

**Enrolled**  
**Senate Bill 405**

Sponsored by Senators PROZANSKI, GIROD, Representative CATE; Senator KENNEMER, Representatives HAYDEN, LEIF, LEWIS, MEEK, MORGAN, STARK, WILDE, WRIGHT (Presession filed.)

CHAPTER .....

AN ACT

Relating to nonconforming uses; 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:**

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

**SECTION 2. 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 3. 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(3) An area within the jurisdiction of city land use planning and regulatory provisions that is withdrawn from the city or an area within a city that disincorporates shall remain subject to such plans and regulations which shall be administered by the county until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 re-

quirements, 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) of this section *[shall not be deemed to be]* **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[; or].

(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.

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

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

- (1) The subject of a federal or state major disaster declaration; or
- (2) Subject to a Governor's executive order invoking the Emergency Conflagration Act under ORS 476.510 to 476.610.

**SECTION 6.** Section 5 of this 2021 Act is repealed January 2, 2026.

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

215.215. (1) Notwithstanding ORS 215.130 [(6)] **(5) to (11)**, 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 non-farm 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 8.** 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) [*Alteration, restoration or replacement of*] 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)[, (6) and (9)] **to (11)**.

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

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**Passed by Senate March 31, 2021**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 4, 2021**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M,....., 2021

**Approved:**

.....M,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2021

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Shemia Fagan, Secretary of State