

# Chapter 215

## 1985 REPLACEMENT PART

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## COUNTY PLANNING

**215.010 Definitions for ORS chapter 215.** As used in ORS chapter 215, the terms defined in ORS 92.010 shall have the meanings given therein, except that "parcel":

(1) Includes a unit of land created:

(a) By partitioning land as defined in ORS 92.010;

(b) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or

(c) By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations.

(2) Does not include a unit of land created solely to establish a separate tax account. [Amended by 1955 c.756 §25, 1963 c.619 §1 (1); 1985 c.717 §4]

**215.020 Authority to establish county planning commissions.** (1) The governing body of any county may create and provide for the organization and operations of one or more county planning commissions.

(2) This section shall be liberally construed and shall include the authority to create more than one planning commission, or subcommittee of a commission, for a county or the use of a joint planning commission or other intergovernmental agency for planning as authorized by ORS 190.003 to 190.110. [Amended by 1973 c.552 §1, 1975 c.767 §15]

**215.030 Membership of planning commission.** (1) The county planning commission shall consist of five, seven or nine members appointed by the governing body for four-year terms, or until their respective successors are appointed and qualified; provided that in the first instance the terms of the initial members shall be staggered for one, two, three and four years.

(2) A commission member may be removed by the governing body, after hearing, for misconduct or nonperformance of duty.

(3) Any vacancy on the commission shall be filled by the governing body for the unexpired term.

(4) Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses.

(5) Members of a commission shall be residents of the various geographic areas of the county. No more than two voting members shall be engaged principally in the buying, selling or developing of real estate for profit, as individuals,

or be members of any partnership or officers or employes of any corporation that is engaged principally in the buying, selling or developing of real estate for profit. No more than two voting members shall be engaged in the same kind of occupation, business, trade or profession.

(6) The governing body may designate one or more officers of the county to be nonvoting members of the commission.

(7) Except for subsection (5) of this section, the governing body may provide by ordinance for alternative rules to those specified in this section. [Amended by 1963 c.619 §2; 1973 c.552 §2, 1977 c.766 §1]

**215.035 Planning commission member conflict of interest activities.** A member of a planning commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest: The member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken. [1973 c.552 §10]

**215.040** [Amended by 1973 c.552 §3, repealed by 1977 c.766 §16]

**215.042 County to appoint planning director; term and duties of director.** (1) The governing body of each county shall designate an individual to serve as planning director for the county responsible for administration of planning. The governing body shall provide employes as necessary to assist the director in carrying out responsibilities. The director shall be the chief administrative officer in charge of the planning department of the county, if one is created.

(2) The director shall provide assistance, as requested, to the planning commission and shall coordinate the functions of the commission with other departments, agencies and officers of the county that are engaged in functions related to planning for the use of lands within the county.

(3) The director shall serve at the pleasure of the governing body of the county. [1973 c.552 §9]

**215.044 Solar access ordinances; purpose; standards.** (1) County governing bodies may adopt and implement solar access ordinances. The ordinances shall provide and protect to the extent feasible solar access to the south

face of buildings during solar heating hours, taking into account latitude, topography, microclimate, existing development, existing vegetation and planned uses and densities. The county governing body shall consider for inclusion in any solar access ordinance, but not be limited to, standards for:

(a) The orientation of new streets, lots and parcels;

(b) The placement, height, bulk and orientation of new buildings;

(c) The type and placement of new trees on public street rights of way and other public property; and

(d) Planned uses and densities to conserve energy, facilitate the use of solar energy, or both.

(2) The Department of Energy shall actively encourage and assist county governing bodies' efforts to protect and provide for solar access.

(3) As used in this section, "solar heating hours" means those hours between three hours before and three hours after the sun is at its highest point above the horizon on December 21. [1981 c 722 §2]

**215.046** [1973 c.552 §11; repealed by 1977 c.766 §16]

**215.047 Effect of comprehensive plan and land use regulations on solar access ordinances.** Solar access ordinances shall not be in conflict with acknowledged comprehensive plans and land use regulations. [1981 c.722 §3]

**215.050 Comprehensive planning, zoning and subdivision ordinances.** (1) The county governing body shall adopt and may from time to time revise a comprehensive plan and zoning, subdivision and other ordinances applicable to all of the land in the county. The plan and related ordinances may be adopted and revised part by part or by geographic area.

(2) Zoning, subdivision or other ordinances or regulations and any revisions or amendments thereof shall be designed to implement the adopted county comprehensive plan. [Amended by 1955 c 439 §2; 1963 c 619 §3; 1973 c 552 §4, 1977 c 766 §2, 1981 c.748 §41]

**215.055** [1955 c.439 §3, 1963 c 619 §4, 1971 c.13 §2, 1971 c 739 §1; 1973 c.80 §43; 1975 c 153 §1; repealed by 1977 c 766 §16]

**215.060 Procedure for action on plan; notice; hearing.** Action by the governing body of a county regarding the plan shall have no legal effect unless the governing body first conducts one or more public hearings on the plan and unless 10 days' advance public notice of each of the hearings is published in a newspaper of gen-

eral circulation in the county or, in case the plan as it is to be heard concerns only part of the county, is so published in the territory so concerned and unless a majority of the members of the governing body approves the action. The notice provisions of this section shall not restrict the giving of notice by other means, including mail, radio and television. [Amended by 1963 c.619 §5; 1967 c.589 §1; 1973 c 552 §6]

**215.070** [Repealed by 1963 c.619 §16]

**215.080 Power to enter upon land.**

The commission, and any of its members, officers and employes, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

**215.090 Information made available to commission.** Public officials, departments and agencies, having information, maps or other data deemed by the planning commission pertinent to county planning shall make such information available for the use of the commission. [Amended by 1977 c.766 §3]

**215.100 Cooperation with other agencies.** The county planning commission shall advise and cooperate with other planning commissions within the state, and shall upon request, or on its own initiative, furnish advice or reports to any city, county, officer or department on any problem comprehended in county planning.

**215.104** [1955 c 439 §4, 1963 c 619 §6, 1967 c 589 §2, 1973 c 552 §7, repealed by 1977 c.766 §16]

**215.108** [1955 c 439 §5, 1961 c.607 §1, repealed by 1963 c 619 §16]

**215.110 Recommendation of ordinances to implement plan; content; enactment; referral; retroactivity prohibited.**

(1) A planning commission may recommend to the governing body ordinances intended to implement part or all of the comprehensive plan. The ordinances may provide, among other things, for:

(a) Zoning;

(b) Official maps showing the location and dimensions of, and the degree of permitted access to, existing and proposed thoroughfares, easements and property needed for public purposes;

(c) Preservation of the integrity of the maps by controls over construction, by making official maps parts of county deed records, and by other action not violative of private property rights;

(d) Conservation of the natural resources of the county;

(e) Controlling subdivision and partitioning of land;

- (f) Renaming public thoroughfares;
- (g) Protecting and assuring access to incident solar energy;

(h) Protecting and assuring access to wind for potential electrical generation or mechanical application; and

- (i) Numbering property.

(2) The governing body may enact, amend or repeal ordinances to assist in carrying out a comprehensive plan. If an ordinance is recommended by a planning commission, the governing body may make any amendments to the recommendation required in the public interest. If an ordinance is initiated by the governing body, it shall, prior to enactment, request a report and recommendation regarding the ordinance from the planning commission, if one exists, and allow a reasonable time for submission of the report and recommendation.

(3) The governing body may refer to the electors of the county for their approval or rejection an ordinance or amendments thereto for which this section provides. If only a part of the county is affected, the ordinance or amendment may be referred to that part only.

(4) An ordinance enacted by authority of this section may prescribe fees and appeal procedures necessary or convenient for carrying out the purposes of the ordinance.

(5) An ordinance enacted by authority of this section may prescribe limitations designed to encourage and protect the installation and use of solar and wind energy systems.

(6) No retroactive ordinance shall be enacted under the provisions of this section. [Amended by 1963 c.619 §7; 1973 c.696 §22, 1975 c.153 §2; 1977 c.766 §4; 1979 c.671 §2; 1981 c.590 §7]

**215.120** [Amended by 1957 c.568 §2; repealed by 1963 c.619 §16]

**215.124** [1955 c.683 §§2, 4; 1957 c.568 §3; repealed by 1959 c.387 §1]

**215.126** [1955 c.683 §3; 1957 c.568 §1; 1959 c.387 §2, repealed by 1963 c.619 §16]

**215.130 Application of ordinances; alteration of nonconforming use.** (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 to reasonably continue the use. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in 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 is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster.

(7) 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.

(8) Any proposal for the 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 considered a contested case under ORS 215.402 (1) subject to such procedures as the governing body may prescribe under ORS 215.412.

(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. [Amended by 1961 c 607 §2, 1963 c 577 §4; 1963 c.619 §9; 1969 c.460 §1; 1973 c.503 §2; 1977 c.766 §5; 1979 c.190 §406; 1979 c.610 §1]

**215.140** [Repealed by 1963 c.619 §16]

**215.150** [Amended by 1955 c 439 §8; repealed by 1963 c.619 §16]

**215.160** [Repealed by 1963 c.619 §16]

**215.170 Authority of cities in unincorporated area.** The powers of an incorporated city to control subdivision and other partitioning of land and to rename thoroughfares in adjacent unincorporated areas shall continue unimpaired by ORS 215.010 to 215.190 and 215.402 to 215.438 until the county governing body that has jurisdiction over the area adopts regulations for controlling subdivision there. Any part of the area subject to the county regulations shall cease to be subject to the two powers of the city, unless otherwise provided in an urban growth area management agreement jointly adopted by a city and county to establish procedures for regulating land use outside the city limits and within an urban growth boundary acknowledged under ORS 197.251. [Amended by 1963 c.619 §10; 1983 c.570 §4]

**215.180** [1955 c 439 §6, 1963 c 619 §11, repealed by 1977 c 766 §16]

**215.185 Remedies for unlawful structures or land use.** (1) In case a building or other structure is, or is proposed to be, located, constructed, maintained, repaired, altered, or used, or any land is, or is proposed to be, used, in violation of an ordinance or regulation designed to implement a comprehensive plan, the governing body of the county or a person whose interest in real property in the county is or may be affected by the violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use. When a temporary restraining order is granted in a suit instituted by a person who is not exempt from furnishing bonds or undertakings under ORS 22.010, the person shall furnish undertaking as provided in ORCP 82 A.(1).

(2) The court may allow the prevailing party reasonable attorney fees and expenses in a judicial proceeding authorized by this section that involves a dwelling approved to relieve a temporary hardship. However, if the court allows the plaintiff reasonable attorney fees or expenses, such fees or expenses shall not be charged to the

county if the county did not actively defend itself or the landowner in the proceeding. [1955 c.439 §7; 1963 c 619 §12, 1977 c 766 §6; 1981 c.898 §48; 1983 c 826 §5]

**215.190 Violation of ordinances or regulations.** No person shall locate, construct, maintain, repair, alter, or use a building or other structure or use or transfer land in violation of an ordinance or regulation authorized by ORS 215.010 to 215.190 and 215.402 to 215.438. [1955 c 439 §9, 1963 c 619 §13]

**215.200** [1957 s.s. c.11 §1; renumbered 215.285]

## AGRICULTURAL LAND USE

### (Exclusive Farm Use Zones)

**215.203 Zoning ordinances establishing exclusive farm use zones; definitions.**

(1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213 or 215.283. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species. It does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section.

(b) "Current employment" of land for farm use includes:

(A) Land subject to the soil-bank provisions of the Federal Agricultural Act of 1956, as amended (P. L. 84-540, 70 Stat. 188);

(B) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

(C) Land planted in orchards or other perennials prior to maturity;

(D) Any land constituting a woodlot of less than 20 acres contiguous to and owned by the

owner of land specially valued at true cash value for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(E) Wasteland, in an exclusive farm use zone, dry or covered with water, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

(F) Land under dwellings customarily provided in conjunction with the farm use in an exclusive farm use zone; and

(G) Land under buildings supporting accepted farm practices.

(c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

(3) "Cultured Christmas trees" means trees:

(a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

(b) Of a species for which the Department of Revenue requires a "Report of Christmas Trees Harvested" for purposes of ad valorem taxation;

(c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

(d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation. [1963 c.577 §2, 1963 c.619 §1(2), (3); 1967 c.386 §1; 1973 c.503 §3; 1975 c.210 §1; 1977 c.766 §7; 1977 c.893 §17a; 1979 c.480 §1; 1981 c.804 §73, 1983 c.826 §18; 1985 c.604 §2]

**215.205** [1957 s.s. c 11 §2, renumbered 215.295]

**215.210** [Amended by 1955 c.652 §6; renumbered 215 305]

**215.213 Permitted uses in exclusive farm use zones.** (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale and transmission towers over 200 feet in height.

(e) A dwelling on real property used for farm use if the dwelling is:

(A) Located on the same lot or parcel as the dwelling of the farm operator; and

(B) Occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator.

(f) Nonresidential buildings customarily provided in conjunction with farm use.

(g) A dwelling customarily provided in conjunction with farm use if the dwelling is on a lot or parcel that is managed as part of a farm operation not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(h) Operations for the exploration of geothermal resources as defined by ORS 522.005.

(i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(j) One mobile home in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.

(k) The breeding, kenneling and training of greyhounds for racing in any county over 200,000 in population in which there is located a greyhound racing track or in a county of over 200,000 in population contiguous to such a county.

(2) The following uses may be established in any area zoned for exclusive farm use if the use meets reasonable standards adopted by the governing body:

(a) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least \$10,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$10,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of \$10,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use.

(d) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate and other mineral resources or other subsurface resources.

(e) Community centers owned and operated by a governmental agency or a nonprofit community organization, hunting and fishing preserves, parks, playgrounds and campgrounds.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Aeronautics Division.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only

portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) The boarding of horses for profit.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) Dog kennels not described in paragraph (k) of subsection (1) of this section.

(m) Residential homes for handicapped persons, as those terms are defined in ORS 443.580, in existing dwellings.

(n) The propagation, cultivation, maintenance and harvesting of aquatic species.

(o) Home occupations as provided in ORS 215.448.

(p) Transmission towers over 200 feet in height.

(3) A single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designate considers necessary.

(4) One single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designate.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designate shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by paragraph (a) of subsection (5) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling. [1963 c.577 §3, 1963 c.619 §1a, 1969 c.258 §1; 1973 c.503 §4; 1975 c.551 §1; 1975 c.552 §32, 1977 c.766 §8, 1977 c.788 §2, 1979 c.480 §6; 1979 c.773 §10; 1981 c.748 §44; 1983 c.743 §3; 1983 c.826 §6, 1983 c.827 §27b; 1985 c.544 §2; 1985 c.583 §1; 1985 c.604 §3; 1985 c.717 §5, 1985 c.811 §12]

**215.214 Effect of solid waste disposal site classification on compliance with agricultural land goals.** The Land Conservation and Development Commission and the Land Use Board of Appeals shall not consider the provisions of ORS 215.213 (2)(k) or 215.283 (2)(j) as being consistent with any state-wide planning goal relating to the preservation of agricultural lands for the purpose of exempting a unit of local government from applying that goal to agricultural lands. [1979 c.773 §11, 1983 c.743 §4; 1983 c.826 §10; 1985 c.565 §29]

**215.215 Reestablishment of nonfarm use.** (1) Notwithstanding ORS 215.130 (4), 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 nonfarm 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. [1977 c.664 §41]

**215.220** [Repealed by 1963 c.619 §16]

**215.223 Procedure for adopting zoning ordinances; notice.** (1) No zoning ordinance enacted by the county governing body may have legal effect unless prior to its enactment the

governing body or the planning commission conducts one or more public hearings on the ordinance and unless 10 days' advance public notice of each hearing is published in a newspaper of general circulation in the county or, in case the ordinance applies to only a part of the county, is so published in that part of the county.

(2) The notice provisions of this section shall not restrict the giving of notice by other means, including mail, radio and television.

(3) In effecting a zone change the proceedings for which are commenced at the request of a property owner, the governing body shall in addition to other notice give individual notice of the request by mail to the record owners of property within 250 feet of the property for which a zone change has been requested. The failure of the property owner to receive the notice described shall not invalidate any zone change.

(4) Before enacting at the request of a property owner an ordinance which would change the zone of property which includes all or part of a mobile home park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home park at least 20 days but not more than 40 days before the date of the first hearing on the ordinance. The governing body may require an applicant for such a zone change to pay the costs of such notice. The failure of a tenant to receive a notice which was mailed shall not invalidate any zone change. [1963 c.619 §8, 1967 c.589 §3; 1985 c.473 §14]

**215.230** [Repealed by 1963 c.619 §16]

**215.233 Validity of ordinances and development patterns adopted before September 2, 1963.** Nothing in ORS 215.010, 215.030, 215.050, 215.060 and 215.110 to 215.213, 215.223 and this section shall impair the validity of ordinances enacted prior to September 2, 1963. All development patterns made and adopted prior to that time shall be deemed to meet the requirements of ORS 215.010, 215.030, 215.050, 215.060 and 215.110 to 215.213, 215.223 and this section concerning comprehensive plans. [1963 c.619 §14; 1971 c.13 §3; 1985 c.565 §30]

**215.236 Establishing nonfarm dwelling in exclusive farm use zone; procedures; disqualification for farm use valuation; additional tax or penalty; requalification.**

(1) As used in this section, "dwelling" means a single-family residential dwelling not provided in conjunction with farm use.

(2) The governing body or its designate shall not grant final approval of an application made

under ORS 215.213 (3) or 215.283 (3) for the establishment of a dwelling on a lot or parcel in an exclusive farm use zone that is valued at true cash value for farm use under ORS 308.370 without evidence that the lot or parcel upon which the dwelling is proposed has been disqualified for valuation at true cash value for farm use under ORS 308.370.

(3) The governing body or its designate may grant tentative approval of an application made under ORS 215.213 (3) or 215.283 (3) for the establishment of a dwelling on a lot or parcel in an exclusive farm use zone that is valued at true cash value for farm use under ORS 308.370 upon making the findings required by ORS 215.213 (3) or 215.283 (3). An application for the establishment of a dwelling that has been tentatively approved shall be given final approval by the governing body or its designate upon receipt of evidence that the lot or parcel upon which establishment of the dwelling is proposed has been disqualified for valuation at true cash value for farm use under ORS 308.370.

(4) The owner of a lot or parcel upon which the establishment of a dwelling has been tentatively approved as provided by subsection (3) of this section shall, before final approval, simultaneously:

(a) Notify the county assessor that the lot or parcel is no longer being used as farmland; and

(b) Request that the county assessor disqualify the lot or parcel for valuation at true cash value for farm use under ORS 308.370.

(5) When the owner of a lot or parcel upon which the establishment of a dwelling has been tentatively approved notifies the county assessor that the lot or parcel is no longer being used as farmland and requests disqualification of the lot or parcel for valuation at true cash value for farm use, the county assessor shall:

(a) Disqualify the lot or parcel for valuation at true cash value for farm use under ORS 308.370 by removing the special assessment for farm use as provided by ORS 308.397 (1);

(b) Provide the owner of the lot or parcel with written notice of the disqualification for valuation at true cash value for farm use under ORS 308.370; and

(c) Impose the additional tax or penalty, if any, provided by ORS 308.399 or 321.960, whichever is applicable.

(6) The Department of Commerce, a building official, as defined in ORS 456.805 (1), or any other agency or official responsible for the administration and enforcement of the state building

code, as defined in ORS 456.750, shall not issue a building permit for the construction of a dwelling on a lot or parcel in an exclusive farm use zone without evidence that the owner of the lot or parcel upon which the dwelling is proposed to be constructed has paid the additional tax or penalty, if any, imposed by the county assessor under paragraph (c) of subsection (5) of this section.

(7)(a) A lot or parcel described in subsection (2) of this section that has been disqualified for valuation at true cash value for farm use under ORS 308.370 is not eligible on or after the date of disqualification for valuation at true cash value for farm use under ORS 308.370 (1) or (2) except as provided in paragraph (b) of this subsection.

(b) Land described in paragraph (a) of this subsection may become eligible for valuation at true cash value for farm use under ORS 308.370 if the lot or parcel becomes part of a larger unit of land, in single ownership, the remainder of which is valued at true cash value for farm use. [1981 c.748 §46; 1983 c.462 §14; 1983 c.570 §6; 1983 c.826 §23; 1985 c.717 §6; 1985 c.811 §6]

**215.240** [Repealed by 1963 c.619 §16]

**215.243 Agricultural land use policy.**

The Legislative Assembly finds and declares that:

(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones. [1973 c.503 §1]

**215.250** [Repealed by 1973 c.619 §16]

**215.253 Restrictive local ordinances affecting farm use zones prohibited; exception.**

(1) No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone established under ORS 215.203 or within an area designated as marginal land under ORS 197.247 in a manner that would unreasonably restrict or regulate farm structures or that would unreasonably restrict or regulate accepted farming practices because of noise, dust, odor or other materials carried in the air or other conditions arising therefrom if such conditions do not extend into an adopted urban growth boundary in such manner as to interfere with the lands within the urban growth boundary. "Accepted farming practice" as used in this subsection shall have the meaning set out in ORS 215.203.

(2) Nothing in this section is intended to limit or restrict the lawful exercise by any state agency, city, county or political subdivision of its power to protect the health, safety and welfare of the citizens of this state. [1973 c.503 §8, 1983 c.826 §12; 1985 c.565 §31]

**215.260** [Amended by 1955 c.652 §3; repealed by 1957 s.s. c.11 §4 (215 261 enacted in lieu of 215 260)]

**215.261** [1957 s.s. c.11 §5 (enacted in lieu of 215 260); repealed by 1963 c.619 §16]

**215.263 Review of land divisions in exclusive farm use zones; criteria for approval; exemptions.**

(1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the governing body or its designate of the county in which the land is situated. The governing body of a county by ordinance shall require such prior review and approval for such divisions of land within exclusive farm use zones established within the county.

(2) The governing body of a county or its designate may approve a proposed division of land to create parcels for farm use as defined in ORS 215.203 if it finds:

(a) That the proposed division of land is appropriate for the continuation of the existing commercial agricultural enterprise within the area; or

(b) The parcels created by the proposed division are not smaller than the minimum lot size acknowledged under ORS 197.251.

(3) The governing body of a county or its designate may approve a proposed division of

land in an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (2) or 215.283 (2), whichever is applicable, if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use. The governing body may establish other criteria as it considers necessary.

(4) The governing body of a county may approve a division of land in an exclusive farm use zone for a dwelling not provided in conjunction with farm use only if the dwelling has been approved under ORS 215.213 (3) or 215.283 (3), whichever is applicable.

(5) This section shall not apply to the creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established.

(6) This section shall not apply to divisions of land resulting from lien foreclosures or divisions of land resulting from foreclosure of recorded contracts for the sale of real property.

(7) The governing body of a county shall not approve any proposed division of a lot or parcel described in ORS 215.213 (1)(e) or 215.283 (1)(e), whichever is applicable.

(8) The governing body of a county may approve a proposed division of land in an exclusive farm use zone to create a parcel with an existing dwelling to be used as a residential home for handicapped persons as defined in ORS 443.580 only if the dwelling has been approved under ORS 215.213 (3) or 215.283 (3), whichever is applicable. [1973 c 503 §9; 1977 c 766 §9; 1979 c 46 §2; 1981 c 748 §48; 1983 c 826 §7; 1985 c.544 §4]

**215.270** [Repealed by 1963 c.619 §16]

**215.273 Applicability to thermal energy power plant siting determinations.**

Nothing in ORS 118.155, 215.130, 215.203, 215.213, 215.243 to 215.273, 215.283, 308.395 to 308.401 and 316.844 is intended to affect the authority of the Energy Facility Siting Council in determining suitable sites for the issuance of site certificates for thermal power plants, as authorized under ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930. [1973 c.503 §16; 1983 c.740 §56; 1983 c.826 §19]

**215.280** [Repealed by 1963 c.619 §16]

**215.283 Alternative uses in exclusive farm use zones.** (1) Subject to ORS 215.288, the following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale and transmission towers over 200 feet in height.

(e) A dwelling on real property used for farm use if the dwelling is:

(A) Located on the same lot or parcel as the dwelling of the farm operator; and

(B) Occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator.

(f) The dwellings and other buildings customarily provided in conjunction with farm use.

(g) Operations for the exploration of geothermal resources as defined by ORS 522.005.

(h) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(i) The breeding, kenneling and training of greyhounds for racing in any county over 200,000 in population in which there is located a greyhound racing track or in a county of over 200,000 in population contiguous to such a county.

(2) Subject to ORS 215.288, the following nonfarm uses may be established, subject to the approval of the governing body or its designate in any area zoned for exclusive farm use:

(a) Commercial activities that are in conjunction with farm use.

(b) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate and other mineral resources or other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds.

(d) Parks, playgrounds or community centers owned and operated by a governmental agency or a nonprofit community organization.

(e) Golf courses.

(f) Commercial utility facilities for the purpose of generating power for public use by sale.

(g) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-

use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Aeronautics Division.

(h) Home occupations as provided in ORS 215.448.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) The boarding of horses for profit.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One mobile home in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.

(m) Transmission towers over 200 feet in height.

(n) Dog kennels not described in paragraph (i) of subsection. (1) of this section.

(o) Residential homes for handicapped persons, as those terms are defined in ORS 443.580, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic species.

(3) Subject to ORS 215.288, single-family residential dwellings, not provided in conjunction

with farm use, may be established, subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon a finding that each such proposed dwelling:

(a) Is compatible with farm uses described in ORS 215.203 (2) and is consistent with the intent and purposes set forth in ORS 215.243;

(b) Does not interfere seriously with accepted farming practices, as defined in ORS 215.203 (2)(c), on adjacent lands devoted to farm use;

(c) Does not materially alter the stability of the overall land use pattern of the area;

(d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract; and

(e) Complies with such other conditions as the governing body or its designate considers necessary. [1983 c.826 §17; 1985 c.544 §3, 1985 c.583 §2; 1985 c.604 §4; 1985 c.717 §7; 1985 c.811 §7]

**215.285** [Formerly 215.200; repealed by 1971 c.13 §1]

**215.288 Impact of using marginal lands designation or lot-of-record provisions in exclusive farm use zones.** (1) If a county does not amend its comprehensive plan or land use regulations to allow for the designation of marginal land under ORS 197.247 or to allow the establishment of dwellings under ORS 215.213 (4) to (8), the county may apply ORS 215.213 (1) to (3) or 215.283 to land zoned for exclusive farm use under ORS 215.203.

(2) If a county amends its comprehensive plan or land use regulations to allow for the designation of marginal land under ORS 197.247 or to allow the establishment of dwellings under ORS 215.213 (4) to (8), the county shall apply ORS 215.213 (1) to (3) to land zoned for exclusive farm use under ORS 215.203. [1983 c.826 §16; 1985 c.565 §33; 1985 c.811 §8]

**215.290** [Repealed by 1963 c.619 §16]

**215.293 Dwelling in exclusive farm use zone; condition; declaration.** A county governing body or its designate may require as a condition of approval of a single-family dwelling under ORS 215.213 or 215.283 that the landowner for the dwelling sign a statement declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use. [1983 c.826 §11]

**Note:** 215.293 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 215 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**215.295** [Formerly 215.205, repealed by 1971 c.13 §1]

**215.300** [Repealed by 1963 c.619 §16]

**215.305** [Formerly 215 210; repealed by 1971 c.13 §1]

**215.310** [Repealed by 1971 c.13 §1]

### (Marginal Lands)

**215.317 Permitted uses on marginal land.** (1) A county may allow the following uses to be established on land designated as marginal land under ORS 197.247:

(a) Intensive farm or forest operations, including but not limited to "farm use" as defined in ORS 215.203.

(b) Part-time farms.

(c) Woodlots.

(d) One single-family dwelling on a lot or parcel created under ORS 215.327 (1) or (2).

(e) One single-family dwelling on a lot or parcel of any size if the lot or parcel was created before July 1, 1983, subject to subsection (2) of this section.

(f) The nonresidential uses authorized in exclusive farm use zones under ORS 215.213 (1) and (2).

(g) One mobile home in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.

(2) If a lot or parcel described in paragraph (e) of subsection (1) of this section is located within the Willamette Greenway, a floodplain or a geological hazard area, approval of a single-family dwelling shall be subject to local ordinances relating to the Willamette Greenway, floodplains or geological hazard areas, whichever is applicable. [1983 c 826 §3]

**215.320** [Repealed by 1971 c.13 §1]

**215.325** [1953 c 662 §6, 1963 c.9 §4; repealed by 1971 c.13 §1]

**215.327 Divisions of marginal land.** A county may allow the following divisions of marginal land:

(1) Divisions of land to create a parcel or lot containing 10 or more acres if the lot or parcel is not adjacent to land zoned for exclusive farm use or forest use or, if it is adjacent to such land, the land qualifies for designation as marginal land under ORS 197.247.

(2) Divisions of land to create a lot or parcel containing 20 or more acres if the lot or parcel is adjacent to land zoned for exclusive farm use and that land does not qualify for designation as marginal land under ORS 197.247.

(3) Divisions of land to create a parcel or lot necessary for those uses authorized by ORS 215.317 (1)(f). [1983 c.826 §4]

**215.330** [Repealed by 1971 c.13 §1]

**215.337 Review of marginal lands designation; findings of fact.** In reviewing a decision of a county approving or denying a marginal land designation under ORS 197.247, the reviewing body shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings. [1983 c.826 §4a]

**215.340** [Repealed by 1971 c.13 §1]

**215.350** [Amended by 1953 c.662 §7; repealed by 1971 c.13 §1]

**215.360** [Amended by 1953 c.662 §7; subsection (2) enacted as 1953 c.662 §1; repealed by 1971 c.13 §1]

**215.370** [Repealed by 1971 c.13 §1]

**215.380** [Amended by 1955 c.652 §4; repealed by 1971 c.13 §1]

**215.390** [Repealed by 1971 c.13 §1]

**215.395** [1953 c 662 §3; 1955 c.652 §5; repealed by 1971 c.13 §1]

**215.398** [1955 c 652 §2, repealed by 1971 c.13 §1]

**215.400** [Repealed by 1971 c.13 §1]

## PLANNING AND ZONING HEARINGS AND REVIEW

**215.402 Definitions for ORS 215.402 to 215.438.** As used in ORS 215.402 to 215.438 unless the context requires otherwise:

(1) "Contested case" means a proceeding in which the legal rights, duties or privileges of specific parties under general rules or policies provided under ORS 215.010 to 215.213, 215.215 to 215.263, 215.283 to 215.337 and 215.402 to 215.438, or any ordinance, rule or regulation adopted pursuant thereto, are required to be determined only after a hearing at which specific parties are entitled to appear and be heard.

(2) "Hearing" means a quasi-judicial hearing, authorized or required by the ordinances and regulations of a county adopted pursuant to ORS 215.010 to 215.213, 215.215 to 215.263, 215.283 to 215.337 and 215.402 to 215.438:

(a) To determine in accordance with such ordinances and regulations if a permit shall be granted or denied; or

(b) To determine a contested case.

(3) "Hearings officer" means a planning and zoning hearings officer appointed or designated by the governing body of a county under ORS 215.406.

(4) "Permit" means discretionary approval of a proposed development of land under ORS 215.010 to 215.438 or county legislation or regulation adopted pursuant thereto. [1973 c.552 §12, 1977 c.654 §1, 1981 c.748 §49]

**215.406 Planning and zoning hearings officers; duties and powers; authority of governing body or planning commission to conduct hearings.** (1) A county governing body may authorize appointment of one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. The hearings officer shall conduct hearings on applications for such classes of permits and contested cases as the county governing body designates.

(2) In the absence of a hearings officer a planning commission or the governing body may serve as hearings officer with all the powers and duties of a hearings officer. [1973 c.552 §13; 1977 c.766 §10]

**215.410** [Repealed by 1971 c.13 §1]

**215.412 Adoption of hearing procedure.** The governing body of a county, by ordinance or order shall adopt one or more procedures for the conduct of hearings. [1973 c.552 §14; 1977 c.766 §11]

**215.415** [1953 c.662 §5; repealed by 1971 c.13 §1]

**215.416 Application for permits; consolidated procedures; hearings; notice; approval criteria; decision without hearing.** (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.428. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations under ORS 197.640.

(3) Except as provided in subsection (9) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved if the proposed use of land is found to be in conflict

with the comprehensive plan of the county and other applicable ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

(5) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law.

(6) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(7) Approval or denial of a permit shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

(8) Written notice of the approval or denial shall be given to all parties to the proceeding.

(9) The hearings officer, or such other person as the governing body designates, may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for appeal of the decision to those persons who would have had a right to notice if a hearing had been scheduled or who are adversely affected or aggrieved by the decision. Notice of the decision shall be given in the same manner as notice of the hearing would have been given if a hearing had been held. An appeal from a hearings officer's decision shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be a de novo hearing. [1973 c.552 §§15, 16, 1977 c.654 §2; 1977 c.766 §12, 1979 c.772 §10a; 1983 c.827 §20]

**215.420** [Amended by 1955 c.439 §10; repealed by 1971 c.13 §1]

**215.422 Review of decision of hearings officer or other authority; notice of appeal; establishment of fees; appeal of final decision.** (1)(a) A party aggrieved by the action of a hearings officer or other decision making authority may appeal the action to the planning commission or county governing body, or both, however the governing body prescribes. The

appellate authority on its own motion may review the action. The procedure and type of hearing for such an appeal or review shall be prescribed by the governing body, but shall not require the notice of appeal to be filed within less than seven days after the date the governing body mails or delivers the decision to the parties.

(b) Notwithstanding paragraph (a) of this subsection, the governing body may provide that the decision of a hearings officer is the final determination of the county.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer or planning commission. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to \$500 plus one-half the actual costs over \$500.

(2) A party aggrieved by the final determination may have the determination reviewed in the manner provided in ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or county governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between county staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer approved under ORS 215.406 (1). [1973 c 522 §17, 18, 1977 c.766 §13; 1979 c.772 §11; 1981 c 748 §42; 1983 c.656 §1; 1983 c 827 §21]

**215.428 Final action on permit or zone change application required within 120 days; exceptions; mandamus authorized.**

(1) Except as provided in subsections (3) and (4) of this section, the governing body of a county or its designate shall take final action on an application for a permit or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete.

(2) If an application for a permit or zone change is incomplete, the governing body or its designate shall notify the applicant of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designate of the missing information. If the applicant refuses to submit the missing information, the application shall be deemed complete for the purpose of subsection (1) of this section on the 31st day after the governing body first received the application.

(3) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(4) The 120-day period set in subsection (1) of this section may be extended for a reasonable period of time at the request of the applicant.

(5) The 120-day period set in subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the county.

(6) Notwithstanding subsection (5) of this section, the 120-day period set in subsection (1) of this section does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the director under ORS 197.610 (1).

(7) If the governing body of the county or its designate does not take final action on an application for a permit or zone change within 120 days after the application is deemed complete, the applicant may apply in the circuit court of the county where the application was filed for a writ of mandamus to compel the governing body or its designate to issue the approval. The writ shall be issued unless the governing body shows that the approval would violate a substantive provision of the county comprehensive plan or land use regulations as defined in ORS 197.015. [1983 c 827 §23]

**215.430** [1955 c 682 §2; repealed by 1971 c.13 §1]

### PERMITTED USES IN ZONES

**215.438 Transmission towers; location; conditions.** The governing body of a county or its designate may allow a transmission tower over 200 feet in height to be established in any zone subject to reasonable conditions imposed by the governing body or its designate. [1983 c.827 §23a]

**215.440** [1955 c.682 §3; repealed by 1971 c.13 §1]

**215.448 Home occupations; where allowed; conditions; annual review of permits.** (1) The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation in any zone, including an exclusive farm use or forest zone, that allows residential uses, if the home occupation:

(a) Will be operated by a resident of the property on which the business is located;

(b) Will employ no more than five full or part-time persons;

(c) Will be operated in:

(A) The dwelling; or

(B) Other buildings normally associated with uses permitted in the zone in which the property is located; and

(d) Will not interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located.

(2) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section.

(3) Nothing in this section authorizes the governing body or its designate to permit construction of any structure that would otherwise be allowed in the zone in which the home occupation is to be established.

(4) The existence of home occupations shall not be used as justification for a zone change.

(5) A governing body of a county or its designate shall review a permit allowing a home occupation under subsection (1) of this section every 12 months following the date the permit was issued and may continue the permit if the home occupation continues to comply with the requirements of this section. [1983 c 743 §2]

**215.450** [1955 c.682 §4; repealed by 1971 c 13 §1]

**215.460** [1963 c.619 §15; repealed by 1971 c.13 §1]

### NOTICE TO PROPERTY OWNERS

**215.503 Legislative act by ordinance; mailed notice to individual property owners required by county for land use actions.** (1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) Except as otherwise provided by county charter:

(a) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by the governing body of a county shall be by ordinance.

(b) In addition to the notice required by ORS 215.060, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof or to adopt a new comprehensive plan, the governing body of a county shall cause a written individual notice of land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

(c) In addition to the notice required by ORS 215.223 (1), at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, the governing body of a county shall cause a written individual notice of land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(3) An additional individual notice of land use change required by paragraph (b) or (c) of subsection (2) of this section shall be approved by the governing body of the county and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall be mailed by first class mail to the affected owner at the address shown on the last available complete tax assessment roll. [1977 c 664 §37]

**215.505** [1969 c.324 §1; repealed by 1977 c.664 §42]

**215.508 Individual notice not required if funds not available.** Except as otherwise provided by county charter, if funds are not available from the Department of Land Conservation and Development to reimburse a county for expenses incurred in giving additional individual notices of land use change as provided in ORS 215.503, the governing body of the county is not required to give those additional notices. [1977 c 664 §38]

**215.510** [1969 c.324 §2, 1973 c.80 §47; repealed by 1977 c.664 §42]

**215.513 Notice form; forwarding of notice to property purchaser.** (1) A mortgagee, lienholder, vendor or seller of real property who receives a mailed notice required by this chapter shall promptly forward the notice to the purchaser of the property. Each mailed notice required by this chapter shall contain the following statement: "NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER."

(2) Mailed notices to owners of real property required by this chapter shall be deemed given to those owners named in an affidavit of mailing executed by the person designated by the governing body of a county to mail the notices. The failure of a person named in the affidavit to receive the notice shall not invalidate an ordinance. The failure of the governing body of a county to cause a notice to be mailed to an owner of a lot or parcel of property created or that has changed ownership since the last complete tax assessment roll was prepared shall not invalidate an ordinance. [1977 c.664 §39]

**215.515** [1969 c.324 §3; 1973 c.80 §48; repealed by 1977 c.766 §16]

**215.520** [1969 c.324 §4, repealed by 1977 c.664 §42]

**215.525** [1969 c.324 §6; repealed by 1977 c.664 §42]

**215.530** [1969 c.324 §7; repealed by 1977 c.664 §42]

**215.535** [1969 c.324 §5; 1973 c.80 §49; repealed by 1977 c.664 §42]

## COUNTY HOUSING CODES

**215.605 Counties authorized to adopt housing codes.** For the protection of the public health, welfare and safety, the governing body of a county may adopt ordinances establishing housing codes for the county, or any portion thereof, except where housing code ordinances are in effect on August 22, 1969, or where such ordinances are enacted by an incorporated city subsequent to August 22, 1969. Such housing code ordinances may adopt by reference published codes, or any portion thereof, and a cer-

tified copy of such code or codes shall be filed with the county clerk of said county. [1969 c.418 §1]

**215.610** [1969 c.418 §2; 1979 c.190 §407; repealed by 1983 c.327 §16]

**215.615 Application and contents of housing ordinances.** The provisions of housing code ordinances authorized by ORS 215.605 and 215.615 shall apply to all buildings or portions thereof used, or designed or intended to be used for human habitation, and shall include, but not be limited to:

(1) Standards for space, occupancy, light, ventilation, sanitation, heating, exits and fire protection.

(2) Inspection of such buildings.

(3) Procedures whereby buildings or portions thereof which are determined to be substandard are declared to be public nuisances and are required to be abated by repair, rehabilitation, demolition or removal.

(4) An advisory and appeals board. [1969 c.418 §3]

**215.990** [Subsections (1) and (2) enacted as 1955 c.439 §11, subsection (5) enacted as 1969 c.324 §8, 1971 c.13 §4; repealed by 1977 c.766 §16]

## LOTS OF RECORD

**Note:** Section 10 and subsection (2) of section 13, chapter 884, Oregon Laws 1981, as amended by section 15, chapter 826, Oregon Laws 1983, provide:

**Sec. 10.** (1) Notwithstanding ORS 197.005 to 197.430, 215.213 and any other provision of law, if at the time a person acquired a lot of record, establishment of a single-family dwelling was a permitted use on that lot of record, a county may not deny that person a permit for a single-family dwelling as a result of zoning, rezoning, adopting or amending a comprehensive plan or changing the text of a zoning code.

(2) This section does not apply to exclusive farm use zones created under ORS 215.203 or land designated as marginal land under section 2 of this 1983 Act [1981 c.884 §10; 1985 c.826 §15]

**Sec. 13.** (2) Any building permit issued under section 10 of this Act before July 1, 1985, shall not expire until July 1, 1987. [1981 c.884 §13]

## CHAPTERS 216 TO 220 [Reserved for expansion]