



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: January 16, 2019

Department: Public Works Agenda Planning Date: Jan 10, 2019 Time required: 5 min

Audio/Visual aids: None

Contact: Brandon Reich Phone: 503-566-4175

Department Head Signature:

TITLE: Schedule Adoption of Ordinance Amending Urban and Rural Zone Codes.

Issue, Description & Background: On August 1, 2018, the Marion County Board of Commissioners initiated consideration of code updates to the urban and rural zone codes, and directed the Marion County Planning Commission to hold a hearing on the matter and make a recommendation to the board. On October 30, 2018, the Marion County Planning Commission held a public hearing to consider the amendments. No one provided public testimony at the hearing. The planning commission voted unanimously to recommend the code amendments be adopted by the board of commissioners. At a management update meeting on November 26, 2018, the board directed staff to schedule a public hearing for December 19, 2018. On December 5, 2018, the board scheduled the public hearing for December 19, 2018. On December 19, 2018, the board held a public hearing to consider the amendments and approved adoption of amendments to the urban and rural zone code, directing staff to return with an ordinance reflecting its decision. The board may now schedule adoption of the ordinance amending the urban and rule zone codes.

Financial Impacts: None.

Impacts to Department & External Agencies: None.

Options for Consideration: 1. Schedule adoption of the ordinance for January 23, 2019. 2. Direct staff to prepare a modified ordinance. 3. Choose not to proceed with adopting an ordinance at this time.

Recommendation: Staff recommends the board of commissioners schedule final consideration and adoption of the ordinance for January 23, 2019.

List of attachments: Ordinance

Presenter: Brandon Reich



MARION COUNTY BOARD OF COMMISSIONERS

# Board Session Agenda Review Form

*Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)*

Copies to:

Brandon Reich - breich@co.marion.or.us

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

In the matter of initiating consideration of	)	LA 18-001
amendments to Marion County Urban and	)	Clerk's File No:
Rural Zone Code Chapters 16 and 17 to	)	Legislative Amendment
conform to changes in state law and	)	
clarifying amendments.	)	
	)	

AN ADMINISTRATIVE ORDINANCE

**ORDINANCE NO. \_\_\_\_\_**

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

**SECTION I. Purpose**

This ordinance is enacted pursuant to the authority granted to general law counties in the State of Oregon by ORS Chapters 203, 197 and 215 to implement the County Comprehensive Plan by amending the Marion County Code provisions related to urban and rural zoning.

**SECTION II. Authorization**

The Marion County Board of Commissioners initiated legislative amendments to the Marion County Urban and Rural Zone Codes by Resolution 18R-25, dated August 1, 2018 and directed the Marion County Planning Commission to hold a public hearing on the matter and made a recommendation to the Board. The Planning Commission held a public hearing on October 30, 2018, for which proper notice and advertisement were given. The Planning Commission voted unanimously to recommend the code amendments to the Board based on evidence in the record. The Marion County Board of Commissioners held a public hearing on December 19, 2018, for which proper notice and advertisement were given. All interested persons were given the opportunity to speak or present written statements.

**SECTION III. Evidence and Conclusion**

The amendments of the Marion County Urban and Rural Zone Codes made hereunder are based on consideration and analysis of the operation of present zoning regulations and requirements of state law. Due consideration was given to the evidence in the record. No testimony was received at the hearings. As set forth in Exhibit A, attached hereto and incorporated herein, the Board finds that the amendments to the Urban and Rural Zone Codes are in compliance with county ordinance and state law, its policies and requirements and federal law.

SECTION IV. Amendments

Marion County Code Title 16 (Marion County Urban Zone Code) and Marion County Code Title 17 (Marion County Rural Zone Code) are amended as set forth in Exhibit B, attached hereto and incorporated herein.

SECTION V. Severability and Savings Clause

Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or any policy, provision, finding, statement, conclusion, or designation to a particular land use or area of land, or any other portion, segment or element of this ordinance or of the amendments adopted hereunder, be declared invalid for any reason, that declaration shall not affect the validity of any provision of this ordinance or of any other Marion County Code provisions amended herein.

SECTION VI. Effective Date

This ordinance being necessary to protect the public health, safety and welfare, an emergency is declared to exist and this ordinance shall become effective upon its passage.

SIGNED and FINALIZED this \_\_\_\_\_ day of January, 2019, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

**JUDICIAL NOTICE**

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

**Urban and Rural Zone Code Amendments  
Legislative Amendment 18-001**

**Facts and Findings**

**Oregon Revised Statute Amendments**

HB 2179 (2017)	Mandatory 17.136, 17.137, 17.139	Permits onsite treatment of septage prior to application of biosolids on EFU land.
SB 677 (2017)	Mandatory 17.125, 17.136, 17.137, 17.139	Permits cider business similar to how wineries are now permitted.
SB 1051 (2017)	Mandatory 16.49	Requires a jurisdiction of a certain size to permit accessory dwelling units. County has already adopted standards, should incorporate definition in ORS 197.312 to be consistent with bill.

In 2017, the legislature adopted a number of bills that amended state statutes. These changes should be incorporated into the zone code.

HB 3012 (2017)	Optional 17.128	Permits a historic home to be converted to an ADU when home is replaced in an Acreage Residential zone.
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This bill permits a historic home (constructed between 1850 and 1945) to be converted to an accessory dwelling unit when it's replaced with a new home on a property. Staff recommends the rural code be amended to allow this provision.

HB 3012 (2018)	Optional 17.136, 17.137, 17.139	Permits equine and equine-affiliated therapeutic and counseling activities as a conditional use.
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Marion County already could permit this use as a commercial activity in conjunction with farm use. The bill goes into effect in 2019 and limits the use to buildings that existed as of January 1, 2019. The bill limits the use to existing buildings or new buildings, if the new buildings are accessory, incidental and subordinate to the farm use of the tract, which is more restrictive than permitting them as a commercial activity in conjunction with farm use. In addition the bill places licensing requirements that staff may not be qualified to apply. Staff does not recommend this bill be incorporated into county code.

**Staff Recommended Amendments**

16.6.010	Optional	Permits a residence on a commercially zoned parcel in the Lyons Urban Growth Boundary.
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There are numerous single-family dwellings on land zoned commercial within the Urban Growth Boundary of Lyons. The property owners of these parcels have trouble obtaining a loan, refinancing or selling their properties because the zone does not permit a single-family dwelling outright. The proposed

amendment would permit a single-family dwelling outright, as well as allow for commercial uses, caretaker dwellings and the future redevelopment of a lot from a single-family use into a commercial use.

16.19.110 17.178.040	Optional	Clarifies standards by which an emergency facility could be approved in a floodplain.
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Clarifies that an emergency facility could be approved in a 500-year floodplain if the facility is needed to provide emergency response services in a timely manner.

16.28.020	Optional	Clarifies setbacks that apply to accessory structures in non-required front yard.
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Currently code is silent of what setbacks to apply to an accessory structure in the non-required front yard. (The required front yard is 12 feet). Planning has always permitted an accessory structure in the non-required front yard to be placed using the same setbacks as the primary structure (i.e., dwelling, which has a 12 foot front yard setback and a 5 foot side yard setback). This amendment would codify permitting an accessory structure in the non-required front yard to be placed using the same setbacks as the primary structure.

16.38.010 17.110.840	Optional	Clarifies that the Board may send a matter to the planning commission or hearings officer for a recommendation without a hearing.
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Currently code is unclear whether the Board can refer an action to the county planning commission for a recommendation without the commission first holding a hearing on the matter. This clarifies that the Board may refer for a recommendation without a hearing and makes urban and rural codes match in this aspect.

17.116.120	Optional	Clarifies that the limits for adjustments do not apply to adjustments for the special setback in resource zones. The limits were not intended to apply, but appear to without the proposed amendment.
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Special setbacks are applied to dwellings near resource land, 100 feet from farm uses and 200 feet from forest uses. Years ago the code was changed to permit a reduction in the special setback through the adjustment process instead of the previous administrative review process. Inadvertently, that code amendment made it appear that the limits for adjustments apply. This was not the intention and, in fact, the code amendment did not include limits on the adjustment amount for a special setback reduction. This code amendment clarifies that the process for adjustments applies to an adjustment for a special setback, but not the limits in 17.116.030.

17.119	Optional	Conditional use chapter references process in variance chapter. Moves language directly into conditional use chapter to clarify process. Makes conditional use effective for two years and cessation after one year, which is consistent with current practice.
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The conditional use chapter has historically referenced parts of the variance chapter for its process, particularly appeals, effective date of the use, cessation and transfer of use, etc. There are differences between conditional uses and variances, for instance conditional uses must be exercised within two years

to be effective and variances must be exercised within one year. Referencing the variance procedures in the conditional use section has been confusing and conflicting because of the different time limits. This amendment places the conditional use procedure solely in the conditional use section of code.

16.25.200 17.126.020	Optional	Permits kitchens connected by “open, livable” space and in a domestic suite. Covenant should not be required since planning reviews plans when building is constructed.
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Planning has historically permitted additional dwellings in a structure if the kitchens were connected by “open, livable” space, area of the dwelling that is finished and connected by hallways or rooms with no doorways between kitchens. This ensures that the dwelling remain for single-family use and cannot be used as a duplex, which is not permitted on rural land. It has recently come to planning’s attention that a domestic suite could be constructed where the two kitchens are separated by a door that locks. The locking door prevents the dwelling from being a duplex or shared housing. The domestic suite option would provide family members the ability to have their own quasi-separate living space while still being part of a single-family dwelling.

17.171.020	Optional	Permits wireless communication facilities (cellular towers) outright in the rural Public zone subject to certain standards.
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Wireless communication facilities are a form of public utility, providing wireless phone service to customers in an area, which is consistent with the public zone. The current public zone permits wireless communication facilities subject to certain standards but does not subject them a land use review. This amendment clarifies the standards which would apply to wireless communication facilities, including attached facilities, in the rural public zone, without land use review.

17.172.400	Optional	Clarifies when a parcel served by a sewage disposal system (septic system) must be reviewed through permitting. Corrects references in code.
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Currently all parcels created through the partition or property line adjustment process require septic review. This amendment clarifies under what circumstances septic review would be required. For instance, in some instances the parcel is large enough or the septic system would be located entirely on one parcel and a review would not be necessary.

**General Amendments**

**Urban**

16.01.020	Mandatory	Includes zone/plan designations for Public zones.
16.19.100	Mandatory	Corrects reference to the county’s flood insurance study.
16.19.110 16.19.130	Optional	Moves an approved use from procedures section to exemptions section.
16.19.140	Mandatory	Adds reference to floodwater velocity standard that applies when crawlspace construction used in floodplain.

16.25.200	Scrivener's Error	Corrects reference in code.
16.49.171	Mandatory	Corrects definition to mobile food vendor to match current county code.

**Rural**

17.110.270	Scrivener's Error	Corrects reference in code
17.112.020	Optional	ODOT confirmed it does not require a 70 foot centerline setback. Removing this special setback would mean the standard 50 foot state highway setback would apply.
17.122	Optional	Clarifies language in the code.
17.128.020	Scrivener's Error	Corrects reference in code
17.136.040 17.137.040 17.138.035 17.139.040	Mandatory	DLCD no longer includes wildlife habitat conservation plan as a land use action. The property owner coordinates with the Marion County Tax Assessor to implement a plan.
17.136.050 17.137.050 17.138.040 17.139.050	Mandatory	Incorporates reference into code to MCC section regarding solid waste disposal facilities.
17.171.020	Optional	Permits wireless communication facilities (cellular towers) without provision of items since there is no requirement for a land use review.
17.172.400	Scrivener's Error	Corrects references in code
17.178.030	Mandatory	Corrects reference to the county's flood insurance study.
17.178.040 17.178.050	Optional	Moves an approved use from procedures section to exemptions section.
17.178.060	Mandatory	Includes reference to floodwater velocity that applies when crawlspace construction approved in floodplain.

**Decision**

Based on the above facts and findings, the Board finds that the amendments to the Urban and Rural Zone Codes are in compliance with county ordinance and state law, its policies and requirements, and federal law.

**ADDITIONS IN BOLD AND UNDERLINED**

**DELETIONS IN STRIKEOUT**

**Staff comments in grey highlight.**

**Chapter 16.06  
COMMERCIAL RETAIL – CR ZONE**

**16.06.010 Uses.**

A. The following uses, when developed under the applicable development standards in this title, are permitted in the CR zone:

49. **In the City of Lyons Urban Growth Boundary, on a lot or parcel that existed on [date of adoption of this ordinance], a single-family residence.**

Optional: Permits a residence on a commercially zoned parcel in the Lyons urban area. This area characterized by an historic mixture of commercial and residential uses in the commercial zone.

**Chapter 16.19  
FLOODPLAIN OVERLAY ZONE**

**16.19.100 General provisions.**

The following regulations apply to all unincorporated lands in identified floodplains as shown graphically on the zoning maps. The floodplain comprises those areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled the “Flood Insurance Study for Marion County, Oregon and Unincorporated Areas” dated ~~January 19, 2000, with accompanying floodway and flood insurance rate maps, and amendments taking effect on August 15, 1979; August 19, 1987; September 30, 1993; December 19, 1995; June 19, 1997; and January 2, 2003,~~ and subsequent FEMA issued letter of map amendments and letter of map revisions related to these adopted studies and maps. The floodplain also comprises areas identified and mapped by Marion County that were not studied by the Flood Insurance Study. The report and maps are incorporated in the overlay zone by this reference and are on file with the Marion County planning division. When base flood elevation data have not been provided, the zoning administrator shall have the authority to determine the location of the boundaries of the floodplain where there appears to be a conflict between a mapped boundary and the actual field conditions, provided a record is maintained of any such determination.

Mandatory: Corrects code reference to the county’s flood insurance study.

**16.19.110 Uses.**

Within a FP (floodplain) overlay zone no uses, structures, recreational vehicles and premises shall be used or established except as provided in the applicable underlying zone and the provisions of this overlay zone. Except as provided herein all uses and floodplain development shall be subject to issuance of a conditional use permit (floodplain development permit) as provided in MCC 16.19.130.

A. The following uses are exempt from the regulations of this overlay zone:

- 9. A highway-ready recreation vehicle may be located on a lot or parcel without a dwelling in a floodplain or floodway only during the non-flood season (June 1st through September 30th), subject to the requirements in MCC 16.26.410.**

Optional: Moves an approved use from procedures section to exemptions section.

E. Siting of new critical facilities are prohibited within the floodway and 100- and 500-year floodplains.

**For a critical facility needed within a hazard area in order to provide essential emergency response services in a timely manner, an** An exception to this prohibition may be granted for development in the 500-year floodplain if a floodplain development permit, and variance meeting the criteria in MCC 16.19.170, are obtained. This prohibition does not apply to water dependent uses.

Optional: Clarifies standards by which an emergency facility could be approved in a floodplain.

**16.19.130 Conditional use procedures and requirements.**

~~F. A highway ready recreation vehicle may be located on a lot or parcel without a dwelling in a floodplain or floodway only during the nonflood season (June 1st through September 30th), subject to the requirements in MCC 16.26.410.~~

Optional: Moves an approved use from procedures section to exemptions section.

**16.19.140 Flood protection standards.**

In all areas of identified floodplain, the following requirements apply:

A. Dwellings, Manufactured Homes and Related Accessory Structures. New residential construction, substantial improvement of any residential structures, location of a manufactured home on a lot or in a manufactured home park or park expansion approved after adoption of this title shall:

6. Construction where the crawl space is below grade on all sides may be used. Designs for meeting these requirements must either be certified by a registered professional engineer or architect, or must meet the following standards, consistent with FEMA Technical Bulletin 11-01 for crawl space construction:

f. An adequate drainage system that removes floodwaters from the interior area of the crawl space shall be provided; ~~and~~

**g. The velocity of floodwaters at the site shall not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types shall be used; and,**

**h.** Below-grade crawl space construction in accordance with the requirements listed above will not be considered basements for flood insurance purposes. However, below-grade crawl space construction in the special flood hazard area is not the recommended construction method because of the increased likelihood of problems with foundation damage, water accumulation, moisture damage, and drainage. Applicants shall be advised that buildings constructed with below-grade crawl spaces will have higher flood insurance premiums than buildings that have the preferred crawl space construction (the interior grade of the crawl space is at or above the adjacent exterior grade).

Mandatory: Adds reference to floodwater velocity standard that applies when crawlspace construction is used in floodplain.

**Chapter 16.25**

**PERMITTED USES GENERALLY**

**16.25.200 Permitted secondary and accessory structures and uses.**

The following secondary and accessory uses and structures shall be permitted on a lot with a primary use and are subject to the limitations and requirements in Chapters 16.24, 16.25, 16.26, 16.27, and 16.28 MCC, and the requirements in any applicable overlay zone:

A. The following accessory structures and uses are permitted on a lot in any zone in conjunction with a permitted dwelling or mobile home:

13. Additional kitchens in a dwelling provided all kitchens in the dwelling are used by only one family and provided the kitchens are not located in separate dwelling units; **and are connected by**

**open, livable space between the kitchens (i.e., no doorways exist between the kitchens and no area between kitchens consists of unfinished or non-livable space, such as a garage). One additional kitchen in a dwelling unit may be constructed inside an existing dwelling, or as an addition to a dwelling, as part of a suite of rooms consisting of a kitchen, one or more bathrooms, one or more bedrooms, and other domestic rooms if the suite of rooms is connected to the main dwelling by a door in a common wall.**

Optional: Permits kitchens connected both by “open, livable” space and in a domestic suite. Covenant should not be required since planning reviews plans when building is constructed

D. Parking of vehicles in a structure or outdoors is a permitted accessory use in conjunction with a dwelling in any zone provided:

2. Vehicles parked outdoors in a residential zone may be parked in a space within the front yard meeting the requirements for required parking in MCC 16.30.430 **140**; or, they may be parked elsewhere on the lot where accessory buildings are permitted provided the parking area is screened by a six-foot-high sight-obscuring fence, wall or hedge from other lots in a residential zone. On a lot in the RS zone, not more than three vehicles shall be parked within required yards adjacent to streets; and

Scrivener’s error: Corrects reference in code.

## **Chapter 16.28 DEVELOPMENT STANDARDS FOR SECONDARY, ACCESSORY AND TEMPORARY STRUCTURES**

### **16.28.020 Accessory and secondary structure location and allowable coverage.**

B. Structures accessory or secondary to a use allowed on property in a residential designation may not be located in the required front yard. **Structures located in the non-required front yard shall meet the setbacks for the primary structure.**

Optional: Clarifies setbacks that apply to structures in non-required front yard.

## **Chapter 16.38 LEGISLATIVE AMENDMENTS**

### **16.38.010 Initiation.**

Legislative amendments may be initiated by the board or planning commission by resolution. An interested party may request that the planning commission or board initiate a legislative amendment. Legislative amendments shall only be initiated by the board or planning commission when the proposed change is in the public interest and will be of general public benefit. If the board initiates the amendments, the resolution shall prescribe whether the hearings officer, planning commission or board shall conduct the hearing. If the planning commission initiates the amendments, the resolution shall prescribe whether the hearings officer or planning commission shall conduct the hearing.

**Whenever an amendment is initiated by the board the resolution may be referred to the director, planning commission or hearings officer for its recommendations without holding a hearing on the matter, unless directed by the board to hold a hearing. On these matters, the planning commission may choose to hold a hearing at its discretion.**

**In every case of a proposed amendment, the director shall fix a date for a public hearing before the board, planning commission or hearings officer and shall cause notice to be given as provided in this chapter. After the public hearing, the director, planning commission or hearings officer may**

refer its recommendations to the board.

Optional: Clarifies that the Board may send a matter to the planning commission or hearings officer for a recommendation without a hearing.

## Chapter 16.49 DEFINITIONS

### 16.49.171 Mobile food vendor.

“Mobile food vendor” means:

~~A. Within the city of Woodburn’s urban growth boundary a “mobile food vendor” means a vehicle, trailer, wagon or temporary structure, as defined by the State Building Code, used for the preparation and/or sale of food and/or beverages.~~

~~B. Within the Salem/Keizer urban growth boundary a “mobile food vendor” means any kiosk, shed, shelter, trailer, vehicle or wagon which is used for the purpose of preparing, processing or converting food for immediate consumption as a drive in, drive through, curb or walk-up service. It does not include a street vendor’s cart or a peddler’s vehicle or conveyance. [Ord. 1204 § 4, 2004. UZ Ord. § 49.1~~

**“Mobile food vendor” means a vehicle, trailer, wagon or temporary structure, as defined by the State Building Code, used for the preparation and/or sale of food and/or beverages. It does not include a street vendor’s cart or a peddler’s vehicle or conveyance.**

Mandatory: Corrects definition to mobile food vendor to match current county code.

### 16.49.007 Accessory dwelling unit.

**“Accessory dwelling unit” means an interior, attached, or detached residential structure that is used in connection with, or that is accessory to, a single-family dwelling as permitted in MCC 16.25 and meeting the standards for development in MCC 16.26.**

Mandatory: Incorporates definition consistent with SB 1051 (2017).

## Chapter 17.110 GENERAL PROVISIONS

### 17.110.270 Home occupation.

“Home occupation” means any business or professional activity engaged in the production of income by a resident of a dwelling or dwelling unit as a subordinate use of the building and its premises, and in conformance with the provisions of this title. A home occupation may include a limited home occupation, conditional home occupation or a home occupation in a resource zone. Such term does not include the lease or rental of a dwelling unit or the rooming or boarding of persons on the same premises nor does it include a use meeting the standards of a home office in Chapter 17.125 ~~126~~ MCC or a marijuana business licensed pursuant to applicable law.

Scrivener’s error: Corrects reference in code.

### 17.110.840 Amendment of text only.

Any amendment of this title that amends, supplements or changes only the text hereof shall be initiated by the board, hearings officer or by the planning commission by resolution. **If the board initiates the amendments, the resolution shall prescribe whether the hearings officer, planning commission or board shall conduct the hearing. If the planning commission initiates the amendments, the resolution shall prescribe whether the hearings officer or planning commission shall conduct the hearing.** Whenever an amendment is initiated by the board the resolution may be referred to the director,

planning commission or hearings officer for its recommendations **without holding a hearing on the matter, unless directed by the board to hold a hearing. On these matters, the planning commission may choose to hold a hearing at its discretion.**

In every case of a proposed amendment, the director shall fix a date for a public hearing before the board, planning commission or hearings officer and shall cause notice to be given as provided in Chapter 17.111 MCC. After the public hearing, the director, planning commission or hearings officer may refer its recommendations to the board.

Optional: Clarifies that the Board may send a matter to the planning commission or hearings officer for a recommendation without a hearing.

## **Chapter 17.112 FUTURE RIGHT-OF-WAY LINES**

### **17.112.020 Special street setbacks.**

#### **F. Special Setback Requirements.**

2. The following streets or roads shall have a centerline setback as specified:

- a. ~~Oregon 99E from the northern city limits of the city of Salem to the northeast boundary of Marion County: 70 feet.~~

Optional: ODOT confirmed it does not require a 70 foot centerline setback. Removing this special setback would mean the standard 50 foot state highway setback would apply.

## **Chapter 17.116 ADJUSTMENTS**

### **17.116.020 Criteria for granting an adjustment.**

B. Adjustment to Special Setback Standards in the AR, EFU, SA, FT, and TC Zones. The director, planning commission, hearings officer or board may permit and authorize an adjustment to the special setback standards listed in MCC 17.128.050(A), 17.136.070(A), 17.137.070(A), 17.138.060(A) and 17.139.070(A) as outlined in those sections. The criteria in subsection (A) of this section do not apply to adjustments granted under this subsection. **The limits for adjustments in 17.116.030 do not apply to adjustments granted under this subsection.**

Optional: Clarifies that the limits for adjustments do not apply to adjustments for the special setback in resource zones. The limits were not intended to apply, but appear to without the proposed amendment.

## **Chapter 17.119 CONDITIONAL USES**

### ~~**17.119.080 Variance procedure applicable to conditional uses.**~~

~~MCC 17.122.070 through 17.122.130, relating to variances, shall apply where applicable to the granting of conditional uses.~~

### **17.119.160 Appeal to the board.**

**A. An appeal may be taken to the board by any person, firm, or corporation, or by an officer, department, board or commission of any public corporation or political subdivision of the state of Oregon aggrieved or affected by the decision of the planning commission or hearings officer on an application for a conditional use. An appeal must be filed with the county clerk within 15 days from the date of mailing of notice of the decision of the planning commission or hearings officer.**

The appeal shall be filed in duplicate and one copy thereof shall be forwarded immediately by the clerk to the board. The appeal shall state wherein the planning commission or hearings officer failed to conform to the provisions of this title.

B. When an appeal is filed it shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of such appeal by the board.

C. The board shall review the action of the planning commission or hearings officer and may refer the matter back to the planning commission or hearings officer for further consideration, in which case the planning commission or hearings officer shall conduct such further investigation if it is deemed advisable and report its findings to the board. The board may summarily, after considering the application and appeal and finding that the facts therein stated do not warrant any further hearings, affirm the action of the planning commission or hearings officer and deny the appeal. If the board is of the opinion that the facts in the case warrant further action, the board shall give notice of the time and place of such hearing in the same manner as set forth in MCC 17.111.030. After the hearing, the board may reverse or affirm or may impose such conditions as the facts warrant and may grant a conditional use, and its decision or determination shall be final. Any hearing may be continued to a time and day certain or as otherwise provided for by re-noticing the hearing.

D. If the board exercises its authority, pursuant to MCC 17.110.765, to make the initial determination on a land use application, the decision of the board is final and appealable only to the Oregon Land Use Board of Appeals.

17.119.170 Call up to the board.

The board may call up any action of the director, planning commission or hearings officer in granting or denying a conditional use. Such action of the board shall be taken at the meeting where notice of the decision is presented. When the board takes such action the director's, planning commission's or hearings officer's records pertaining to the conditional use in question shall be submitted to the board by the director or hearings officer and such call up shall stay all proceedings in the same manner as the filing of a notice of appeal.

17.119.180 Effective date of conditional use.

Conditional uses granted by the director, planning commission or hearings officer under the provisions of this title shall not be effective until 15 days after the mailing of the notice of decision; provided, however, in case call up of the proceedings has been requested by the board or an appeal has been taken as herein provided, the conditional use shall not be effective until the planning commission, hearings officer or board has acted on the call up or appeal.

17.119.190 Conditional use right must be exercised to be effective.

Conditional uses granted under this title shall be effective only when the exercise of the right granted thereunder shall be commenced within two years from the effective date of that conditional use, unless a longer period be specified or thereafter allowed by the director, planning commission, hearings officer, or board. In case the right has not been exercised, or extension obtained, the conditional use shall be void. A written request for an extension of time filed with the director prior to the expiration of the conditional use shall extend the running of the conditional use period until the director, planning commission, hearings officer or board has acted on the request.

17.119.200 Cessation of conditional use.

Discontinuance of the exercise of any right heretofore or hereafter authorized by any conditional use for a continuous period of one year shall be deemed an abandonment of such conditional use,

**and the property affected thereby shall be subject to all the provisions and regulations of this title applicable to the district or zone in which such property is located at the time of such abandonment.**

**17.119.210 Transfer of conditional use.**

**Unless otherwise provided in the decision granting the conditional use permit, conditional use permits shall run with the land.**

**17.119.220 Resubmission of conditional use application.**

**No application which has been denied wholly or in part by the director, planning commission, hearings officer or by the board shall be resubmitted for a period of one year from such denial, unless consent for resubmission be given by the director, two-thirds of the members of the planning commission, the hearings officer or the board.**

Optional: Conditional use chapter references process in variance chapter. Moves language directly into conditional use chapter to clarify process. Makes conditional use effective for two years and cessation after one year, which is consistent with current practice.

**Chapter 17.122  
VARIANCES**

**17.122.110 Transfer of variance.**

~~Any valid variance granted pursuant to this title is transferable unless otherwise provided at the time of the granting of such variance.~~ Unless otherwise provided in the decision granting the variance, variances shall run with the land.

Optional: Clarifies language in the code.

**17.122.120 Appeal to the board.**

A. An appeal may be taken to the board by any person, firm, or corporation, or by an officer, department, board or commission of any public corporation or political subdivision of the state of Oregon aggrieved or affected by the decision of the planning commission or hearings officer on an application for a variance.

An appeal must be filed with the county clerk within 15 days from the date of mailing of notice of the decision of the planning commission or hearings officer.

The appeal shall be filed in duplicate and one copy thereof shall be forwarded immediately by the clerk to the board. The appeal shall state wherein the planning commission or hearings officer failed to conform to the provisions of this title.

B. When an appeal is filed it shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of such appeal by the board.

C. The board shall review the action of the planning commission or hearings officer and may refer the matter back to the planning commission or hearings officer for further consideration, in which case the planning commission or hearings officer shall conduct such further investigation if it is deemed advisable and report its findings to the board. The board may summarily, after considering the application and appeal and finding that the facts therein stated do not warrant any further hearings, affirm the action of the planning commission or hearings officer and deny the appeal. If the board is of the opinion that the facts in the case warrant further action, the board shall give notice of the time and place of such hearing in the same manner as set forth in MCC 17.111.030. After the hearing, the board may reverse or affirm or may impose such conditions as the facts warrant and may grant a variance, and its decision or determination shall be final. Any hearing may be continued ~~from time to time~~ **to a time and day certain or as otherwise provided for by re-noticing the hearing.**

D. If the board exercises its authority, pursuant to MCC 17.110.765, to make the initial determination on a land use application, the decision of the board is final and appealable only to the Oregon Land Use Board of Appeals. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 6, 2000. RZ Ord. § 122.120.]

Optional: Clarifies language in the code.

## Chapter 17.125 LIMITED USES

### **17.125.140 Cider business.**

**A cider business may be established in the EFU, SA or FT zones subject to the following criteria:**

**A. As used in this section:**

- 1. “Agri-tourism or other commercial events” includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of cider produced in conjunction with the cider business is a secondary purpose of the event.**
- 2. “Cider” means an alcoholic beverage made from the fermentation of the juice of apples or pears. “Cider” includes but is not limited to flavored cider, sparkling cider and carbonated cider.**
- 3. “Cider business” means a facility used primarily for the commercial production, shipping and distribution, wholesale or retail sales, tasting, crushing, making, blending, storage, bottling, administrative functions or warehousing of cider.**
- 4. “Cidermaker” means a person who makes cider.**
- 5. “On-site retail sale” includes the retail sale of cider in person at the cider business site, through a cider club or over the Internet or telephone.**
- 6. “Orchard” means a piece of land planted with apple or pear trees.**

**B. A cider business may be established if the cider business produces:**

- 1. Less than 100,000 gallons of cider annually and the cider business:**
  - a. Owns an on-site orchard of at least 15 acres;**
  - b. Owns a contiguous orchard of at least 15 acres;**
  - c. Has a long-term contract for the purchase of all of the apples or pears from at least 15 acres of an orchard contiguous to the cider business; or**
  - d. Obtains apples or pears from any combination of (a), (b), or (c); or**
- 2. At least 100,000 gallons of cider annually and the cider business:**
  - a. Owns an on-site orchard of at least 40 acres;**
  - b. Owns a contiguous orchard of at least 40 acres;**
  - c. Has a long-term contract for the purchase of all of the apples or pears from at least 40 acres of an orchard contiguous to the cider business;**
  - d. Owns an on-site orchard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of orchards in Oregon that are located within 15 miles of the cider business site; or**
  - e. Obtains apples or pears from any combination of (a), (b), or (c).**

**C. In addition to any other activities authorized for a cider business, a cider business established under this section may:**

- 1. Market cider produced in conjunction with the cider business.**
- 2. Conduct operations that are directly related to the sale or marketing of cider produced in conjunction with the cider business, including:**
  - a. Cider tastings in a tasting room or other location on the premises occupied by the cider business;**
  - b. Cider club activities;**

- c. Cidermaker luncheons and dinners;
- d. Cider business and orchard tours;
- e. Meetings or business activities with cider business suppliers, distributors, wholesale customers and cider industry members;
- f. Cider business staff activities;
- g. Open house promotions of cider produced in conjunction with the cider business; and
- h. Similar activities conducted for the primary purpose of promoting cider produced in conjunction with the cider business.
- 3. Market and sell items directly related to the sale or promotion of cider produced in conjunction with the cider business, the marketing and sale of which is incidental to on-site retail sale of cider, including food and beverages:
  - a. Required to be made available in conjunction with the consumption of cider on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act;  
or
  - b. Served in conjunction with an activity authorized by paragraph (2), (4) or (5) of this subsection.
- 4. Carry out agri-tourism or other commercial events on the tract occupied by the cider business as provided for below.
- 5. Host charitable activities for which the cider business does not charge a facility rental fee.
- 6. Site a bed and breakfast as a home occupation on the same tract, and in association with, the cider business.
  - a. The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
  - b. The meals may be served at the bed and breakfast facility or at the cider business.

D. A cider business may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in this section. Food and beverage services authorized under this section may not utilize menu options or meal services that cause the kitchen facilities to function as a cafe or other dining establishment open to the public.

E. The gross income of the cider business from the sale of incidental items or services provided pursuant to subsection (C)(3) to (5) of this section may not exceed 25 percent of the gross income from the on-site retail sale of cider produced in conjunction with the cider business. The gross income of a cider business does not include income received by third parties unaffiliated with the cider business. At the request of the county, the cider business shall submit to the local government a written statement prepared by a certified public accountant that certifies the compliance of the cider business with this subsection for the previous tax year.

G. A cider business may carry out agri-tourism or other commercial events as provided for below:

- 1. Events on the first six days of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multi-year license that:
  - a. Has a term of five years; and
  - b. Is subject to an administrative review to determine necessary conditions pursuant to subsection (H).
- 2. The local government's decision on a license under (1) of this subsection is not:
  - a. A land use decision, as defined in ORS 197.015, and is not subject to review by the Land Use Board of Appeals.
  - b. A permit, as defined in ORS 215.402 or 227.160.
- 3. Events on days seven through 18 of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multi-year permit that:

- a. Has a term of five years;
- b. Is subject to an administrative review to determine necessary conditions pursuant to subsection (H); and
- c. Is subject to notice as specified in ORS 215.416 (11) or 227.175 (10).
- 4. The local government's decision on a permit under (3) of this subsection is:**
  - a. A land use decision, as defined in ORS 197.015, and is subject to review by the Land Use Board of Appeals.
  - b. A permit, as defined in ORS 215.402 or 227.160.

**H. Agri-tourism or other commercial events occurring as described in this section shall be subordinate to the production and sale of cider and not create significant adverse impacts to uses on surrounding land. The county may impose conditions on a license or permit issued for agri-tourism or other commercial events to ensure events do not create significant adverse impacts to uses. The conditions must be related to:**

- 1. The number of event attendees;
- 2. The hours of event operation;
- 3. Access and parking;
- 4. Traffic management;
- 5. Noise management; and
- 6. Sanitation and solid waste.

**I. A cider business operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the cider business is situated.**

**J. The cider business shall comply with:**

- 1. Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;
- 2. Regulations of general applicability for the public health and safety; and
- 3. Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.

**K. For the purpose of limiting demonstrated conflicts with accepted farm and forest practices on adjacent lands, the cider business and all public gathering places shall be setback at least 100 feet from all property lines. The cider businesses shall provide direct road access and internal circulation for the cider business and all public gathering places. The setback may be reduced if it is determined, concurrently with any land use application or as provided in Chapter 17.116 MCC, that a lesser setback will meet the following review criteria:**

- 1. The location of the site will have the least impact on nearby or adjoining forest or agricultural lands.
- 2. The location of the site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.
- 3. The amount of agricultural and forestlands used to site access roads, service corridors, and structures is minimized.
- 4. The risks associated with wildfire are minimized.

Mandatory: Enacted by SB 677 (2017). Permits cider business.

**Chapter 17.126**  
**PERMITTED USES GENERALLY**  
**17.126.020 Permitted secondary and accessory structures and uses.**

The following secondary and accessory uses and structures shall be permitted on a lot or parcel with a primary use and are subject to the limitations and requirements in Chapters 17.110, 17.112, 17.113, 17.114, 17.116, 17.117, 17.118, 17.120 and 17.121 MCC, and the requirements in any applicable overlay zone:

A. The following accessory structures and uses are permitted on a lot in any zone in conjunction with a permitted dwelling unit or mobile home:

13. Additional kitchens in a dwelling unit, provided all kitchens in the dwelling unit are used by only one family ~~and subject to the recording of a covenant restricting the use to a single family dwelling;~~ **and are connected by open, livable space between the kitchens (i.e., no doorways exist between the kitchens and no area between kitchens consists of unfinished or non-livable space, such as a garage). One additional kitchen in a dwelling unit may be constructed inside an existing dwelling, or as an addition to a dwelling, as part of a suite of rooms consisting of a kitchen, one or more bathrooms, one or more bedrooms, and other domestic rooms if the suite of rooms is connected to the main dwelling by a door in a common wall.**

Optional: Permits kitchens connected both by “open, livable” space and in a domestic suite. Covenant should not be required since planning reviews plans when building is constructed

## Chapter 17.128 AR (ACREAGE RESIDENTIAL) ZONE

### 17.128.020 Permitted uses.

J. Replacement of a lawfully established dwelling, subject to the special siting standards in MCC 17.128.050(B), when the dwelling:

**3. A dwelling constructed between 1850 and 1945 on a parcel at least two acres in size outside of any area designated as an urban reserve may remain on the parcel as an accessory dwelling unit if replaced by a new single-family dwelling on the parcel subject to the following conditions:**

**a. The property owner shall obtain all required permits from Marion County Building Inspection to convert the existing residence to an accessory dwelling unit upon completion of the new single-family dwelling, including permits for sanitation and wastewater disposal and treatment.**

**b. The land containing the accessory dwelling cannot be divided from the land containing the new single-family dwelling.**

**c. The accessory dwelling unit cannot be renovated or remodeled so that the square footage of the accessory dwelling unit is more than 120 percent of the historic home's square footage at the time construction of the new single-family dwelling commenced.**

**d. The accessory dwelling cannot be rebuilt if the structure is lost to fire.**

**e. The property owner shall record a declaratory statement acknowledging compliance with the conditions in (b), (c) and (d) above.**

**OPTIONAL: The new single-family dwelling shall be served by the same water supply source as the accessory dwelling unit.**

Mandatory: Enacted by HB 3012 (2017). Permits a historic home to be converted to an ADU when home is replaced in an Acreage Residential zone.

### 17.128.030 Conditional uses.

The following uses may be permitted subject to obtaining a conditional use permit:

E. Religious organizations and expansions not qualifying under MCC 17.128.020(H), and related conference and residence

Scrivener's error: Corrects reference in code.

## Chapter 17.136 EFU (EXCLUSIVE FARM USE) ZONE

### 17.136.040 Uses permitted subject to standards.

The following uses may be permitted in the EFU zone subject to approval of the request by the planning director, based on satisfaction of the standards and criteria specified for each use, pursuant to Chapter 17.115 MCC:

~~H. Wildlife Habitat Conservation. A wildlife habitat conservation and management plan on a lot or parcel subject to the following:~~

- ~~1. The lot or parcel contains an existing legally established dwelling; or~~
- ~~2. Approval for the dwelling is obtained under provisions contained in MCC 17.136.030(A), (D) or 17.136.050(A);~~
- ~~3. The dwelling is situated on a legally created lot or parcel existing on November 4, 1993;~~
- ~~4. The lot or parcel is not predominantly composed of soils rated Class I or II, when not irrigated, or rated prime or unique by the Natural Resource Conservation Service, or any combination of such soils.~~

Mandatory: DLCD no longer includes wildlife habitat conservation plan as a land use action. The property owner coordinates with the Marion County Tax Assessor to implement a plan.

N. Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids, **or the onsite treatment of septage prior to the land application of biosolids**, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this division. **For the purposes of this section, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.**

Mandatory: Enacted by HB 2179 (2017). Permits onsite treatment of septage prior to application of biosolids on EFU land.

### **P. Cider business. A cider business subject to the standards in MCC 17.125.140.**

Mandatory: Enacted by SB 677 (2017). Permits cider business.

### 17.136.050 Conditional uses.

The following uses may be permitted in an EFU zone subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.136.060(A), and any additional criteria, requirements, and standards specified for the use:

I. Expansion of a lawfully established solid waste disposal site together with facilities and buildings for its operation (**see specific conditional uses, MCC 17.120.310 through 17.120.380**).

Mandatory: Incorporates reference into code.

## Chapter 17.137

## SA (SPECIAL AGRICULTURE) ZONE

### 17.137.040 Uses permitted subject to standards.

The following uses may be permitted in the SA zone subject to approval of the request by the director, based on satisfaction of the standards and criteria specified for each use, pursuant to the procedures in Chapter 17.115 MCC:

~~H. Wildlife Habitat Conservation. A wildlife habitat conservation and management plan on a lot or parcel subject to the following:~~

- ~~1. The lot or parcel contains an existing legally established dwelling; or~~
- ~~2. Approval for the dwelling is obtained under provisions contained in MCC 17.137.030(A), (D), (E) or 17.137.050(A).~~
- ~~3. The dwelling is situated on a legally created lot or parcel existing on November 4, 1993.~~
- ~~4. The lot or parcel is not predominantly composed of soils rated Class I or II, when not irrigated, or rated prime or unique by the Natural Resources Conservation Service, or any combination of such soils.~~

Mandatory: DLCD no longer includes wildlife habitat conservation plan as a land use action. The property owner coordinates with the Marion County Tax Assessor to implement a plan.

N. Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249, and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids **or the onsite treatment of septage prior to the land application of biosolids**, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in a special agriculture zone under this chapter. **For the purposes of this section, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.**

Mandatory: Enacted by HB 2179 (2017). Permits onsite treatment of septage prior to application of biosolids on EFU land.

### **P. Cider business. A cider business subject to the standards in MCC 17.125.140.**

Mandatory: Enacted by SB 677 (2017). Permits cider business.

### 17.137.050 Conditional uses.

The following uses may be permitted in an SA zone subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.137.060(A) and any additional criteria, requirements, and standards specified in this section:

I. Disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, or for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with facilities and buildings for its operation, **(see specific conditional uses, MCC 17.120.310 through 17.120.380)**, subject to MCC 17.137.060(H)(2) with filing of the declaratory statement in MCC 17.137.100(C).

Mandatory: Incorporates reference into code.

## Chapter 17.138

## TC (TIMBER CONSERVATION) ZONE

### 17.138.035 Uses permitted subject to standards.

~~A. Wildlife Habitat Conservation. A wildlife habitat conservation and management plan on a lot or parcel subject to the following:~~

- ~~1. The lot or parcel contains an existing legally established dwelling; or~~
- ~~2. Approval for the dwelling is obtained under provisions contained in MCC 17.138.030(A), (B), (C) or (D);~~
- ~~3. The dwelling is situated on a legally created lot or parcel existing on November 4, 1993;~~
- ~~4. The lot or parcel is not predominantly composed of soils rated Class I or II, when not irrigated, or rated prime or unique by the Natural Resources Conservation Service, or any combination of such soils.~~

~~B. A. Parking of not more than seven dump trucks and not more than seven trailers on a tract when the use will not:~~

- ~~1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.~~
- ~~2. Significantly increase the cost of accepted farm or forest practices on surrounding land devoted to farm or forest use.~~

Mandatory: DLCD no longer includes wildlife habitat conservation plan as a land use action. The property owner coordinates with the Marion County Tax Assessor to implement a plan.

### 17.138.040 Conditional uses.

The following uses may be permitted in a TC zone subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.138.050(A) and any additional criteria, requirements and standards specified in this section.

H. Disposal site for solid waste for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operations **(see specific conditional uses, MCC 17.120.310 through 17.120.380).**

Mandatory: Incorporates reference into code.

## Chapter 17.139

### FT (FARM/TIMBER) ZONE

### 17.139.040 Uses permitted subject to standards.

The following uses may be permitted in the FT zone subject to approval of the request by the director, based on satisfaction of the standards and criteria specified for each use, pursuant to the procedures in Chapter 17.115 MCC.

~~H. Wildlife Habitat Conservation. A wildlife habitat conservation and management plan on a lot or parcel subject to the following:~~

- ~~1. The lot or parcel contains an existing legally established dwelling; or~~
- ~~2. Approval for the dwelling is obtained under provisions contained in MCC 17.139.030(A), (B), (C), (D), (E), (H), (I) or 17.139.050(A);~~
- ~~3. The dwelling is situated on a legally created lot or parcel existing on November 4, 1993;~~
- ~~4. The lot or parcel is not predominantly composed of soils rated Class I or II, when not irrigated, or rated prime or unique by the Natural Resources Conservation Service, or any combination of such soils.~~

Mandatory: DLCD no longer includes wildlife habitat conservation plan as a land use action. The property owner coordinates with the Marion County Tax Assessor to implement a plan.

K. Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules

adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249, and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids **or the onsite treatment of septage prior to the land application of biosolids**, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in the farm/timber zone under this division. **For the purposes of this section, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.**

Mandatory: Enacted by HB 2179 (2017). Permits onsite treatment of septage prior to application of biosolids on EFU land.

#### **N. Cider business. A cider business subject to the standards in MCC 17.125.140.**

Mandatory: Enacted by SB 677 (2017). Permits cider business.

#### **17.139.050 Conditional uses.**

The following uses may be permitted in an FT zone subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.139.060(A) and any additional criteria, requirements and standards specified for the use.

I. Disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, or for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation, **(see specific conditional uses, MCC 17.120.310 through 17.120.380)**, subject to MCC 17.139.060(E) and 17.139.070(B).

Mandatory: Incorporates reference into code.

### **Chapter 17.171 P (PUBLIC) ZONE**

#### **17.171.020 Uses.**

Within any P (public) zone, no building, structure or premises shall be used, arranged, or designed to be used, erected, structurally altered or enlarged except for the following purposes:

E. Wireless communications facilities, **including** attached, subject to the following development standards:

1. Notwithstanding other height limitations in this title omni-directional (whip) antennas not exceeding 20 feet in height and directional/parabolic antennas not exceeding seven feet in diameter or width and 15 feet in height may be attached to or located on existing structures;
2. Antennas and associated equipment shall be surfaced in a nonreflective color to match the structure on which they are located. An equipment enclosure may be set back from the edge of a roof by a distance at least equal to its height in lieu of screening;
3. Equipment enclosures shall be located within the building on which they are located wherever possible; otherwise, equipment enclosures shall be fenced by a six-foot-high fence, wall or hedge;
4. Antennas shall not be illuminated except as required by the Oregon State Aeronautics Division or the Federal Aviation Administration;
5. A wireless communications facility, attached, and equipment enclosure shall be removed by the facility owner or property owner within six months of the date it ceases to be operational;
6. **Notwithstanding other height limitations in this code all lattice, monopole, guyed or other freestanding support structures shall be limited to a total height, including antennas, of 150 feet above natural grade.**

F. ~~Wireless communication facilities (see limited use, MCC 17.125.120);~~

Optional: Permits wireless communication facilities (cellular towers) outright in the rural Public zone subject to certain standards.

## Chapter 17.172 SUBDIVISION AND PARTITION REQUIREMENTS

### 17.172.400 Sewage disposal.

All **new or refigured** lots or parcels, **10 acres or smaller in size**, shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet the requirements of the Department of Environmental Quality (DEQ) and the Marion County building inspection division. Those subsurface sewage systems that are used by a community, sanitary district, industry, or incorporated area must be authorized by the Department of Environmental Quality (DEQ) via the Marion County building inspection division. Installation and maintenance shall be in accordance with the Department of Environmental Quality's regulations and requirements.

**All new or reconfigured lots or parcel with an existing on-site septic system, that was authorized by an approving authority, shall be reviewed to determine that the existing system is either located entirely on the same lot or parcel containing the existing dwelling, or that proper easement is provided to allow the continued use and maintenance of the system.**

Optional: Clarifies when a parcel served by a sewage disposal system (septic system) must be reviewed through permitting.

### 17.172.540 Conformance with regulations.

Unless a variance is granted as provided herein, partitions shall conform to applicable regulations contained in MCC 17.172.460~~140~~ through 17.172.660. The director shall determine if annexation to a fire, sewer or water district is required. If the director determines that annexation is required, annexation or a nonremonstrance agreement must be filed with the appropriate agency

Scrivener's error: Corrects references in code.

### 17.172.760 Conformance with regulations.

Unless a variance is granted as provided herein, the subdivision shall conform to applicable regulations contained in MCC 17.172.180 ~~140~~ through 17.172.660 and planned developments shall, in addition, conform to the regulations in MCC 17.121.200 through 17.121.250. The director shall determine if annexation to a fire, sewer or water district is required. If the director determines that annexation is required, annexation or a nonremonstrance agreement must be filed with the appropriate agency.

Scrivener's error: Corrects references in code.

## Chapter 17.178 FLOODPLAIN OVERLAY ZONE

### 17.178.030 General provisions.

The following regulations apply to all unincorporated lands in identified floodplains as shown graphically on the zoning maps. The floodplain comprises those areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled the "Flood Insurance Study for Marion County, Oregon, Unincorporated Areas" dated January 19, 2000, with accompanying Floodway and Flood Insurance Rate Maps and amendments taking effect as of August 15, 1979, August

19, 1987, September 30, 1993, December 19, 1995, June 19, 1997, and January 2, 2003, and subsequent letter of map amendments and letter of map revisions issued by FEMA pertaining to studies and maps previously adopted by the county. The floodplain also comprises areas identified and mapped by Marion County that were not studied by the flood insurance study. The report and maps are incorporated in the overlay zone by this reference and are on file with the Marion County planning division. When base flood elevation data have not been provided, the zoning administrator shall have the authority to determine the location of the boundaries of the floodplain where there appears to be conflict between mapped boundary and the actual field conditions, provided a record is maintained of any such determination.

A. Duties of the zoning administrator shall include, but not be limited to:

1. Review all development permits to determine that the permit requirements of this title have been satisfied.
2. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
3. Review building permits where elevation data is not available either through the FIS or from another authoritative source, to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available.
4. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of MCC 17.178.060(J) are met.
5. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structures contain a basement.
6. For all new or substantially improved floodproofed structures:
  - a. Verify and record the actual elevation (in relation to mean sea level); and
  - b. Maintain the floodproofing certifications required in MCC 17.178.060(C).
7. Maintain for public inspection all records pertaining to the provisions of this title, including elevation certificates.

Mandatory: Corrects code reference to the county's flood insurance study.

#### 17.178.040 Uses.

A. The following uses are exempt from the regulations of this overlay zone:

**9. A highway-ready recreational vehicle may be located on a lot or parcel without a dwelling in a floodplain or floodway only during the non-flood season (June 1st through September 30th), subject to the requirements in MCC 17.126.040.**

Optional: Moves an approved use from procedures section to exemptions section.

E. Siting of new critical facilities are prohibited within the floodway and 100- and 500-year floodplains. **For a critical facility needed within a hazard area in order to provide essential emergency response services in a timely manner, an** ~~An~~ exception to this prohibition may be granted for development in the 500-year floodplain if a floodplain development permit, and variance meeting the criteria in MCC 17.178.090, are obtained. This prohibition does not apply to water dependent uses.

Optional: Clarifies standards by which an emergency facility could be approved in a floodplain.

**17.178.050 Conditional use procedures and requirements.**

~~F. A highway ready recreational vehicle may be located on a lot or parcel without a dwelling in a floodplain or floodway only during the nonflood season (June 1st through September 30th), subject to the requirements in MCC 17.126.040.~~

Optional: Moves an approved use from procedures section to exemptions section.

**17.178.060 Flood protection standards.**

In all areas of identified floodplain, the following requirements apply:

A. Dwellings, Manufactured Homes and Related Accessory Structures. New residential construction, substantial improvement of any residential structures, location of a manufactured home on a lot or in a manufactured home park or park expansion approved after adoption of this title shall:

6. Construction where the crawlspace is below grade on all sides may be used. Designs for meeting these requirements must either be certified by a registered professional engineer or architect, or must meet the following standards, consistent with FEMA Technical Bulletin 11-01 for crawlspace construction:

f. An adequate drainage system that removes floodwaters from the interior area of the crawlspace shall be provided; ~~and~~

**g. The velocity of floodwaters at the site shall not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types shall be used; and,**

**g. h.** Below-grade crawlspace construction in accordance with the requirements listed above will not be considered basements for flood insurance purposes. However, below-grade crawlspace construction in the special flood hazard area is not the recommended construction method because of the increased likelihood of problems with foundation damage, water accumulation, moisture damage, and drainage. Applicants shall be advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade);

Mandatory: Adds reference to floodwater velocity standard that applies when crawlspace construction is used in floodplain.