

Enrolled House Bill 2438

Sponsored by Representative GARRARD; Representatives ANDERSON, BEYER, Senators ATKINSON, METSGER, RINGO (at the request of Oregon Association of Realtors)

CHAPTER

AN ACT

Relating to exception to land use planning goals; creating new provisions; and amending ORS 197.732.

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

SECTION 1. ORS 197.732 is amended to read:

197.732. (1) A local government may adopt an exception to a goal if:

(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas which do not require a new exception cannot reasonably accommodate the use;

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

(2) "Compatible," as used in subsection (1)(c)(D) of this section, is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(3) The commission shall adopt rules establishing:

(a) That an exception may be adopted to allow a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;

[(a)] **(b)** Under what circumstances particular reasons may or may not be used to justify an exception under subsection (1)(c)(A) of this section; and

[(b)] **(c)** Which uses allowed by the applicable goal must be found impracticable under subsection (1) of this section.

(4) A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons which demonstrate that the standards of subsection (1) of this section have or have not been met.

(5) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(6) Upon review of a decision approving or denying an exception:

(a) The board or the commission shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;

(b) The board upon petition, or the commission, shall determine whether the local government's findings and reasons demonstrate that the standards of subsection (1) of this section have or have not been met; and

(c) The board or commission shall adopt a clear statement of reasons which sets forth the basis for the determination that the standards of subsection (1) of this section have or have not been met.

(7) The commission shall by rule establish the standards required to justify an exception to the definition of "needed housing" authorized by ORS 197.303 (3).

(8) As used in this section, "exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(c) Complies with standards under subsection (1) of this section.

(9) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement Part) on or before August 9, 1983, [shall continue to be valid and shall] **continues to be valid and is not** be subject to this section.

SECTION 2. The amendments to ORS 197.732 by section 1 of this 2005 Act apply to a proposal initiated on or after the effective date of this 2005 Act to adopt an exception to a land use planning goal.

Passed by House February 23, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate May 2, 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