

**31.3.10 Permits – Particular Uses – Home Occupations.** Where an applicant proposes to bifurcate a proposed business development into two segments, one to be approved as a conditional use, and another to be approved as a home occupation, to avoid application of permit standards that would otherwise prohibit the business use viewed as a whole, both sets of permit requirements potentially apply to any components of the segmented use that are shared or overlap. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

**31.3.10 Permits – Particular Uses – Home Occupations.** An argument that the hearings officer failed to address a statutory home occupation standard requiring that the home occupation be operated “substantially” within a dwelling or accessory structure provides no basis for reversal or remand, where the county has adopted and applied a more rigorous home occupation standard that prohibits external evidence of the home occupation, except for signs and limited vehicle parking. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

**31.3.10 Permits – Particular Uses – Home Occupations.** Where in order to avoid code prohibitions on “external evidence” of a home occupation an applicant attempts to authorize all outdoor processing associated with a log home manufacturing business under a conditional use permit for the primary processing of forest products, and all indoor processing associated with the business as part of a home occupation, any activities that use shared equipment, vehicles or employees, such as transporting logs from the outdoor primary processing site to the indoor secondary processing site, are not authorized exclusively under the primary processing permit, but are also subject to the prohibition on external evidence required of the home occupation permit. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

**31.3.10 Permits – Particular Uses – Home Occupations.** The primary processing of logs pursuant to a conditional use permit for the primary processing of forest products is not itself subject to home occupation standards, even if the logs are later transported to a structure on the property for secondary processing under a home occupation permit. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

**31.3.10 Permits – Particular Uses – Home Occupations.** All on-site vehicle use associated with a proposed home occupation is subject to code limitations on the number and weight of vehicles, even if the vehicles are also associated with other uses allowed or conditionally allowed on the property. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

**31.3.10 Permits – Particular Uses – Home Occupations.** A hearings officer does not err in requiring the applicant for a home occupation to demonstrate that the home occupation is “clearly subordinate” to residential use of the property, where the code defines home occupation to include only commercial uses that are clearly subordinate to residential use of the property, and the definition functions to disqualify home occupations that do not meet the definition. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

**31.3.10 Permits – Particular Uses – Home Occupations.** In determining whether a home occupation is “clearly subordinate” to residential use of the property, a hearings officer must consider all activities associated with the home occupation, including vehicle parking and usage on the property. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

**31.3.10 Permits – Particular Uses – Home Occupations.** Remand is necessary where the hearings officer concludes that a portion of a proposed log home manufacturing facility operating as a home occupation is “clearly subordinate” to residential use of the property, but without identifying what features or elements of the home occupation and residential uses are compared or considered in determining whether the home occupation is clearly subordinate to the residential use. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

**31.3.10 Permits – Particular Uses – Home Occupations.** A reasonable decision-maker could rely upon a diesel fume test conducted by the applicant to determine whether diesel fumes are detectable at the property line, combined with a condition of approval limiting idling and operation within 60 feet of the property line, to conclude that a “no fume detection” home occupation standard is met, notwithstanding conflicting anecdotal testimony from the neighbors across the road that they can sometimes detect diesel fumes. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

**31.3.10 Permits – Particular Uses – Home Occupations.** A code provision requiring that a home occupation shall not utilize over 600 square feet of floor area cannot plausibly be interpreted to limit only the square feet physically occupied by a truck or trailer as part of a home occupation to perform maintenance work on trucks and trailers. Because the home occupation activity is the maintenance and not the storage of trucks and trailers, any interpretation that ignores the square footage necessary for employees to perform maintenance tasks is not consistent with the text of the code provision. *Stevens v. City of Island City*, 71 Or LUBA 275 (2015).

**31.3.10 Permits – Particular Uses – Home Occupations.** A finding that a proposed truck maintenance home occupation will comply with a 600-square-foot floor area limitation is inadequate and not supported by substantial evidence, where the findings do not address how much floor area employees will use in performing maintenance tasks, and there is no evidence in the record supporting a finding that the physical area occupied by trucks, tools, storage, and the area needed to perform maintenance tasks will occupy no more than 600 square feet. *Stevens v. City of Island City*, 71 Or LUBA 275 (2015).

**31.3.10 Permits – Particular Uses – Home Occupations.** Remand is required where city code limits a home occupation to 600 square feet in size in an accessory structure, the undisputed evidence is that the home occupation will occupy more than 600 square feet, but the city’s decision simply imposes a condition of approval limiting the home occupation to 600 square feet. *Stevens v. City of Island City*, 68 Or LUBA 112 (2013).

**31.3.10 Permits – Particular Uses – Home Occupations.** Where the applicant for a home occupation fails to provide information regarding the location of office functions and equipment, and the code limits the entire home occupation to a 600-square foot space that is already fully occupied by other functions, remand is necessary for the city to address the issue and impose any conditions necessary to ensure that office functions on the site comply with the code. *Stevens v. City of Island City*, 68 Or LUBA 112 (2013).

**31.3.10 Permits – Particular Uses – Home Occupations.** A petitioner’s mere disagreement with a city’s conclusion that, as conditioned, a commercial truck repair home occupation located in an accessory structure is secondary to residential use of the property does not establish that the city’s conclusion is not supported by substantial evidence. *Stevens v. City of Island City*, 68 Or LUBA 112 (2013).

**31.3.10 Permits – Particular Uses – Home Occupations.** Where the code limits a home occupation to one employee, and the applicant proposes one full-time mechanic to maintain the applicant’s commercial trucking fleet, but proposes no way for the applicant’s drivers to bring and retrieve trucks for maintenance without violating the one-employee rule, remand is required for the city to address the issue and impose any necessary conditions. *Stevens v. City of Island City*, 68 Or LUBA 112 (2013).

**31.3.10 Permits – Particular Uses – Home Occupations.** Remand is required where the code prohibits use of noisy equipment as part of a home occupation, but the decision authorizes diesel truck start up and dispatch at night based on the presence of masking noise from nearby industrial uses, but does not explain how truck noise can be masked at night when nearby industrial uses are not active. *Stevens v. City of Island City*, 68 Or LUBA 112 (2013).

**31.3.10 Permits – Particular Uses – Home Occupations.** A home occupation standard requiring that conditions of approval be “readily administered by City staff” is met, where the city imposed 10 conditions of approval that are reasonably clear and objective and that primarily involve outdoor activities that can be readily observed and verified. *Stevens v. City of Island City*, 68 Or LUBA 112 (2013).

**31.3.10 Permits – Particular Uses – Home Occupations.** In approving a wedding venue and event business in a forest zone under a code provision that allows, on a “temporary” basis, uses otherwise not allowable in the applicable zone, a county must consider whether the proposed use is properly characterized as a “home occupation,” which is an allowed conditional use in the forest zone, subject to restrictions. If the proposed is properly characterized as a home occupation allowable in the forest zone, then the code does not allow the county to issue a temporary use permit for that use. *White v. Lane County*, 68 Or LUBA 423 (2013).

**31.3.10 Permits – Particular Uses – Home Occupations.** A county does not improperly substitute a condition of approval for a finding that the proposed home occupation will be conducted “primarily in buildings,” where the county finds based on testimony below that the home occupation will be conducted primarily in buildings and the county

imposes a condition of approval that no more than 20 percent of any home occupation event may be conducted outside a building. *Green v. Douglas County*, 67 Or LUBA 234 (2013).

**31.3.10 Permits – Particular Uses – Home Occupations.** ORS 215.448(1) requires that a home occupation “shall employ on the site no more than five full-time or part-time persons.” Because the statute does not specify the time of measurement, it is possible to interpret the ORS 215.448(1) five employee limit to apply “at any one time.” *Green v. Douglas County*, 67 Or LUBA 234 (2013).

**31.3.10 Permits – Particular Uses – Home Occupations.** Where a county zoning ordinance requires that any violation of the county’s development ordinance must be corrected before a permit for new development on the property can be approved, a county’s interpretation that the correction requirement is triggered only if the county enforcement officer finds there is a violation, and is not triggered by mere allegations of violations, is plausible and must be sustained under *Siporen v. City of Medford*, 349 Or 247, 266, 243 P3d 776 (2010). *Green v. Douglas County*, 67 Or LUBA 234 (2013).

**31.3.10 Permits – Particular Uses – Home Occupations.** ORS 215.448(1) authorizes counties to approve home occupations but requires that home occupations in EFU, forest and mixed farm and forest zones must be “operated substantially in \* \* \* the [d]welling \* \* \* or buildings normally associated with uses permitted in the zone in which the property is located.” As used in ORS 215.448(1), buildings must be an enclosed structure of some type, and activities that occur in open-sided structures such as gazebos and pavilions are essentially out-of-doors activities for purposes of ORS 215.448(1). *Green v. Douglas County*, 63 Or LUBA 200 (2011).

**31.3.10 Permits – Particular Uses – Home Occupations.** In amending ORS 215.448(1) in 1995 to authorize home occupations to include vehicle parking and to be operated “substantially” in a residence or buildings the legislature was concerned with four cases where permits for home occupations had been rejected because they included outdoor parking and other outdoor activities. In attempting to understand what the legislature meant by “substantially,” it is appropriate to assume the legislature intended that those four home occupations, which included limited outdoor activity, would have been approvable under the amended statute. *Green v. Douglas County*, 63 Or LUBA 200 (2011).

**31.3.10 Permits – Particular Uses – Home Occupations.** Under the ORS 215.448(1)(c) requirement that a home occupation be operated “substantially” in the dwelling or a building on the property, the home occupation must be conducted in the residence or buildings “to a large degree,” “in the main,” or as the “main part,” compared to the portion of the home occupation conducted outside. In other words, the home occupation must be “largely” or “mainly” operated in the dwelling or buildings. *Green v. Douglas County*, 63 Or LUBA 200 (2011).

**31.3.10 Permits – Particular Uses – Home Occupations.** ORS 215.448(1)(b) requires that a home occupation employ no more than five full-time or part-time persons. For purposes of applying that statutory limit, persons who are hired to assist in producing weddings and other events at an event-site home occupation must be counted in applying the ORS 215.448(1)(b) five person limit, and it does not matter whether the persons who are employed to produce the events are hired by the residents of the property or by those who attend events at the property. *Green v. Douglas County*, 63 Or LUBA 200 (2011).

**31.3.10 Permits – Particular Uses – Home Occupations.** When a local code provision prevents the filing of substantially similar applications after the denial of a previous application, a home occupation permit application that proposes the same general construction contracting activity as the first application is nonetheless not substantially similar to the first application when it significantly reduces the scope and intensity of the proposed use. *Henkel v. Clackamas County*, 56 Or LUBA 495 (2008).

**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 refiling 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).