

Enrolled
House Bill 2328

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Representative Phil Barnhart for Northwest Propane Gas Association)

CHAPTER

AN ACT

Relating to standards for storage of liquid petroleum; creating new provisions; and amending ORS 197.015 and 476.060.

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

SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 480.410 to 480.460.

SECTION 2. (1) The regulation of liquid petroleum gas containers or receptacles by the State Fire Marshal pursuant to ORS 480.410 to 480.460 is not a program affecting land use under ORS 197.180.

(2) A local government may not regulate the siting, installation, maintenance or removal of a liquid petroleum gas container or receptacle regulated by the State Fire Marshal pursuant to ORS 480.410 to 480.460, except as provided in subsection (3) of this section or ORS 480.450 (7).

(3) A local government may:

(a) Regulate the siting and installation of a liquid petroleum gas container or receptacle with a capacity of more than 1,200 gallons or a group of containers and receptacles with an aggregate capacity of more than 4,000 gallons to protect the public health and safety.

(b) Regulate the siting and installation of liquid petroleum gas containers or receptacles in a flood plain regulated by local ordinance.

(c) Regulate the siting and installation of liquid petroleum gas containers or receptacles that are not accessory to an authorized or authorizable land use.

(d) Prohibit the siting and installation of liquid petroleum gas containers or receptacles of specified types or sizes in specific zones within an urban growth boundary to protect the public health and safety.

(e) Regulate, through the local government's assistant to the State Fire Marshal as described in ORS 476.060, the placement of liquid petroleum gas containers or receptacles for the purpose of fire prevention.

SECTION 3. ORS 197.015 is amended to read:

197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the statewide planning goals.

- (2) “Board” means the Land Use Board of Appeals.
- (3) “Commission” means the Land Conservation and Development Commission.
- (4) “Committee” means the Joint Legislative Committee on Land Use.
- (5) “Comprehensive plan” means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. “Comprehensive” means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. “General nature” means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is “coordinated” when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. “Land” includes water, both surface and subsurface, and the air.
- (6) “Department” means the Department of Land Conservation and Development.
- (7) “Director” means the Director of the Department of Land Conservation and Development.
- (8) “Goals” means the mandatory statewide planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.
- (9) “Guidelines” means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.
- (10) “Land use decision”:
- (a) Includes:
- (A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:
- (i) The goals;
- (ii) A comprehensive plan provision;
- (iii) A land use regulation; or
- (iv) A new land use regulation;
- (B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or
- (C) A decision of a county planning commission made under ORS 433.763;
- (b) Does not include a decision of a local government:
- (A) [*Which*] **That** is made under land use standards [*which*] **that** do not require interpretation or the exercise of policy or legal judgment;
- (B) [*Which*] **That** approves or denies a building permit issued under clear and objective land use standards;
- (C) [*Which*] **That** is a limited land use decision;
- (D) [*Which*] **That** determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility [*which*] **that** is otherwise authorized by and consistent with the comprehensive plan and land use regulations; [*or*]
- (E) [*Which*] **That** is an expedited land division as described in ORS 197.360; **or**
- (F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal of a liquid petroleum gas container or receptacle regulated exclusively by the State Fire Marshal under ORS 480.410 to 480.460;**
- (c) Does not include a decision by a school district to close a school;
- (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and
- (e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;
or

(B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.

(11) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

(12) "Limited land use decision" is a final decision or determination made by a local government pertaining to a site within an urban growth boundary which concerns:

(a) The approval or denial of a subdivision or partition, as described in ORS chapter 92.

(b) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

(13) "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025.

(14) "Metro" means a metropolitan service district organized under ORS chapter 268.

(15) "Metro planning goals and objectives" means the land use goals and objectives that a metropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

(16) "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

(17) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

(18) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197.

(19) "Special district" means any unit of local government, other than a city, county, metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025 authorized and regulated by statute and includes but is not limited to: Water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

(20) "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

(21) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SECTION 4. ORS 476.060 is amended to read:

476.060. (1) All fire marshals in those governmental subdivisions having such officers, and where no such officer exists, the chief of the fire department of every city or rural fire protection district in which a fire department is established, the marshal or chief of police, officer of any city in which no fire department exists, and constables, if any, shall be, by virtue of the offices held by them, assistants to the State Fire Marshal without additional recompense, subject to the duties and obligations imposed by law, and shall be subject to the direction of the State Fire Marshal in the execution of the provisions of this section and ORS 476.070, 476.090, 476.150 and 476.210 **and section 2 of this 2005 Act.**

(2) In addition to other duties under subsection (1) of this section, an individual designated as an assistant to the State Fire Marshal shall aid in the administration and enforcement of ORS 480.200 to 480.290 and 480.990 (6) upon the request of the State Fire Marshal.

Passed by House April 11, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate May 6, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State