

31.3.10 Permits – Particular Uses – Home Occupations. Under ORS 215.448(1) and the local code provision implementing that statute, a log home kit manufacturing facility is not a home occupation where the majority of the business activities in connection with the business, including the construction, dismantling, and transport of the homes are not conducted in the dwelling or in any structure normally associated with uses in an EFU zone. *Ott v. Lake County*, 54 Or LUBA 502 (2007).

31.3.10 Permits – Particular Uses – Home Occupations. Where the definition of “home occupation” in the local code includes a business activity that is conducted in a *dwelling* or *accessory building* normally associated with the primary uses allowed in the underlying zone, a local government need not determine whether the proposed *business* is normally associated with the permitted uses allowed in the zone. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

31.3.10 Permits – Particular Uses – Home Occupations. Where the local noise standard applicable to home occupations provides that the proposed home occupation “shall not create noise that, when measured off the subject property, exceeds the greater of 60 dba or the ambient noise level,” the hearings officer errs in interpreting that provision to allow noise spikes in excess of 60 dba. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

31.3.10 Permits – Particular Uses – Home Occupations. A hearings officer’s determination that it is feasible for a proposed home occupation to comply with local code criteria prohibiting the creation of vibration, glare, fumes or odors detectable to normal sensory perception off the subject property with a condition relocating the parking area for diesel vehicles away from abutting properties and limiting idling time of diesel vehicles to 10 minutes is not supported by substantial evidence, where the evidence relied upon is a conclusory statement in a planning staff memorandum that fumes and odors could be eliminated by limiting idling time and providing a sufficient buffer. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

31.3.10 Permits – Particular Uses – Home Occupations. Where a local home occupation standard prohibits external evidence of a home occupation, an interpretation of that standard that allows a vehicle related to the home occupation to traverse the subject property to access an accessory structure in which the vehicle will be stored is reasonable. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

31.3.10 Permits – Particular Uses – Home Occupations. A local government interpretation of its own code that allows home occupations to exhibit some characteristics of a business does not violate ORS 197.829(1) when the local government code expressly allows for up to five employees, on-premises signage, and on-premises parking. *Stewart v. Coos County*, 45 Or LUBA 525 (2003).

31.3.10 Permits - Particular Uses - Home Occupations. A condition of approval of a home occupation permit for a bed and breakfast inn that prohibits continued operation of a special events business as part of that home occupation does not violate the

Religious Land Use and Institutionalized Persons Act of 2000, simply because some of those special events might be religious in nature or because one of the owners of the home occupation is an ordained minister and might perform weddings that might be scheduled by the special events business. *Cookman v. Marion County*, 44 Or LUBA 630 (2003).

31.3.10 Permits – Particular Uses – Home Occupations. It is within a city council’s discretion to interpret its zoning ordinance to allow commercial-sized greenhouses as outright permitted uses in a residential zone and to allow a related home occupation florist business as a conditional use without considering the impacts that may be associated with the greenhouses. *Latta v. City of Joseph*, 39 Or LUBA 318 (2001).

31.3.10 Permits – Particular Uses – Home Occupations. A city council does not commit reversible error by imposing a condition that requires that a parking lot for a home occupation be accessed from an alley, notwithstanding that the zoning ordinance defines “alley” as a street that provides secondary access to property. *Latta v. City of Joseph*, 39 Or LUBA 318 (2001).

31.3.10 Permits – Particular Uses – Home Occupations. Where an issue was raised below concerning whether a proposed bed and breakfast facility violated a plan policy regulating commercial development and is not addressed in a hearings officer’s decision and the policy itself and related plan and land use regulation provisions are unclear whether the policy applies, LUBA will remand the decision. *Hatfield v. City of Portland*, 37 Or LUBA 664 (2000).

31.3.10 Permits – Particular Uses – Home Occupations. Where a county prohibits the refile of a new or substantially similar application until two years after a final decision denying an application; the decision maker determines that a second application, filed less than a year after the first, was “substantially similar” because it involved the same use on the same property and the changes in the facts supporting the application were otherwise insufficient to demonstrate that the application is different; and the decision maker points to evidence in the record to support his conclusions, that decision is supported by substantial evidence. *Munn v. Clackamas County*, 37 Or LUBA 621 (2000).

31.3.10 Permits – Particular Uses – Home Occupations. Where the statute authorizing counties to permit home occupations is amended to remove the limitation that the home occupation be conducted entirely within a dwelling or accessory building, but the county’s home occupation ordinance still reflects the former statute, the county is not required to apply its home occupation ordinance consistently with the stricter requirements of the former statute and case law interpreting that statute. *Greer v. Josephine County*, 37 Or LUBA 261 (1999).

31.3.10 Permits – Particular Uses – Home Occupations. A county exceeds its interpretational discretion under ORS 197.829 and *Clark v. Jackson County* where it interprets an ordinance prohibiting home occupations that require alteration of a structure in a manner that changes the character of the structure under the Uniform Building Code,

to allow such home occupations as long as the structure is altered to conform to the Uniform Building Code. *Greer v. Josephine County*, 37 Or LUBA 261 (1999).

31.3.10 Permits – Particular Uses – Home Occupations. It is reasonable and correct to interpret a code provision requiring that "vehicle to be repaired shall be located within an enclosed building" to require that repaired vehicles remain within an enclosed building until they are removed from the property. *Gibbons v. Clackamas County*, 35 Or LUBA 210 (1998).

31.3.10 Permits – Particular Uses – Home Occupations. It is reasonable and correct to consider vehicles used to pick up and drop off customers who have vehicles waiting to be repaired as "vehicles associated with" an auto repair home occupation. *Gibbons v. Clackamas County*, 35 Or LUBA 210 (1998).

31.3.10 Permits – Particular Uses – Home Occupations. Where petitioner's home occupation includes the movement and storage of vehicles on the subject property, that activity is external evidence of the business for purposes of a local ordinance based on ORS 215.448 that limits allowable external evidence of a home occupation, even though such activity is incidental to the primary business activity. *Sheldon Fire & Rescue, Inc. v. Washington County*, 34 Or LUBA 474 (1998).

31.3.10 Permits – Particular Uses – Home Occupations. Where a local ordinance limits external evidence of a home occupation to one small sign, a hearings officer may reasonably interpret the ordinance to mean that the storage and movement of vehicles on the subject property is external evidence of the business, and therefore prohibited. *Sheldon Fire & Rescue, Inc. v. Washington County*, 34 Or LUBA 474 (1998).

31.3.10 Permits – Particular Uses – Home Occupations. A local governing body is not entitled to interpretive deference under ORS 197.829 and *Clark v. Jackson County* when interpreting statutory requirements for home occupations. *Holsheimer v. Clackamas County*, 28 Or LUBA 279 (1994).

31.3.10 Permits – Particular Uses – Home Occupations. Where a business is actually carried out as more than one separate and distinct part, any such part could be approved as a home occupation provided such part of the business complies with the requirements of ORS 215.448(1). *Holsheimer v. Clackamas County*, 28 Or LUBA 279 (1994).

31.3.10 Permits – Particular Uses – Home Occupations. For purposes of qualifying as a home occupation, the *storage* of paving materials, vehicles and equipment is not properly viewed as a part of a paving business that is separate and distinct from the daily *use* of such paving materials, vehicles and equipment in the business operation. *Holsheimer v. Clackamas County*, 28 Or LUBA 279 (1994).

31.3.10 Permits – Particular Uses – Home Occupations. In addressing the ORS 215.448(1)(c) requirement that a proposed home occupation "will not interfere with existing uses on nearby land or with other uses permitted in the zone in which the

property is located," the local government must identify the uses permitted in the applicable zone. *Holsheimer v. Clackamas County*, 28 Or LUBA 279 (1994).

31.3.10 Permits – Particular Uses – Home Occupations. Where LUBA remands a local government decision granting a home occupation permit, the permit expires on the date the decision is remanded. Under a local code requirement limiting home occupation permits to one year, the year is measured from the date of a decision on remand granting the permit, not the date of the original permit decision. *Wuester v. Clackamas County*, 27 Or LUBA 314 (1994).

31.3.10 Permits – Particular Uses – Home Occupations. Regardless of whether the local decision maker imposed a condition requiring satisfaction of DEQ noise standards, DEQ noise standards are not approval criteria for an auto repair home occupation permit, where the local code does not make DEQ noise standards applicable approval criteria. *Wuester v. Clackamas County*, 27 Or LUBA 314 (1994).

31.3.10 Permits – Particular Uses – Home Occupations. Where a code approval standard for home occupations in a resource zone requires that a home occupation be "situated upon generally unsuitable land for the production of farm and forest products," the local government may interpret the standard to require that the entire property on which the home occupation is proposed to be located be "generally unsuitable." *Smith v. Clackamas County*, 25 Or LUBA 568 (1993).

31.3.10 Permits – Particular Uses – Home Occupations. ORS 215.448(1) is an enabling statute that both authorizes local governments to approve home occupations and places limits on that authorization. A local government may not authorize home occupations that violate those statutory limitations. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

31.3.10 Permits – Particular Uses – Home Occupations. Under ORS 215.448(1)(c), home occupations may not be conducted outside the dwelling and other buildings normally associated with permitted uses in the zone. ORS 215.448(1)(c) does not provide for a *de minimis* exception to that requirement. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

31.3.10 Permits – Particular Uses – Home Occupations. Where the challenged decision authorizes a home occupation in an *existing* structure, the ORS 215.448(3) prohibition against authorizing construction of a structure that would not otherwise be allowed in the zone could not be violated. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

31.3.10 Permits – Particular Uses – Home Occupations. Under ORS 215.448(1)(c), home occupations must be operated in dwellings or other buildings normally associated with uses permitted in the applicable zone. Where the county adopts no findings addressing this requirement, the decision must be remanded for findings of compliance with the requirement. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

31.3.10 Permits – Particular Uses – Home Occupations. A condition of approval requiring that not more than 1000 square feet of an existing structure be partitioned for use in conjunction with a home occupation is sufficient to assure compliance with a local code provision requiring that home occupations occupy no more than 1000 square feet of an accessory building. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

31.3.10 Permits – Particular Uses – Home Occupations. Where a county interprets a forest zone requirement that nonforest uses be located on generally unsuitable land for production of farm or forest products as requiring consideration of the suitability of the entire parcel, the county exercises its interpretive discretion to the fullest in interpreting a home occupation approval standard that incorporates the nonforest use standard by reference, as requiring consideration of only the land under the existing building where the home occupation will be located. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

31.3.10 Permits – Particular Uses – Home Occupations. Where a local government determines an application for a home occupation on a parcel adjoining another parcel on which an earlier application for the same home occupation was denied, is an application for a "substantially similar" use, LUBA will defer to that interpretation of the local code requirement that an application may not be "substantially similar" to a previously denied application. *Roozenboom v. Clackamas County*, 24 Or LUBA 433 (1993).

31.3.10 Permits – Particular Uses – Home Occupations. A local code requirement that a home occupation be "operated in" a dwelling or other buildings normally associated with the dwelling is not satisfied by the parking of repossessed vehicles outside of the dwelling until such vehicles are either loaded on trucks for disposal or driven away. *Stevenson v. Douglas County*, 23 Or LUBA 227 (1992).

31.3.10 Permits – Particular Uses – Home Occupations. A local code provision allowing a "resident" of a dwelling to conduct a home occupation does not require that such "resident" also be the owner of the dwelling in which the home occupation is to be conducted. *Tarbell v. Jefferson County*, 21 Or LUBA 294 (1991).

31.3.10 Permits – Particular Uses – Home Occupations. Where the local code provides that a property owner may file a conditional use application, a property owner has standing to file an application for approval of a home occupation, even though the property owner does not propose to reside in the dwelling and conduct the home occupation. *Tarbell v. Jefferson County*, 21 Or LUBA 294 (1991).