

11 **SECTION 6.** ORS 308A.462 is amended to read:

12 308A.462. Subject to the terms of the applicable conservation easement, new and existing  
13 dwellings may be allowed on a lot or parcel subject to conservation easement special assessment  
14 as follows:

15 (1) Lawfully existing dwellings, pursuant to ORS 215.130 (5) to [(11)] **(13)**, may remain.

16 (2) For a lot or parcel without an existing dwelling, dwellings may be allowed if each dwelling  
17 for which the landowner seeks approval complies with all applicable requirements under the  
18 county's acknowledged zoning ordinance.

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