



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 3, 2016

Department: Public Works Agenda Planning Date: July 28, 2016 Time required: 10 min

☐ Audio/Visual aids

Contact: Brandon Reich Phone: 503-566-4175

Department Head Signature:

TITLE Consider adopting an ordinance amending the Marion County Urban and Rural Zone Codes by emergency procedure.

Issue, Description & Background The Marion County Board of Commissioners initiated a process to consider amendments to the Marion County Urban and Rural Zone Codes in January 2016. The Marion County Planning Commission held a public hearing on March 15, 2016, and the board held a public hearing on July 13, 2016. On July 13, 2016, after reviewing the testimony and evidence in the record and deliberating, the board approved the amendments. Before the board today is an ordinance reflecting their decision and adopting amendments to the Marion County Urban and Rural Zone Codes.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration:
1. Adopt the ordinance amending the Marion County Urban and Rural Zone Codes.
2. Direct staff to make changes to the ordinance and return with the changes for its consideration.
3. Decline to adopt the ordinance.

Recommendation: Staff recommends the board adopt the ordinance by emergency procedure amending the Marion County Urban and Rural Zone Codes.

List of attachments: Ordinance

Presenter: Brandon Reich

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 an Ordinance Amending Marion)
County Code, Title 16.19 (Urban Zone Code) and)
Title 17.178 (Rural Zone Code) by adopting)
amendments to conform to changes in state law,)
amendments related to the state model code for)
resource zones, amendments pertaining to mobile)
food vendors, home offices, and paving standards)
in urban unincorporated communities, and)
other amendments, and declaring an emergency.)

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 16R-2, dated January 27, 2016 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 work session on February 16, 2016 and a public hearing on March 15, 2016, for which proper notice and advertisement were given. The Planning Commission made a recommendation to the Board based on evidence in the record. The Marion County Board of Commissioners held a public hearing on July 13, 2016, 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 August, 2016, 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 16-1**

Facts and Findings

Oregon Revised Statute Amendments

SB 841 (2013)	Mandatory (215.452-215.456)	Clarifies uses allowed outright at wineries, adds agri-tourism and other events as allowed at wineries with a permit, allows bed and breakfasts at wineries. Takes effect June 28, 2013.
HB 2393 (2013)	Mandatory (215.283(1)(r))	Allows slaughtering, processing and selling of up to 1,000 poultry as an outright permitted nonfarm use, subject to size limit of the facility of 10,000 square feet and siting standards. Takes effect January 1, 2014.
HB 2704 (2013)	Mandatory (215.283(1)(c))	Establishes requirements for certain transmission lines. Takes effect January 1, 2014.
HB 2746 (2013)	Mandatory (215.283(1)(p))	Modifies provisions for replacing existing dwellings. Takes effect January 1, 2014.
HB 2831 (2015)	Mandatory (92.192)	Prohibits property line adjustments from causing M37/M49 created property to go above maximum lot sizes.

Between 2013 and 2015, the legislature adopted a number of bills that amended state statutes. These changes should be incorporated into the zone code.

HB 3516 (2011)	Optional	County previously adopted for rural. Bill permits adopt for urban too. Establishes standards for roof top solar.
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This bill established standards for roof top solar installations. Previously, the county adopted the standards into the rural code. These same standards should be adopted into the urban code, too, so that the provisions would be available to residents in the urban areas of the county.

HB 2457 (2015)	Optional (215.263, et. al.)	Allows the division of farm and forest land along the boundary line of an urban growth boundary.
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This bill allows a property that is partially inside an urban growth boundary and partially outside (rural farm land) to be divided along the urban growth boundary line, even if the rural portion does not meet the minimum parcel size of the zone. This codifies in statute something that Marion County Planning has previously allowed (since the rural portion of the property is not being 'resized' by the property division, only separated off along the urban growth boundary line, it can be permitted). Urban land can be divided up and developed very differently from rural land, so it is appropriate to allow the urban portion of a parcel to be divided off from the rural portion.

Oregon Administrative Rule Amendments

660-018 (2012)	Mandatory	Changed minimum submittal period from 45 days to 35 days.
660-033 (2012)	Mandatory	Changed procedures/requirements for soil assessments.
660-033 (2013)	Mandatory	Modifies criteria for replacement of dwelling on farmland.
660-033 (2013)	Mandatory	Adds criteria for approving "associated transmission line" to a utility facility.
660-033 (2013)	Mandatory	Adds slaughter, processing, selling poultry/poultry products to farm processing facility use.
660-033 (2013)	Mandatory	Clarifies use of model aircraft buildings and facilities.
660-006 (2013)	Mandatory since county previously adopted this use	Clarifies private seasonal accommodations for game bird or big game hunting.
660-006 (2015)	Mandatory	Adds definition of "primary processing of forest products."
660-006 (2016)	Mandatory	Requires covenant to run with land for dwelling based on parcel size.

Between 2012 and 2016, the Department of Land Conservation and Developed amended the Oregon Administrative Rules pertaining to farm and forest lands. These amendments should be incorporated into the zone code.

660-006 (2016)	Optional	Allows the division of forest land along the boundary line of an urban growth boundary.
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Similar to the discussion above for farm land, this provision allow the division of a property along the urban growth boundary to separate the property's rural (timber) and urban portions of land.

660-033 (2016)	Optional	Clarifies reference to seasonal farmworker housing.
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Previously the rule referenced the Oregon Revised Statute in effect for a specific year to which the seasonal farmworker housing provision applied. The revised language uses instead the year the use was approved, which clarifies the seasonal farmworker housing provisions.

Model Code Amendments

Optional	Revise and update purpose statement
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Generally the existing purpose statements of the EFU, SA and FT zones reflect the model code well. The model code incorporates a reference to how non-resource uses are consistent with the resource uses in the zones. This addition is helpful to complete the purpose statement.

Optional	Define agri-tourism
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When the legislature adopted agri-tourism provisions into the farm zones, it never defined the term, ‘agri-tourism.’ Agri-tourism events are usually conditional uses in the farm zones. The definition based on the model code is helpful to potential applicants and interested citizens to determine whether a proposed agri-tourism event is consistent with the criteria in this portion of county code.

Optional	Revise definition/standards net metering power generation
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Marion County currently approves net metering power generation as a kind of accessory use to a dwelling or other development on a property. The model code has developed standards which are more up-to-date and comprehensive than county code, while still permitting the use as an accessory use on a property.

Optional	Define processed agricultural products for farm stands
Optional	Revise standards for farm stand

The model code incorporates comprehensive definitions and clarifying standards for use in permitting farm stands. To staff, these appear to be consistent with the provisions already being applied to farm stands and, if incorporated into what the county is already doing, would improve the process and clarify the standards for allowing farm stands on farm properties.

Optional	Revise standards for composting
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Composting on farm operations is not regulated by the county. Other kinds of composting requires a land use review and approval. The model code provides important standards to address impacts to nearby areas when considering new composting operations.

Staff Recommended Amendments

Mandatory	Definition of farm use is out of date, ORS 215.203
Mandatory	Definition kennel needs to be revised to account for permitted dog related uses in the resource zones.

The county definitions are out of date and should be amended to be consistent with current statutes.

Optional (Strongly Recommended)	Revise property line adjustment standards so the same language is in the urban and rural zone codes
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When the last code update was performed, errors were made to both the urban and rural provisions of property line adjustments. The provisions are intended to match each other and provide guidance for performing property line adjustments in a clear manner. Different components of each rural and urban set of provisions were inadvertently left out. The code should be amended so that both sets of provisions are consistent with each other.

Optional (Strongly Recommended)	Incorporate FEMA floodplain Letter of Map Amendments and Letter of Map Revisions by zone code reference
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The Federal Emergency Management Administration requires that changes to the county flood map be adopted by the county. These amendments range from relatively minor amendments to individual buildings, to portions of individual properties, to changes based on existing elevations in the floodway, to larger amendments affecting multiple properties, to changes to entire map panels and entirely new flood studies. This proposal from staff would automatically incorporate minor amendments into the code once the changes are approved by FEMA.

Larger scale amendments affecting map panels or adopting new flood studies would still require adoption by the county through a noticed public hearing.

Optional	Modify food cart regulations
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In 2004, Marion County amended its restaurant regulations in its urban commercial and industrial zones to require specific standards for food carts. These amendments applied in the urban growth boundaries of Salem and Woodburn and matched their standards regarding the separation between food cart locations, length of time a cart can stay at a location, etc. Since that time, Salem and Woodburn have both amended their regulations and all jurisdictions have gained more experience with permitting food carts. Staff recommends the food cart standards be amended to be consistent with Salem and Woodburn's regulations and to ensure minimal impact to roadways and neighboring properties. Staff also recommends these new standards apply in the urban growth boundaries of all cities in the county, not just Salem and Woodburn.

Optional	Adopt new home office regulations in rural resource zones
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While statute establishes criteria for home occupations in rural resources zones, some types of business have such a small impact that they need not be considered a home occupation, but could be considered an accessory use to a dwelling. These 'home offices' would include such activities as running an internet business, doing paperwork for a business at home, performing a hobby that occasionally earns money, distance working/telecommuting, etc.

Optional	Pave commercial and industrial lots in urban unincorporated communities.
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Urban unincorporated communities are characterized by a variety of uses, a significant number of dwellings, and both a community water and sewer system (OAR 660-022-0010). While the area is still considered rural, the intensity of uses, size of developments, and the smaller sizes of parcels permitted because of the water and sewer service to the properties, occasionally create urban styled impacts.

The proposal to pave commercial and industrial parcels in the urban unincorporated community of Brooks-Hopmore would have a number of benefits for the community. Paving would reduce the amount of dust generated, reduce the cost to the property owner of maintaining graveled parking areas, reduce the cost to the county of street sweeping gravel off public roads, and permit the striping of parking and driving areas for better traffic control for property owners. Stormwater standards and detention requirements apply to developments with both graveled and paved parking areas in Brooks; the difference between the requirements is minimal and paved parking areas would improve the ability of the property owners to provide detention. Alternatives to paving could be approved on a case-by-case basis by the Public Works Director. Additionally, Federal Census standards mandate that stormwater be managed on the east side of Interstate 5 in Brooks in a manner similar to how it is managed in urban areas. Because of the general need for paving and paving alternatives in Brooks-Hopmore and Brooks being in an urban-styled stormwater management area, it is appropriate to require paving in Brooks on the east side of Interstate 5 in the stormwater management area.

Optional	Legalize all parcels created prior to September 1, 1977
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Currently, Marion County Code provides a means to legalize parcels created between 1962, when the county began regulating partitionings, and 1977, approximately when the state required the county to regulate land divisions in rural resource zones. Since then, many properties have been divided further and have had their property lines changed by roadway dedication or adjustments with neighboring properties. In addition, ownerships have changed on some parcels many times. It is becoming increasingly difficult to follow the property description and ownership record back to 1962 to determine if a property qualifies for legal parcel status under the existing criteria. Instead, staff proposes to consider all parcels created before September 1, 1977, legal.

It is not possible to grandfather in parcels created later because, after the passage of Senate Bill 100 in 1973, local governments had to regulate the division of rural land in order to comply with state laws.

Optional	Revise criteria for expanding non-conforming use
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This code provision permits an existing, non-conforming use of land to expand. The existing code language contains a reference to legislative or economic market demands which is difficult to demonstrate and more appropriate to be considered in conjunction with a zone change. In addition, the criteria for expanding a non-conforming use are not based on market demands. This causes confusion and the amendments are proposed to clarify the language.

Optional	Make permitting RVs in floodplain consistent with permitted uses in the EFU zone
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The generally permitted section of the code only allows an RV in an EFU zone when there is a dwelling on the property. The flood code allows RVs during the non-flood season on any property in any floodplain. The intention of this is to provide some use of a property in a floodplain even if it might not qualify for a dwelling. These two provisions in code are in conflict and the amendment is intended to clarify that RVs are allowed in floodplains regardless of whether there is a dwelling on the property.

Optional	Remove 500 year fill permit requirements
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After the floods in 1996-97, Marion County developed a flood study for the county based on areas that were inundated with floodwaters. Unfortunately, the study proved to be too general and not useful for determining flood risk of or regulating development on a specific property. The county previously amended its code to cease using the 100 year floodplain developed by that study. Now, staff proposes to cease using the 500 year floodplain developed by that study.

Currently, development proposing fill within the urban 500 year floodplain or rural Mill Creek Floodplain has to obtain a floodplain permit and certify the fill will not cause flooding to increase or shift to other properties. The information that an engineer uses to make this analysis was not contained in the county study and does not usually exist elsewhere (such as in the FEMA flood study). This makes it very difficult for engineers to provide the required certifications unless the engineer performs an expensive flood analysis specific to the property.

(The following amendments were not reviewed by the Planning Commission because they are relatively minor amendments, including amendments to conform with existing language in the county code or to remove outdated definitions from code.)

Optional	Cross reference to density standard
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This amendment would include a cross reference to the density standard in the Multi-Family Zone as it applies to lot area, similar to the cross reference in the Limited Multi-Family Zone. This cross reference is useful to property owners when considering development of their property.

Optional	Clarify that a property line adjustment cannot be used to qualify for a dwelling
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This amendment was previously review by the Board, approved, and incorporated into the code in the SA zone. It was inadvertently left out of the EFU and FT zones in the amendments provided to the code publishing service. This current amendment would correct the omission and make the EFU and FT zones consistent with the SA zone.

Optional (Strongly Recommended)	Remove unused and outdated definitions from code.
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These amendments remove the following unused and outdated definitions from code: convalescent home (not in code, code uses ‘nursing home’), homes for the aged and infirm (not in code, code uses ‘group care home’), kindergarten (either a ‘school’ or a ‘child care facility’, as used by code), maternity home (not in code, code uses ‘hospital), nursery (not in code, code uses ‘child care home’) and rest home (not in code, code uses ‘nursing home’).

Optional	Clarify setbacks accessory structures.
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This amendment would clarify the requirements for placing accessory structures on residential property.

Mandatory	Corrects wet floodproofing standards to be consistent with federal requirements.
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This amendment clarifies the requirements for constructing buildings to wet floodproofing standards in a floodplain.

Optional	Electronic display sign as part of an existing sign.
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This amendment clarifies that an electronic display sign can be part of an existing sign, not only a separate freestanding sign.

Optional	Permit limited home occupations outright.
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This amendment permits limited home occupations as an outright permitted use without needing an over-the-counter permit. The amendment allows a minimum of one employee and one sign, in addition to other provisions that are currently allowed.

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.

**Urban and Rural Zone Code Amendments
Legislative Amendment 16-001**

~~DELETIONS IN STRIKEOUT~~
ADDITIONS IN BOLD AND UNDERLINED

Staff comments in gray and italics

**Chapter 16.04
MULTIPLE-FAMILY RESIDENTIAL – RM ZONE**

16.04.120 Lot area and dimensions.

Within an RM zone:

A. Lot Area, Multifamily Dwellings and Other Uses. At least 6,000 square feet. **(See Chapter 16.27 MCC for density limitations.)**

Optional: Incorporates a cross reference into the code similar to the existing reference in the RL zone.

**Chapter 16.05
COMMERCIAL OFFICE – CO ZONE**

16.05.010 Uses.

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

39. The following uses subject to the special standards in Chapter 16.26 MCC:

i. Eating places, SIC 5812, except mobile food vendors ~~located within the Woodburn urban growth boundary and the Salem/Keizer urban growth boundary.~~

Optional. Mobile food vendor standards would apply in all urban growth boundaries.

**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:

13. Eating and drinking places except mobile food vendors ~~located within the Woodburn urban growth boundary and the Salem/Keizer urban growth boundary,~~ SIC 58.

Optional. Mobile food vendor standards would apply in all urban growth boundaries.

Chapter 16.07
COMMERCIAL GENERAL – CG ZONE

16.07.010 Uses.

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

14. Eating and drinking places, SIC 58, ~~except mobile food vendors located within the Woodburn urban growth boundary and the Salem/Keizer urban growth boundary.~~

Optional. Mobile food vendor standards would apply in all urban growth boundaries.

Chapter 16.08
HIGHWAY COMMERCIAL – HC ZONE

16.08.010 Uses.

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

G. Eating and drinking places, SIC 58, ~~except mobile food vendors located within the Woodburn urban growth boundary and the Salem/Keizer urban growth boundary.~~

Optional. Mobile food vendor standards would apply in all urban growth boundaries.

Chapter 16.09
INDUSTRIAL COMMERCIAL – IC ZONE

16.09.010 Uses.

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

40. Eating and drinking places, SIC 58, ~~except mobile food vendors located within the Woodburn urban growth boundary and the Salem/Keizer urban growth boundary.~~

Optional. Mobile food vendor standards would apply in all urban growth boundaries.

Chapter 16.11
GENERAL INDUSTRIAL – IG ZONE

16.11.010 Uses.

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

29. Eating and drinking places, SIC 58, ~~except mobile food vendors located within the Woodburn urban growth boundary and the Salem/Keizer urban growth boundary.~~

Optional. Mobile food vendor standards would apply in all urban growth boundaries.

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 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.

Optional: Permits the county to adopt minor amendments to properties and portions of maps by zoning code reference. New studies and new maps would still require hearing and adoption by county.

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.

~~D. Prior to any mining, dredging, filling, grading, paving or excavation within the 500-year floodplain area as shown on the Marion County zoning maps, a floodplain development permit shall be obtained.~~

Optional: Removes permit requirement. Lack of studies in these areas make it difficult to comply with criteria.

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:

~~7. A garage attached to a residential structure, constructed with the garage floor slab below the base flood elevation, may be constructed to wet floodproofing standards; provided, that:~~

~~a. The garage shall meet the standards for openings in subsection (A)(5) of this section; and~~

~~b. The garage shall be constructed with unfinished materials acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;~~

7. A garage attached to a residential structure, constructed with the garage floor slab below the base flood elevation, or a fully enclosed space beneath a dwelling that does not constitute a basement may be constructed to wet floodproofing standards; provided, that:

a. The garage or enclosed space shall be constructed with unfinished materials, acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;

b. The garage or enclosed space shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must comply with the following standards:

i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

ii. The bottom of all openings shall be no higher than one foot above grade;

iii. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters;

c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site;

d. The garage or enclosed space shall be limited to vehicle parking and storage of items having low damaged potential when submerged by water (no workshops, offices, recreation rooms, etc.);

e. The garage or enclosed space shall not be used for human habitation;

f. A declaratory statement is recorded requiring compliance with the standards in subsections (a) through (e) of this section.

Mandatory: corrects wet floodproofing standards to be consistent with federal requirements.

8. A detached residential accessory structure may be constructed to wet floodproofing standards; provided, that:

~~a. The accessory structure shall be located on a property with a dwelling;~~

~~b. The accessory structure shall be limited to vehicle parking and limited storage (no workshops, offices, recreation rooms, etc.);~~

~~c. The accessory structure shall be constructed with unfinished materials acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;~~

~~d. The accessory structure shall not be used for human habitation;~~

~~e. The accessory structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;~~

~~f. The accessory structure shall meet the standards for openings in subsection (A)(5) of this section; and~~

~~g. The accessory structure shall meet the criteria for a variance in MCC 16.19.170.~~

a. The accessory structure shall be located on a property with a dwelling;

b. The accessory structure shall meet the criteria for a variance in MCC 17.178.090;

c. The accessory structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

d. The accessory structure shall be constructed with unfinished materials, acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;

e. The accessory structure shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must comply with the following standards:

i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

ii. The bottom of all openings shall be no higher than one foot above grade;

iii. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters;

f. Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site;

g. The accessory structure shall be limited to vehicle parking and storage of items having low damaged potential when submerged by water (no workshops, offices, recreation rooms, etc.);

h. The accessory structure shall not be used for human habitation;

i. A declaratory statement is recorded requiring compliance with the standards in subsections (d) through (h) of this section.

Mandatory: corrects wet floodproofing standards to be consistent with federal requirements.

C. Nonresidential Development.

3. An agricultural structure may be constructed to wet floodproofing standards; provided, that:

~~a. The structure shall be used solely for agricultural purposes, for which the use is exclusively in conjunction with the production, harvesting, storage, drying, or raising of agricultural commodities, the raising of livestock, and the storage of farm machinery and equipment;~~

~~b. The structure shall be constructed with unfinished materials acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;~~

~~c. The structure shall not be used for human habitation;~~

~~d. The structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;~~

~~e. The structure shall meet the standards for openings in subsection (A)(5) of this section; and~~

~~f. The structure shall meet the criteria for a variance in MCC 16.19.170.~~

a. The structure shall meet the criteria for a variance in MCC 17.178.090;

b. The structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

c. The structure shall be constructed with unfinished materials, acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;

d. The structure shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must comply with the following standards:

i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

ii. The bottom of all openings shall be no higher than one foot above grade;

iii. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters;

e. Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site;

f. The structure shall be used solely for agricultural purposes, for which the use is exclusively in conjunction with the production, harvesting, storage, drying, or raising of agricultural commodities, the raising of livestock, and the storage of farm machinery and equipment;

g. The structure shall not be used for human habitation;

h. A declaratory statement shall be recorded requiring compliance with the standards in (c) through (g) of this section.

Mandatory: corrects wet floodproofing standards to be consistent with federal requirements.

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:

N. A solar photovoltaic energy system or solar thermal energy system is permitted on residential and commercial structures, provided:

1. The installation of the system will not increase the footprint of the structure or peak height of the portion of the roof on which the system is installed; and

2. The system will be mounted so that the plane of the system is parallel to the slope of the roof; and

3. Installations on historic buildings or landmarks, on buildings in a historic district, on conversation landmarks, or on buildings located in an area designated as a significant scenic resource shall be constructed of material designated as either anti-reflective or less than 11 percent reflective.

Optional: amendment to implement HB 3516 (2011)

Chapter 16.26 USE STANDARDS

16.26.200 Home occupations, limited.

A home occupation, limited shall meet the following use and development standards:

~~A. The premises upon which the home occupation is conducted shall be the residence of the persons conducting the home occupation. No employees living off the premises are allowed.~~

A. The home occupation shall be carried on by the resident or residents of a dwelling on the subject property as a secondary use and may employ no more than one person ("person" includes volunteer, nonresident employee, partner or any other person).

~~O. In order to establish a new home occupation, an agreement shall be signed by the property owner and any lessee of the dwelling that:~~

~~1. Acknowledges the requirements of this section;~~

~~2. Agrees that the home occupation will be discontinued or brought into conformance with city requirements if the property is annexed; and~~

~~3. Agrees that if the lot is in a UT zone, the owner, lessee, and their heirs or assigns will not remonstrate if annexation is proposed by the city.~~

Optional: adopts provision for a home occupation with one employee without a permit.

16.26.570 Mobile food vendors.

Mobile food vendors shall meet the following use and development standards:

~~A. Within the city of Woodburn's urban growth boundary:~~

~~1. The use is allowed only in the IC, IP, IG and IH zones.~~

~~2. The use shall be limited to the preparation and/or sale of food and beverages from a vehicle, trailer or temporary structure. Temporary structures shall be as defined and regulated by the State Building Code.~~

~~3. The use shall not be conducted within public rights-of-way.~~

~~4. The use shall be conducted on property only with the written consent of the property owner.~~

~~5. Business operations shall be conducted between the hours of 7:00 a.m. and 10:00 p.m.~~

~~6. The use shall not block driveways, entrances or parking aisles.~~

~~7. The use shall provide a minimum of four designated off-street parking spaces that comply with the standards of MCC 16.30.190.~~

~~8. The use shall conform with all setback standards for the zone where it is located, including the clear vision area.~~

~~9. Signs associated with the use shall conform with Chapter 16.31 MCC.~~

~~10. The operator of the use shall possess valid county certification of compliance with health and sanitation standards.~~

~~11. The base of operations for mobile food service units shall be from commercial or industrial zones. Use of sites in residential zones for the preparation, maintenance, or storage area for mobile food service units is prohibited.~~

B. Within the Salem/Keizer urban growth boundary, mobile food vendors shall meet the following use and development standards:

~~1. The use is allowed only in the CR, CG, HC, IC, IP, IG and IH zones.~~

~~2. If the mobile food vendor is located on private property not owned by the operator, the operator shall maintain, on-site, a copy of an agreement between the operator and the property owner granting permission to use the property.~~

~~3. Mobile food vendors shall not operate or be located in a public right-of-way.~~

~~4. Mobile food vendors shall only be located at one development site for a maximum of six months in any consecutive 12-month period, which commences from the date of occupation of the development site by any mobile food vendor. As used herein, a "development site" means any lot, parcel, integrated shopping center, any aggregation of lots or parcels, portions of which share parking, access or landscaping.~~

~~5. No mobile food vendor shall be allowed unless the on-site parking requirements under Chapter 16.30 MCC for all businesses being served by the parking lot or facility are met, excluding the parking area to be covered by the mobile food vendor and one additional space to accommodate mobile food vendor customers.~~

~~6. No mobile food vendor shall be within 500 feet of another mobile food vendor on the same side of the street or highway, or within 250 feet of another mobile food vendor on the opposite side of the street or highway.~~

~~7. Site Plan.~~

~~a. The owner and/or operator of any semi-permanent mobile food vendor must prepare and file a complete site plan with the zoning administrator. This plan shall be to scale and include all structures and present uses served by the parking lot in which the mobile food vendor will be located; all parking, loading, and maneuvering areas; lot ingress and egress; and type and location of the mobile food vendor screening, landscaping, utility services, sewage and waste disposal, and propane tank size and arrangement.~~

~~b. All semi-permanent mobile food vendors shall be fully skirted and all conduit, tanks and storage shall be completely screened from all public areas and streets by the use of sight-obscuring fencing and/or temporary landscaping.~~

c. For the purpose of this section, a “semi permanent unit” is defined as any unit which is not a self-propelled, self-contained, fully operational motorized vehicle.

d. Primary access to mobile food vendors shall be from arterial streets, through existing driveways. [Ord. 1204 § 4, 2004. UZ Ord. § 26.57.]

- A. Mobile food units may only operate subject to standards in the CO, CR, CG, HC, IC, IP, IG and IH zones. Mobile food units may not operate in residential zones.
- B. Mobile food units may not operate in a public street or right-of-way.
- C. Mobile foods units may only operate in an approved parking lot, or other hard surface area, where the off-street parking requirements for all users served by the off-street parking area are met.
- D. Mobile food unit operators shall not obstruct pedestrian pathways, driveways or drive aisles and shall not create a traffic or safety hazard.
- E. Mobile food units parked in a stationary location for a period of 24 hours or longer shall provide screening of all storage areas, tanks and conduit by site obscuring fencing or temporary landscaping.
- F. Mobile food unit operators are responsible for picking up any litter which is deposited by any person within 20 feet of the mobile food unit when conducting business.
- G. Mobile food units are not permanent structures and must remain capable of being moved. The wheels must remain on the unit and no permanent connections to any utility service are permitted.
- H. Mobile food units are not permitted to have decks, carports, covered shelters or similar structures placed adjacent to or attached to them.
- I. Mobile food units shall obtain all necessary licenses from Marion County Environmental Health prior to operating.

Optional: Modified standards for mobile food vendors

Chapter 16.28 DEVELOPMENT STANDARDS FOR SECONDARY, ACCESSORY AND TEMPORARY STRUCTURES

16.28.020 Accessory and secondary structure location and allowable coverage.

A. Structures accessory or secondary to a use allowed on property in a residential designation may be located in a side or ~~required~~ rear yard provided:

1. The lot coverage by all accessory or secondary structures located in the required rear yard, except fences or retaining walls, shall total no more than 25 percent of the required rear yard; and
2. The accessory or secondary structure shall be set back at least one foot from any alley, or roadway adjacent to the rear lot line.

B. Structures accessory or secondary to a use allowed on property in a residential designation may **not** be located in the ~~nonrequired portion of the side or rear~~ **front** yard ~~provided they meet the setbacks for the primary structure.~~

Optional: Clarifies setbacks for accessory structures in residential zones.

Chapter 16.31 SIGNS

16.31.070 Signs in CO zones.

Except as provided in MCC 16.31.040, no sign shall be erected or maintained in a CO zone except as set forth in this section:

A. Maximum Square Footage. The total area of all signs shall not exceed one square foot for each linear foot of building frontage.

7. Subject to the standards above, one electronic display sign not exceeding 32 square feet with a dwell time of one hour, except changes to correct hour-and-minute or temperature information, which may change no more often than once every three seconds, ~~may be erected in place of a freestanding sign.~~

16.31.080 Signs in other zones.

Except as provided in MCC 16.31.040 and 16.31.090, no sign shall be erected or maintained in any other zones except as set forth in this section:

E. Subject to the standards above, one electronic display sign ~~in place of a freestanding sign~~ with a dwell time of eight seconds, except changes to correct hour-and-minute or temperature information, which may change no more often than once every three seconds.

16.31.090 Signs for integrated business centers.

Except as provided in MCC 16.31.040, only signs permitted in this section are allowed in an integrated business center in CR and CG zones:

A. Integrated Business Center Sign. One freestanding structure per street frontage with driveway entrance access.

4. Subject to the standards above, one electronic display sign ~~in place of a freestanding sign~~ with a dwell time of eight seconds, except changes to correct hour-and-minute or temperature information, which may change no more often than once every three seconds.

Optional: Clarifies that an electronic display sign can be part of an existing sign, not only a separate freestanding sign.

Chapter 16.33 SUBDIVISION AND PARTITION REQUIREMENTS

16.33.140 Property line adjustments.

The following requirements shall apply to all property line adjustments:

A. Regardless of the size of the adjustment, when a property line to be adjusted is part of a division of land previously approved by the Marion County planning director, planning commission, hearings officer, or board of commissioners it must be reviewed by the planning director.

B. Except as provided in subsection (A) of this section, no approval is necessary for property line adjustments in the RL (limited multiple-family residential), RM (multiple-family residential), CO (commercial office), CR (commercial retail), CG (commercial general), HC (highway commercial), IC (industrial commercial), IP (industrial park), IG (general industrial) or IH (heavy industrial) zones.

C. Except as provided in subsections (A) and (B) of this section, all property line adjustments shall require approval under the partitioning procedure if the adjustment exceeds 10 percent of the total land area of the smallest affected parcel. [Ord. 1170 § 4, 2002. UZ Ord. § 33.14.]

D. Any adjustment or removal of a property line or public easement involving a parcel in a recorded partition plat or lot line in a recorded subdivision shall be performed by means of the replat process specified in ORS 92.180 through 92.190.

E. Property line adjustment deeds shall be recorded with the Marion County clerk's office prior to submitting the property line adjustment survey, if a survey is required. Deed recording reference numbers shall be noted on the required survey.

Optional: Consistency with the rural code.

Chapter 17.110 General Provisions

~~17.110.160 Convalescent home.~~

~~See "Nursing home," MCC 17.110.415. [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.160.]~~

~~17.110.265 Homes for the aged and infirm.~~

~~"Homes for the aged and infirm" means "group care home." [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 882 § 5, 1990; Ord. 516 § 2, 1978. RZ Ord. § 110.265.]~~

~~17.110.295 Kindergarten.~~

~~See "Child care facility," MCC 17.110.147. [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.295.]~~

~~17.110.375 Maternity home.~~

~~See "Hospital." [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.375.]~~

~~17.110.410 Nursery.~~

~~See "Child care home." [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.410.]~~

~~17.110.480 Rest home.~~

~~See "Nursing home," MCC 17.110.415. [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.480.]~~

Optional to remove outdated and unused terms from definitions.

17.110.223 Farm use.

"Farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, furbearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, species and bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this section. "Farm use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees as defined in ~~ORS 215.203~~ **subsection (3)** or land described in ORS 321.267(3) or 321.824(3).

“Current employment” of land for farm use includes:

(A) Farmland, the operation or use of which is subject to any farm-related government program;

(B) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

(C) Land planted in orchards or other perennials, other than land specified in subparagraph (D) of this paragraph, prior to maturity;

(D) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;

(E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

(F) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);

(G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

(H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(I) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer’s immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;

(J) Any land described under ORS 321.267 (3) or 321.824 (3); and

(K) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

(i) Only the crops of the landowner are being processed;

(ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or

(iii) The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.

“Preparation of products or by-products” includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products. “Products or by-products raised on such land” means that those products or by-products are raised on the farm operation where the preparation occurs or on other farm land, provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land. [Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 979 § 6, 1994; Ord. 579 § 6, 1980; Ord. 516 § 2, 1978; Ord. 457 § 1, 1976. RZ Ord. § 110.223.]

Mandatory to conform with changes to state law.

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 125.** [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.270.]

Mandatory if home office standards are adopted.

17.110.300 Kennel.

“Kennel” means any lot or premises on which four or more dogs and/or cats or pets over the age of four months are kept for sale, lease, breeding, boarding, shows or training. **Such term does not include kennels and dog training facilities meeting the standards and criteria set forth in EFU, SA and FT zones.** [Ord. 1330 § 4 (Exh. A), 2013; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.300.]

Mandatory to conform with changes to state law permitting kennels in resource zones.

17.110.315 Lot.

“Lot” means a unit of land created by a subdivision as defined in ORS 92.010 in compliance with all applicable zoning and subdivision ordinances; or created by deed or land sales contract ~~if there were no applicable zoning or subdivision ordinances~~, **prior to September 1, 1977**, exclusive of units of land created solely to establish a separate tax account. [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1997; Ord. 516 § 2, 1978. RZ Ord. § 110.315.]

Optional to legalize parcels created prior to 1977 when the county regulated partitionings, before the state require land divisions to be review by local government.

17.110.427 Parcel.

“Parcel” means a unit of land created by a partitioning as defined in ORS 92.010 in compliance with all applicable zoning and partitioning code provisions contained in Chapter 17.172 MCC, or created by deed or land sales contract ~~if there were no applicable zoning or partitioning code provisions contained in Chapter 17.172 MCC~~, **prior to September 1, 1977** excluding units of land created solely to establish a separate tax account. [Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008. RZ Ord. § 110.427.]

Optional to legalize parcels created prior to 1977 when the county regulated partitionings, before the state require land divisions to be review by local government.

Chapter 17.111 PUBLIC HEARING

17.111.030 Notice of quasi-judicial public hearing.

Upon the fixing of the time of a quasi-judicial public hearing notice shall be provided as follows:

C. Notices of quasi-judicial public hearings shall be mailed at least 20 days prior to the date of the first evidentiary hearing and 10 days prior to the date of any subsequent hearings. Failure to receive such notice by mail shall not affect the validity of the proceedings. In addition, notices shall also be mailed to an appointed area advisory committee when it exists. The Director of the Department of Land Conservation and Development shall be notified of a hearing involving an amendment to a comprehensive plan or land use regulation, ~~45~~ **35** days prior to the first evidentiary hearing on adoption. The notice shall be provided to the applicant, the owner(s) of the subject property, and owners of record of property on the most recent property tax assessment roll where the property is located within:

1. Two hundred fifty feet of the property subject to the notice for subject property that is not within the EFU, SA, FT or TC zone; or
2. Seven hundred fifty feet of the property subject to the notice for subject property that is within the EFU, SA, FT or TC zone;
3. Notice shall be sent to owners of a public-use airport of any land use action within 5,000 feet of the side or end of a “visual airport” runway, or within 10,000 feet of an “instrument airport” runway, unless the action involves structures less than 35 feet tall outside the runway approach surface;
4. Notice shall also be provided to any neighborhood or community organization recognized by the Board and whose boundaries include the site;
5. Notice of the public hearing on an application for an aggregate site shall be mailed to all owners of property, any portion of which is within 1,500 feet of the subject property. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 516 § 2, 1978. RZ Ord. § 111.030.]

Mandatory: OAR amendments 2012

Chapter 17.114 NONCONFORMING BUILDINGS AND USES

17.114.040 Nonconforming lots of record.

Notwithstanding MCC 17.110.680 and Chapter 17.172 MCC, ~~those lots or parcels that were not created in conformance with the applicable laws and regulations pertaining to division of land at the time they were created, but meet all of the following standards, will be considered nonconforming legal lots:~~

~~A. For a lot or parcel created between August 8, 1962, and September 1, 1977, an application to validate a unit of land that did not comply with the applicable criteria for creation of a unit of land may be approved if:~~

- ~~1. The subject lot or parcel has been transferred by a recorded deed or contract into an ownership separate from the lot or parcel from which it was separated and has remained in separate ownership since that transfer; and~~
- ~~2. The subject lot or parcel has not been combined with a contiguous lot or parcel by a recorded deed or contract; and~~
- ~~3. There is no record of a land use action or building permit issued based upon or requiring combination of the lot or parcel with contiguous lot(s) or parcel(s) for land use purposes, and there is no record of a land use decision denying a partition. **any lot created by deed, plat or subdivision prior to September 1, 1977, is considered legally created for the purposes of applying the land use code.**~~

Optional: Legalized all lots created prior to September 1, 1977.

17.114.150 Expansion of nonconforming uses. A nonconforming use may be enlarged, expanded, or extended **wholly on the same lot or parcel or on an adjacent lot or parcel** ~~when such expansion is solely required by either legislative or economic market demands for the goods, products, or services provided, and~~ **consistent with the criteria below when** such enlargement, expansion or extension is approved by the planning commission, hearings officer, or planning director through the variance proceedings set forth in Chapter 17.122 MCC. Any approval by the planning commission, hearings officer, or planning director of an application for the enlargement, expansion or extension of a nonconforming use shall be allowed only after findings are made which reflect the following considerations:

- A. The intent and purpose of the zoning or zone change which caused the subject use to become nonconforming;
- B. Adverse impact of the expansion of the nonconforming use on the interests sought to be protected by the zone in which the subject property is located;
- C. The availability, including economic factors, of other property where the subject use would be a conforming and permitted use;
- D. The availability of other appropriate remedies, ~~including but not limited to a zone change;~~
- E. ~~The applicant's satisfaction of the criteria required for a variance.~~
- E. The presence of unnecessary, unreasonable hardships or practical difficulties which can be relieved only by approving the request;**
- F. Whether the request is the minimum necessary to permit development of the property for the proposed use;**
- G. Whether the request will not have a significant adverse affect on property or improvements in the neighborhood of the subject property;**
- H. Whether the request will not have a significant adverse affect upon the health or safety of persons working or residing in the vicinity.**

The approval of an application under this section does not waive the status of the nonconforming use. [Ord. 1271 § 5, 2008; Ord. 1168 § 5, 2002; Ord. 1125 § 4, 2000. RZ Ord. § 114.150.]

Optional: Clarifies criteria.

Chapter 17.120 SPECIFIC CONDITIONAL USES

17.120.090 Agri-tourism events and activities.

Agri-tourism and other commercial events or activities in conjunction with a farming operation shall meet the following use criteria and development standards. An applicant may be approved under subsection (A) or (B) and subsection (C) of this section:

G. As used in this section, the term “agri-tourism” means a common, farm-dependent activity that promotes agriculture, any income from which is incidental and subordinate to the income of a working farm operation. Such activities may include hay rides, corn mazes and other similar uses that are directly related to on-site agriculture. Any assembly of persons shall be for the purpose of taking part in agriculturally-based activities such as animal or crop care, tasting farm products or learning about farm or ranch operations. Agri-tourism may include farm-to-plate meals and similarly small, farm-themed parties. Regularly occurring celebratory gatherings, weddings, parties or similar uses that cause the property to act as an event center or that take place in structures specifically designed for such events, are not agri-tourism.

~~G.~~**H.** Wineries approved for uses under this section are prohibited from qualifying for uses under MCC 17.125.030. [Ord. 1326 § 4 (Exh. A), 2012.]

Optional: Adds a definition of agri-tourism based on model code.

Chapter 17.125 LIMITED USES

17.125.030 Winery.

A winery is subject to the following:

~~A. A winery may be established in the EFU, SA or FT zones subject to the following criteria:~~

~~1. A winery with a maximum annual production of less than 50,000 gallons shall:~~

- ~~a. Own an on-site vineyard of at least 15 acres;~~
- ~~b. Own a contiguous vineyard of at least 15 acres;~~
- ~~c. Have a long term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or~~
- ~~d. Obtain grapes from any combination of subsection (A)(1)(a), (b), or (c) of this section; or~~

~~2. A winery with a maximum annual production of at least 50,000 gallons shall:~~

- ~~a. Own an on-site vineyard of at least 40 acres;~~
- ~~b. Own a contiguous vineyard of at least 40 acres;~~
- ~~c. Have a long term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or~~
- ~~d. Obtain grapes from any combination of subsection (A)(2)(a), (b), or (c) of this section; or~~

~~3. The winery complies with the following:~~

- ~~a. The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;~~
- ~~b. The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in subsection (A)(3)(a) of this subsection; and~~
- ~~c. The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three of the five calendar years before the winery is established under this section.~~

~~4. Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards have been planted or that the contract has been executed, as applicable.~~

~~5. The winery shall not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.~~

~~6. Adequate fire protection and other rural services are, or will be, available when the use is established.~~

~~B. A winery described in either subsection (A)(1) or (A)(2) of this section may:~~

~~1. Market and sell wine produced in conjunction with the winery, including the following activities: wine tours; wine tastings in a tasting room or other location at the winery; wine clubs; and similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;~~

~~2. Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010; and~~

~~3. Provide services, including private events, such as facility rentals and celebratory gatherings, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured; that:~~

~~a. Are directly related to the sale or promotion of wine produced in conjunction with the winery;~~

~~b. Are incidental to the retail sale of wine on site; and~~

~~c. Are limited to 25 days or fewer in a calendar year.~~

[HB 3280 (2011) sunsets the provisions in subsection (B)(3) of this section on January 1, 2014.]

~~4. The gross income of the winery from the sale of incidental items pursuant to subsection (B)(2) of this section and services provided pursuant to subsection (B)(3) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. Beginning on January 1, 2013, a winery approved under this section shall submit a written statement for the previous tax year, prepared by a certified public accountant, certifying compliance with the standards in this subsection.~~

[HB 3280 (2011) sunsets the provisions in subsection (B)(4) of this section on January 1, 2014.]

C. A winery described in subsection (A)(3) of this section may:

~~1. Market and sell wine produced in conjunction with the winery, including the following activities: wine tours; wine tastings in a tasting room or other location at the winery; wine clubs; and similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;~~

~~2. Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010, wine not produced in conjunction with the winery and gifts; and~~

~~3. Provide services, including private events, such as facility rentals and celebratory gatherings, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured; that:~~

~~a. Are directly related to the sale or promotion of wine produced in conjunction with the winery;~~

~~b. Are incidental to the retail sale of wine on site; and~~

~~c. Are limited to 25 days or fewer in a calendar year.~~

~~4. The gross income of the winery from the sale of incidental items pursuant to subsection (C)(2) of this section and services provided pursuant to subsection (C)(3) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. Beginning on January 1, 2013, a winery approved under this section shall submit a written statement for the previous tax year, prepared by a certified public accountant, certifying compliance with the standards in this subsection.~~

~~5. Sell or deliver items or provide services not described in subsection (C)(2), (3) or (4) of this section under the criteria for a commercial activity in conjunction with farm use in the applicable zone.~~

6. Operate a restaurant, as defined in ORS 624.010, for 25 days or fewer in a calendar year in which food is prepared for consumption on the premises of the winery.

D. In addition to the uses listed in subsection (C) of this section, a winery described in subsection (A)(3) of this section may operate a restaurant that is open to the public for more than 25 days in a calendar year or provides for private events occurring on more than 25 days in a calendar year shall, in addition to other criteria in this code, be subject to the following criteria:

1. The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non farm or non forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary;
2. The use is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and
3. The use does not materially alter the stability of the land use pattern in the area;
4. A person may not have a substantial ownership interest in more than one winery operating a restaurant under this section;
5. Any approval under this subsection for private events, including facility rentals and celebratory gatherings, shall be reviewed at least once every five years to determine whether the permit may be renewed.

E. In addition to the criteria and standards above, any winery established under this code shall demonstrate compliance with the following standards:

1. The winery shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.
2. The winery and all public gathering places shall be set back at least 100 feet from all property lines.
3. The winery shall establish a direct road access and a plan for internal circulation.

F. Wineries approved for events or uses under this section are prohibited from qualifying for uses under MCC 17.120.090. [Ord. 1326 § 4 (Exh. A), 2012.]

17.125.030 WINERY. A winery may be established in the EFU, SA or FT zones subject to the following criteria:

A. The winery produces wine with a maximum annual production of:

1. Less than 50,000 gallons and:

- a. **Owns an on-site vineyard of at least 15 acres;**
- b. **Owns a contiguous vineyard of at least 15 acres;**
- c. **Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or**
- d. **Obtains grapes from any combination of (a), (b) or (c); or**

2. At least 50,000 gallons and the winery:

- a. Owns an on-site vineyard of at least 40 acres;
- b. Owns a contiguous vineyard of at least 40 acres;
- c. Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery;
- d. Owns an on-site vineyard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of vineyards in Oregon that are located within 15 miles of the winery site; or
- e. Obtains grapes from any combination of (a), (b), (c) or (d).

B. In addition to producing and distributing wine, a winery established under this section may:

- 1. Market and sell wine produced in conjunction with the winery.
- 2. Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:
 - a. Wine tastings in a tasting room or other location on the premises occupied by the winery;
 - b. Wine club activities;
 - c. Winemaker luncheons and dinners;
 - d. Winery and vineyard tours;
 - e. Meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members;
 - f. Winery staff activities;
 - g. Open house promotions of wine produced in conjunction with the winery; and
 - h. Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery.
- 3. Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to on-site retail sale of wine, including food and beverages:
 - (A) Required to be made available in conjunction with the consumption of wine 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 (B)(2), (B)(4) or (B)(5).
- 4. Carry out agri-tourism or other commercial events on the tract occupied by the winery subject to (E) and (F).

5. Host charitable activities for which the winery does not charge a facility rental fee.
- C. A winery 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 (B)(3). Food and beverage services authorized under (B)(3) may not utilize menu options or meal services that cause the kitchen facilities to function as a café or other dining establishment open to the public.
- D. The gross income of the winery from the sale of incidental items or services provided pursuant to (B)(3) to (B)(5) may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery. At the request of the Planning Director, the winery shall submit a written statement that is prepared by a certified public accountant and certifies the compliance of the winery with this section for the previous tax year.
- E. A winery may carry out up to 18 days of agri-tourism or other commercial events annually on the tract occupied by the winery, subject to the following:
1. Events on the first six days of the 18-day limit per calendar year shall be authorized through the issuance of a renewable multi-year license that has a term of five years and is subject to an administrative review to determine necessary conditions pursuant to (F). The license described in this section is not a land use decision, as defined in ORS 197.015, and is not subject to review by the Land Use Board of Appeals and is not a permit, as defined in ORS 215.402 or 227.160.
 2. Events on days seven through 18 of the 18-day limit per calendar year shall be authorized by the local government through the issuance of a renewable multi-year permit that has a term of five years, is subject to an administrative review to determine necessary conditions pursuant to (F), and is subject to notice as specified in ORS 215.416 (11) or 227.175 (10). The permit described in this section is a land use decision, as defined in ORS 197.015, and is subject to review by the Land Use Board of Appeals and is a permit, as defined in ORS 215.402 or 227.160.
- F. As necessary to ensure that agri-tourism or other commercial events on a tract occupied by a winery are subordinate to the production and sale of wine and do not create significant adverse impacts to uses on surrounding land, the local government may impose conditions on a license or permit issued pursuant to (E) 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.
- G. A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.

H. Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in (A) have been planted or that the contract has been executed, as applicable.

I. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:

1. Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places unless the local government grants an adjustment or variance allowing a setback of less than 100 feet; and
2. Provision of direct road access and internal circulation.

J. In addition, the following apply to any permitted winery request:

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. When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:

1. The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
2. The meals may be served at the bed and breakfast facility or at the winery.

L. 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 wine produced in conjunction with the winery is a secondary purpose of the event.
2. "On-site retail sale" includes the retail sale of wine in person at the winery site, through a wine club or over the Internet or telephone.

Mandatory: SB 841 (2013)

17.125.035 LARGE WINERY. A large winery may be established in the EFU, SA or FT zones subject to the following criteria:

A. The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;

B. The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in (A); and

- C. The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three of the five calendar years before the winery is established under this section.
- D. In addition to producing and distributing wine, a winery described in (A) through (C) may:
1. Market and sell wine produced in conjunction with the winery;
 2. Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:
 - a. Wine tastings in a tasting room or other location on the premises occupied by the winery;
 - b. Wine club activities;
 - c. Winemaker luncheons and dinners;
 - d. Winery and vineyard tours;
 - e. Meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members;
 - f. Winery staff activities;
 - g. Open house promotions of wine produced in conjunction with the winery; and
 - h. Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;
 3. Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages:
 - a. Required to be made available in conjunction with the consumption of wine 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 (D)(2)(b), (d) or (e);
 4. Provide services, including agri-tourism or other commercial events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:
 - a. Are directly related to the sale or promotion of wine produced in conjunction with the winery;
 - b. Are incidental to the retail sale of wine on-site; and
 - c. Are limited to 25 days or fewer in a calendar year; and
 5. Host charitable activities for which the winery does not charge a facility rental fee.
- E. The gross income of the winery from the sale of incidental items pursuant to (D)(3) and services provided pursuant to (D)(4) may not exceed 25 percent of the gross income from the on-site retail

sale of wine produced in conjunction with the winery. At the request of the Planning Director, the winery shall submit to the local government a written statement, prepared by a certified public accountant, that certifies compliance with this section for the previous tax year.

F. A winery operating under this section:

1. Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.
2. May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.

G. A winery shall obtain a permit from the local government if the winery operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for agri-tourism or other commercial events authorized under (D)(4) occurring on more than 25 days in a calendar year. In addition to any other requirements, a local government may approve a permit if the local government finds that the authorized activity:

1. Complies with the standards described in ORS 215.296;
2. Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and
3. Does not materially alter the stability of the land use pattern in the area.
4. If the local government issues a permit for agri-tourism or other commercial events, the local government shall review the permit at least once every five years and, if appropriate, may renew the permit.

H. A person may not have a substantial ownership interest in more than one winery operating a restaurant under this section.

I. Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in (A), (B), and (C) have been planted.

J. A winery operating under this section shall:

1. Be setback at least 100 feet from all property lines for the winery and all public gathering places; and
2. Provide for direct road access and internal circulation.

K. A local government shall apply:

1. Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;
2. Regulations 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.

- L. The local government may authorize a winery described in (A), (B) and (C) to sell or deliver items or provide services not described in (D)(3), (D)(4), or (E) for a commercial activity in conjunction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a) or under other provisions of law.
- M. A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before August 2, 2011. A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government did not issue permits to wineries operating under this section in similar circumstances before August 2, 2011.
- N. When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:
1. The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
 2. The meals may be served at the bed and breakfast facility or at the winery.
- O. 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 wine produced in conjunction with the winery is a secondary purpose of the event.
 2. “On-site retail sale” includes the retail sale of wine in person at the winery site, through a wine club or over the Internet or telephone.

Mandatory: ORS 215.453. Proposed to be a separate section of MCC in order to clarify the different criteria between regular and large winery.

17.125.100 Limited home occupations.

A limited home occupation shall meet the following use and development standards:

~~A. The home occupation shall be carried on solely by the resident or residents of a dwelling on the subject property as a secondary use. No employees living off the premises are allowed.~~

A. The home occupation shall be carried on by the resident or residents of a dwelling on the subject property as a secondary use and may employ no more than one person (“person” includes volunteer, nonresident employee, partner or any other person).

~~C. No sign or display on the premises is allowed that will indicate from the exterior of the dwelling or attached garage that the premises is used for any purpose other than a dwelling.~~

C. No sign shall be displayed on the premises except such signs as are allowed in Chapter 17.191 MCC for the zone in which the home occupation is located.

~~N. In order to establish a new home occupation the property owner, and any lessee of the dwelling, shall sign an agreement that:~~

- ~~1. Acknowledges the requirements of this section;~~

~~2. Agrees that the home occupation will be discontinued or brought into strict conformance with the requirements of this section upon notification from the community development department of any violation of this section.~~

Optional: adopts provisions for a home occupation with one sign without requiring a permit.

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:

21. In EFU, SA, FT and TC zones, a home office, provided:

- a. The home office shall be carried on solely by the resident or residents of a dwelling on the subject property as an accessory use. No other persons shall be employed by the business.**
- b. The home office shall be continuously conducted in such a manner as not to create any public or private nuisance, including, but not limited to, offensive noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference. In a residential zone noise associated with the home office shall not violate Department of Environmental Quality or Chapter 8.45 Noise.**
- c. No sign or display on the premises is allowed that will indicate the presence of the home office.**
- d. The home office shall be conducted entirely within the dwelling or attached garage. There shall be no outside storage or display of materials, equipment, or merchandise used in, or produced in connection with, the home office.**
- e. No structural alterations shall be made to the dwelling or garage that would be inconsistent with future use of the building exclusively as a dwelling.**
- f. No visits by suppliers shall occur.**
- g. No customers or clients shall visit the property in the course of doing business.**

Optional: adopts provisions for a home office.

K. Private energy generating facilities (such as wind turbines, solar power panels, fuel cells, and hydropower facilities) are permitted in all zones as an accessory use, provided:

- ~~1. The applicant shall provide a copy of a net metering agreement with a nameplate rating that restricts the electrical power generation capacity to private electrical power on the property.~~
- ~~2. The property owner shall not receive any monetary compensation or credit for annually accumulated excess electrical power.~~
- ~~3. Any excess energy shall be transferred under provisions listed in OAR 860-039-0060.~~

4. ~~Wind turbine towers shall be the factory default color.~~

1. Generates energy using means such as solar power, wind power, fuel cells, hydroelectric power, landfill gas, digester gas, waste, dedicated energy crops available on a renewable basis or low-emission, nontoxic biomass based on solid organic fuels from wood, forest or field residues but not including the production of biofuel as authorized by ORS 215.203(2)(b)(K) in all zones which allow "Farm Use" and 215.283(1)(r) in the Exclusive Farm Use zone;
2. Is intended to offset part of the customer-generator's requirements for energy;
3. Will operate in parallel with a utility's existing transmission and distribution facilities;
4. Is consistent with generating capacity as specified in ORS 757.300 and/or OAR 860-039-0010 as well as any other applicable regulations;
5. Is located on the same tract as the use(s) to which it is accessory and the power generating facility, tract, and use(s) are all under common ownership and management.

Optional: Revised language suggested by model code.

17.126.030 Permitted temporary uses.

The following temporary uses shall be permitted subject to the following limitations and requirements and the requirements in applicable overlay zones:

C. Except as provided for in MCC 17.178.050 (F), one recreational vehicle space on a lot or parcel without a dwelling in the AR, SA, FT and TC zones subject to the requirements in MCC 17.126.040, except subsections (B) and (C). In addition, the space shall:

1. Not be occupied for more than 120 days in any calendar year; and
2. Satisfy all development standards and requirements applied to a non-resource-related dwelling in the applicable zone.

Optional: Clarifies language to be consistent with 17.178.050(F).

Chapter 17.136 EFU (EXCLUSIVE FARM USE) ZONE

17.136.010 Purpose.

The purpose of the EFU (exclusive farm use) zone is to provide areas for continued practice of commercial agriculture. It is intended to be applied in those areas composed of tracts that are predominantly high-value farm soils as defined in OAR 660-33-020(8). These areas are generally well suited for large-scale farming. It is also applied to small inclusions of tracts composed predominantly of non-high-value farm soils to avoid potential conflicts between commercial farming activities and the wider range of non-farm uses otherwise allowed on non-high-value farmland. Moreover, to provide the needed protection within cohesive areas it is sometimes necessary to include incidental land unsuitable for farming and some pre-existing residential acreage.

To encourage large-scale farm operations the EFU zone consolidates contiguous lands in the same ownership when required by a land use decision. It is not the intent in the EFU zone to create, through land divisions, small-scale farms. There are sufficient small parcels in the zone to accommodate those small-scale farm operations that require high-value farm soils. Subdivisions and planned developments are not consistent with the purpose of this zone and are prohibited.

To minimize impacts from potentially conflicting uses it is necessary to apply to non-farm uses the criteria and standards in OAR 660-33-130 and in some cases more restrictive criteria are applied to ensure that adverse impacts are not created.

The EFU zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water and land resources of the county.

Non-farm dwellings generally create conflicts with accepted agricultural practices. Therefore, the EFU zone does not include the lot of record non-farm dwelling provisions in OAR 660-33-130(3). The provisions limiting non-farm dwellings to existing parcels composed on Class IV – VIII soils [OAR 66033-130(4)] are included because the criteria adequately limit applications to a very few parcels and allow case-by-case review to determine whether the proposed dwelling will have adverse impacts. The EFU zone is intended to be a farm zone consistent with OAR 660, Division 033 and ORS 215.283. [Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 8, 2000. RZ Ord. § 136.010.]

Optional: Clarification of purpose statement suggested by model code.

17.136.020 Permitted uses.

Within an EFU zone no building, structure or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

D. Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.136.100(C), when the dwelling:

1. Has a “percentage good” rating of 40 percent or more in the current county assessor’s records.
2. ~~In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the final inspection or occupancy of the replacement dwelling.~~
3. ~~In the case of replacement of a manufactured dwelling, the unit to be replaced is a manufactured home as defined in ORS 446.003 (manufactured after June 15, 1976).~~

1. Is assessed in the current County Assessor’s records as a site-built dwelling or manufactured home.

2. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:

a. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or

b. If the dwelling to be replaced is in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and

c. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.

3. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted to a non-residential use.

4. Replacement dwellings may sited on any part of the same lot or parcel. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned EFU, SA (special agriculture) or FT

(farm/timber), the applicant shall execute and record in the deed records a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement of dwellings have changed to allow the siting of another dwelling.

5. Replacement under this section includes dwelling replaced pursuant to 17.136.080 (C) when a fire report is provided at the time building permits are applied for.

Optional: HB 2746 (2013)

17.136.030 Dwellings permitted subject to standards.

The following dwellings may be established in the EFU zone with filing of the declaratory statement in MCC 17.136.100(C), subject to approval by the director, based on satisfaction of the standards and criteria listed for each type of dwelling pursuant to the procedures in Chapter 17.115 MCC.

A. Primary Farm Dwellings. A single-family dwelling customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

4. It is in conjunction with a commercial dairy farm as defined in this chapter and if:

- a. The subject tract will be employed as a commercial dairy as defined; and
- b. The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy; and
- c. ~~Except as permitted by ORS 215.283(1)(p) (1999 Edition) (seasonal farmworker housing),~~ **for seasonal farmworker housing approved prior to 2001,** there is no other dwelling on the subject tract; and

Optional: 2016 rule amendments

5. The applicant had previously operated a commercial farm use and if:

- a. Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by subsection (A)(1) or (2) of this section, whichever is applicable.
- b. The subject lot or parcel on which the dwelling will be located is:
 - i. Currently employed for the farm use, as defined in this title, that produced in the last two years or three of the last five years, or the average of the best three of the last five years, the gross farm income required by subsection (A)(1) or (2) of this section, whichever is applicable; and
 - ii. At least the size of the applicable minimum lot size in this chapter; and:

~~(A) Except as permitted by ORS 215.283(1)(p) (1999 Edition) (seasonal farmworker housing),~~ **for seasonal farmworker housing approved prior to 2001,** there is no other dwelling on the subject tract; and

Optional: 2016 rule amendments

D. Dwelling Alteration and Replacement. Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.136.100(C), other than as permitted in MCC 17.136.020(D), when the dwelling:

- ~~1. Has intact exterior walls and roof structure;~~
- ~~2. Has indoor plumbing consisting of a kitchen sink, toilet, and bathing facilities connected to a sanitary waste disposal system;~~
- ~~3. Has interior wiring for interior lights;~~
- ~~4. Has a heating system; and~~
5. In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the final inspection or occupancy of the replacement dwelling.
6. For the case in which the applicant has requested a deferred replacement permit, the dwelling to be replaced shall be removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of consideration. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.
7. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned EFU, SA or FT the applicant shall execute and record in the deed records a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel.

The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. [Ord. 1326 § 4 (Exh. A), 2012; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 8, 2000. RZ Ord. § 136.030.]

- 1. The dwelling to be altered, restored or replaced has or formerly had:**
 - a. Intact exterior walls and roof structure;**
 - b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;**
 - c. Interior wiring for interior lights; and**
 - d. A heating system; and**
- 2. The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from the time the dwelling was established; and**
- 3. If the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling had to have been assessed as a dwelling until such time as the value of the dwelling was eliminated:**

- a. The destruction (i.e by fire or natural hazard), or demolition in the case of restoration, of the dwelling; or
 - b. The applicant establishes to the satisfaction of the permitting authority that the dwelling was improperly removed from the tax roll by a person other than the current owner. "Improperly removed" means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll.
4. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:
 - a. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or
 - b. If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and
 - c. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.
5. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.
6. As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, Chapter 462, Section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.
7. A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.
8. When a dwelling formerly had the features described in (1) or was removed from the tax roll as described in (3)(a), then, the replacement dwelling must be sited on the same lot or parcel consistent with the following:
 - a. Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and
 - b. If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.

9. Replacement dwellings that currently have the features described in (1) and that have been on the tax roll as described in (2) may be sited on any part of the same lot or parcel.

10. The approval to replace a dwelling under this section shall expire on January 1, 2024.

Mandatory: HB 2746 (2013)

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:

A. Farm Stand. Farm stand subject to the following standards:

~~1. Structures shall be designed to be used for the sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area.~~

~~a. As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.~~

~~b. As used in this section, "local agricultural area" is limited to the state of Oregon.~~

~~2. The sale of incidental retail items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand is permitted, provided the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand.~~

~~3. "Farm stand" shall not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.~~

1. The structures shall be designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the in State of Oregon, including processed food items, and the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand; and,

2. Annual sales of the incidental items and fees from promotional activity, sales of farm crops produced outside the State of Oregon, and sales of prepared food items together cannot make up more than 25 percent of the total annual sales of the farm stand; and

3. The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

4. As used in this section, "processed food items" means farm crops and livestock that have been converted into other products through canning, drying, baking, freezing, pressing, butchering or other similar means of adding value to the farm product, such as such as jams, syrups, apple cider, and similar animal products, but not prepared food items.

5. As used in this section, "prepared food items" means that food products that are prepared for immediate consumption, such as pies, short cake, milk shakes, smoothies, and baked goods.

6. Adequate off-street parking shall be provided and all vehicle maneuvering will be conducted on site. No vehicle backing or maneuvering shall occur within adjacent roads, streets or highways.
7. No farm stand building or parking is permitted within the right-of-way.
8. Roadways, driveway aprons, driveways and parking surfaces shall be surfaces that prevent dust, and may include paving, gravel, cinders, or bark/wood chips.
9. Approval is required from the County Public Works Department regarding adequate egress and access including compliance with vision clearance standards. All egress and access points shall be clearly marked.
10. All outdoor light fixtures shall be directed downward, and have full cutoff and full shielding to preserve views of the night sky and to minimize excessive light spillover onto adjacent properties, roads and highways.
11. Signs are permitted consistent with Marion County Code Chapter 191.
12. All required permits shall be obtained from the Marion County Health Department or the Department of Agriculture, as required.
13. When requested by the Planning Director, the farm stand operator/land owner shall submit a statement demonstrating how the farm stand complies with this policy certified by the landowner's/operator's accountant or attorney as being accurate and complete.

Optional: Incorporates county/ Board policy on farm stands with model code suggestions

B. Winery. A winery subject to the standards in MCC 17.125.030 or 17.125.035.

Mandatory: Conforming reference to revised winery standards

F. Facilities for Processing Farm Crops. A facility for processing of farm crops, an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038, or the production of biofuel as defined in ORS 315.141, subject to the following:

1. Except for an establishment for the slaughter, processing or selling of poultry or poultry products, the farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. For an establishment for the slaughter, processing or selling of poultry or poultry products, all of the poultry must have been raised on the farm operation consistent with ORS 603.038.
2. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use.
3. The processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits siting of the processing facility.
4. Division of a lot or parcel that separates a processing facility from the farm operation on which it is located shall not be approved.

Mandatory: HB 2393 (2013)

G. Model Aircraft. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary, subject to the following:

1. Buildings and facilities **associated with a site for the takeoff and landing of model aircraft** shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility pre-existed the use.
2. The site shall not include an aggregate surface or hard area surface unless the surface pre-existed the use.
3. As used in this section “model aircraft” means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and controlled by radio, lines or design by a person on the ground.
4. An owner of property used for the purpose authorized in this subsection may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator’s cost to maintain the property, buildings and facilities.

Mandatory: OAR amendments 2013

I. ~~Other Uses~~. Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is “necessary” if it must be situated in the EFU zone in order for the service to be provided. An applicant must demonstrate that reasonable alternatives have been considered and that the facility must be sited in an EFU zone due to one or more of the following factors as found in OAR 660-33-130(16):

Optional: Clarifies section applied to utility facilities.

1. Technical and engineering feasibility;
2. The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
3. Lack of available urban and nonresource lands;
4. Availability of existing right-of-way;
5. Public health and safety; and
6. Other requirements of state and federal agencies.
 - a. Costs associated with any of the factors listed above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.
 - b. The owner of a utility facility approved under this section shall be responsible for restoring, to its former condition as nearly as possible, any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing upon a contractor the responsibility for restoration.
 - c. The applicant shall address the requirements of MCC 17.136.060(A)(1).

d. In addition to the provisions above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

e. The provisions of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

f. If the criteria contained in this subsection (I) for siting a utility facility on land zoned for exclusive farm use are met for a utility facility that is a transmission line, the utility provider shall, after the route is approved by the siting authorities and before construction of the transmission line begins, consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two weeks after the certified mail is sent, the utility provider has satisfied the provider's obligation to consult. The requirement to consult under this section is in addition to and not in lieu of any other legally required consultation process. For the purposes of this subsection:

i. "Consult" means to make an effort to contact for purpose of notifying the record owner of the opportunity to meet.

ii. "Transmission line" means a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users.

7. An associated transmission line shall be considered necessary for public service solely based on the criteria below:

a. "Associated transmission line" means a new transmission line constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

b. An associated transmission line is necessary for public service if it is demonstrated to meet either (A) or (B) below:

(A) An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

(i) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;

(ii) The associated transmission line is co-located with an existing transmission line;

(iii) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or

(iv) The associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.

- (B) After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to paragraphs (C) and (D) of this subsection, two or more of the following criteria:**
- (i) Technical and engineering feasibility;**
 - (ii) The associated transmission line is locationally-dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;**
 - (iii) Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;**
 - (iv) Public health and safety; or**
 - (v) Other requirements of state or federal agencies.**
- (C) As pertains (B), the applicant shall present findings to the governing body of the county or its designee on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland.**
- (D) The governing body of a county or its designee may consider costs associated with any of the factors listed in paragraph (B) of this subsection, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.**

Mandatory: HB 2704 (2013)

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:

D. The following commercial uses:

7. Composting Facilities.

a. Existing composting operations and facilities that do not meet MCC 17.136.020(J) may be maintained, enhanced, or expanded on the same tract subject to meeting the performance and permitting requirements of the Department of Environmental Quality (DEQ) under OAR 340-093-0050 and 340-096-006-, **subject to compost facility operators preparing, implementing and maintaining a site-specific Odor Minimization Plan that:**

(a) Meets the requirements of OAR 340-096-0150;

(b) Identifies the distance of the proposed operation to the nearest residential zone;

(c) Includes a complaint response protocol;

(d) Is submitted to the DEQ with the required permit application; and

(e) May be subject to annual review by the county to determine if any revisions are necessary.

b. New composting operations and facilities that do not meet MCC 17.136.020(J) may be established on land not defined as high-value farmland subject to the following:

i. Meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-006; and

ii. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility; and

iii. On-site sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

iv. Compost facility operators must prepare, implement and maintain a site-specific Odor Minimization Plan that:

(a) Meets the requirements of OAR 340-096-0150;

(b) Identifies the distance of the proposed operation to the nearest residential zone;

(c) Includes a complaint response protocol;

(d) Is submitted to the DEQ with the required permit application; and

(e) May be subject to annual review by the county to determine if any revisions are necessary.

Optional: Adds odor control plan. Suggested by model code.

17.136.090 Minimum parcel size, divisions of land, and property line adjustments.

The following regulations apply when property line adjustments and partitioning of land within an EFU zone subject to the provisions of Chapter 17.172 MCC are proposed:

B. Requirements for Creation of New Non-Farm Parcels.

7. A portion of a lot or parcel that has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan may be divided off from and the portion of the lot or parcel that remains outside the urban growth boundary and zoned for resource use even if the resource use portion is smaller than the minimum lot or parcel size established under ORS 215.780, subject to the following:

a. The partition must occur along the urban growth boundary and:

b. If the parcel contains a dwelling, the parcel must be large enough to support continued residential use.

c. If the parcel does not contain a dwelling, the parcel:

- (i) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;
 - (ii) May not be considered in approving or denying an application for siting any other dwelling; and
 - (iii) May not be considered in approving a redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.
- d. The owner of the parcel shall record with the county clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

Optional: HB 2457 (2015)

C. Property Line Adjustments.

4. A property line adjustment may not be used to:

- a. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;
- b. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
- c. Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.
- d. Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver so that any lawfully established unit of land affected by the property line adjustment is larger than the size granted by the waiver.**

Mandatory: HB 2831 (2015)

5. Any property line adjustment that results in an existing dwelling being located on a different parcel shall not be subject to the standards in MCC 17.136.030(A) so long as the adjustment:

- a. Does not increase any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and
- b. Does not increase the potential number of dwellings on the resulting parcels. [Ord. 1330 § 4 (Exh. A), 2013; Ord. 1326 § 4 (Exh. A), 2012; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 8, 2000. RZ Ord. § 136.090.]
- c. Does not allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.**

Optional: Include an amendment that was part of a earlier update that inadvertently not codified.

17.136.130 Consideration of soil classification changes for non-farm dwellings.

For purposes of approving an application for a dwelling not in conjunction with farm use under MCC 17.136.050(A), the soil class, soil rating, or other soil designation of a specific lot or parcel may be changed if the property owner submits a report from a consulting soils scientist whose credentials may have been certified as acceptable to the State Department of Agriculture that the soil class, soil rating, or other soil designation should be changed, and the report satisfies the most recent requirements in the Oregon Administrative Rules for acceptable soils reports. **a soil assessment prepared by a professional soil classifier that has been reviewed and approved by the Department of Land Conservation and Development as meeting the requirements in OAR 660-033-0045.** [Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 8, 2000. RZ Ord. § 136.130.]

Mandatory: OAR amendments 2012

Chapter 17.137 SA (SPECIAL AGRICULTURE) ZONE

17.137.010 Purpose.

The SA (special agriculture) zone is applied in areas characterized by small farm operations or areas with a mixture of good and poor farm soils where the existing land use pattern is a mixture of large and small farm units and some acreage homesites. The farm operations range widely in size and include grazing of livestock, orchards, grains and grasses, Christmas trees and specialty crops. The range in size of management units present no significant conflicts and allow optimum resource production from areas with variable terrain and soils. It is not deemed practical or necessary to the continuation of the commercial agricultural enterprise that contiguous ownerships be consolidated into large parcels suitable for large-scale management. Subdivision and planned developments, however, are not consistent with the purpose of this zone and are prohibited.

This zone allows the flexibility in management needed to obtain maximum resource production from these lands. It emphasizes farm use but forest use is allowed and protected from conflicts. The SA zone is intended to be applied in areas designated special agriculture in the Marion County Comprehensive Plan.

The EFU zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water and land resources of the county.

The SA zone retains Class I through IV soils in commercial farm units comparable to those in the vicinity or in small-scale or specialty commercial farms where the land is especially suited for such farming. The SA zone is intended to be a farm zone consistent with ORS 215.283. [Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 9, 2000. RZ Ord. § 137.010.]

Optional: Clarification of purpose statement suggested by model code.

17.137.020 Permitted uses.

Within an SA zone no building, structure or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

D. Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.137.100(C), when the dwelling:

1. Has a “percentage good” rating of 40 percent or more in the current county assessor’s records.
2. ~~In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the final inspection or occupancy of the replacement dwelling.~~

3. ~~In the case of replacement of a manufactured dwelling, the unit to be replaced is a manufactured home as defined in ORS 446.003 (manufactured after June 15, 1976).~~

1. Is assessed in the current County Assessor's records as a site-built dwelling or manufactured home.

2. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:

a. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or

b. If the dwelling to be replaced is in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and

c. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.

3. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted to a non-residential use.

4. Replacement dwellings may sited on any part of the same lot or parcel. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned SA or EFU (exclusive farm use), the applicant shall execute and record in the deed records a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling.

5. Replacement under this section includes dwelling replaced pursuant to 17.137.080 (C) when a fire report is provided at the time building permits are applied for.

Optional: HB 2746 (2013)

17.137.030 Dwellings permitted subject to standards.

The following dwellings may be established in the SA zone with filing of the declaratory statement in MCC 17.137.100(C), subject to approval by the director, based on satisfaction of the standards and criteria listed for each type of dwelling, pursuant to the procedures in Chapter 17.115 MCC.

A. Primary Farm Dwellings. A single-family dwelling customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

4. It is in conjunction with a commercial dairy farm as defined in MCC 17.137.130(B) and if:

a. The subject tract will be employed as a commercial dairy as defined; and

b. The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy; and

c. ~~Except as permitted by ORS 215.283(1)(p) (1999 Edition) (seasonal farmworker housing),~~ **for seasonal farmworker housing approved prior to 2001,** there is no other dwelling on the subject tract; and

Optional: 2016 rule amendments

- d. The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm activities necessary to the operation of the commercial dairy farm; and
 - e. The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and
 - f. The Oregon Department of Agriculture has approved the following:
 - i. A permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and
 - ii. A producer license for the sale of dairy products under ORS 621.072;
5. The applicant had previously operated a commercial farm use and if:
- a. Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by subsection (A)(1) or (2) of this section, whichever is applicable;
 - b. The subject lot or parcel on which the dwelling will be located is:
 - i. Currently employed for the farm use, as defined in this title, that produced in the last two years, three of the last five years, or the average of the best three of the last five years the gross farm income required by subsection (A)(1) or (2) of this section, whichever is applicable; and
 - ii. At least the size of the applicable minimum lot size in this chapter; and
- (A) Except as permitted by ORS 215.283(1)(p) (1999 Edition) (seasonal farmworker housing), **for seasonal farmworker housing approved prior to 2001**, there is no other dwelling on the subject tract; and

Optional: 2016 rule amendments

- (B) The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (A)(5)(a) of this section;
 - (C) In determining the gross income required by subsections (A)(5)(a) and (A)(5)(b)(i) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract, and only gross income from land owned, not leased or rented, shall be counted;
- E. Dwelling Alteration and Replacement. Alteration, restoration or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.137.100(C), other than as permitted in MCC 17.137.020(D), when the dwelling:
- ~~1. Has intact exterior walls and roof structure;~~
 - ~~2. Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;~~
 - ~~3. Has interior wiring for interior lights;~~

4. Has a heating system; and

5. In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the final inspection or occupancy of the replacement dwelling.

6. For the case in which the applicant has requested a deferred replacement permit, the dwelling to be replaced shall be removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of consideration. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

7. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned SA or EFU, the applicant shall execute and record in the deed records a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. [Ord. 1326 § 4 (Exh. A), 2012; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 9, 2000. RZ Ord. § 137.030.]

1. The dwelling to be altered, restored or replaced has or formerly had:

a. Intact exterior walls and roof structure;

b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

c. Interior wiring for interior lights; and

d. A heating system; and

2. The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from the time the dwelling was established; and

3. If the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling had to have been assessed as a dwelling until such time as the value of the dwelling was eliminated:

a. The destruction (i.e by fire or natural hazard), or demolition in the case of restoration, of the dwelling; or

b. The applicant establishes to the satisfaction of the permitting authority that the dwelling was improperly removed from the tax roll by a person other than the current owner. "Improperly removed" means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll.

4. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:

- a. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or
 - b. If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and
 - c. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.
5. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.
6. As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, Chapter 462, Section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.
7. A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.
8. When a dwelling formerly had the features described in (1) or was removed from the tax roll as described in (3)(a), then, the replacement dwelling must be sited on the same lot or parcel consistent with the following:
 - a. Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and
 - b. If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.
9. Replacement dwellings that currently have the features described in (1) and that have been on the tax roll as described in (2) may be sited on any part of the same lot or parcel.
10. The approval to replace a dwelling under this section shall expire on January 1, 2024.

Mandatory: HB 2746 (2013)

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:

A. Farm Stand. Farm stand subject to the following standards:

~~1. Structures shall be designed and used for the sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area.~~

~~a. As used in this section, “farm crops or livestock” includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this section, “processed crops and livestock” includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.~~

~~b. As used in this section, “local agricultural area” is limited to the state of Oregon.~~

~~2. The sale of incidental retail items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand is permitted, provided the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand.~~

~~3. “Farm stand” shall not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.~~

1. The structures shall be designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the in State of Oregon, including processed food items, and the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand; and,

2. Annual sales of the incidental items and fees from promotional activity, sales of farm crops produced outside the State of Oregon, and sales of prepared food items together cannot make up more than 25 percent of the total annual sales of the farm stand; and

3. The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

4. As used in this section, “processed food items” means farm crops and livestock that have been converted into other products through canning, drying, baking, freezing, pressing, butchering or other similar means of adding value to the farm product, such as such as jams, syrups, apple cider, and similar animal products, but not prepared food items.

5. As used in this section, “prepared food items” means that food products that are prepared for immediate consumption, such as pies, short cake, milk shakes, smoothies, and baked goods.

6. Adequate off-street parking shall be provided and all vehicle maneuvering will be conducted on site. No vehicle backing or maneuvering shall occur within adjacent roads, streets or highways.

7. No farm stand building or parking is permitted within the right-of-way.

8. Roadways, driveway aprons, driveways and parking surfaces shall be surfaces that prevent dust, and may include paving, gravel, cinders, or bark/wood chips.

9. Approval is required from the County Public Works Department regarding adequate egress and access including compliance with vision clearance standards. All egress and access points shall be clearly marked.

- 10. All outdoor light fixtures shall be directed downward, and have full cutoff and full shielding to preserve views of the night sky and to minimize excessive light spillover onto adjacent properties, roads and highways.**
- 11. Signs are permitted consistent with Marion County Code Chapter 191.**
- 12. All required permits shall be obtained from the Marion County Health Department or the Department of Agriculture, as required.**
- 13. When requested by the Planning Director, the farm stand operator/land owner shall submit a statement demonstrating how the farm stand complies with this policy certified by the landowner's/operator's accountant or attorney as being accurate and complete.**

Optional: Incorporates county/ Board policy on farm stands with model code suggestions

B. Winery. A winery subject to the standards in MCC 17.125.030 **or 17.125.035.**

Mandatory: Conforming reference to revised winery standards

F. Facility for Processing Farm Crops. A facility for the processing of farm crops, **an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038,** or the production of biofuel as defined in ORS 315.141, subject to the following:

- 1. Except for an establishment for the slaughter, processing or selling of poultry or poultry products, the farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. For an establishment for the slaughter, processing or selling of poultry or poultry products, all of the poultry must have been raised on the farm operation consistent with ORS 603.038.**
2. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use.
3. The processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits siting of the processing facility.
4. Division of a lot or parcel that separates a processing facility from the farm operation on which it is located shall not be approved.

Mandatory: HB 2393 (2013)

G. Model Aircraft. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary, subject to the following:

1. Buildings and facilities **associated with a site for the takeoff and landing of model aircraft** shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility pre-existed the use.
2. The site shall not include an aggregate surface or hard area surface unless the surface pre-existed the use.
3. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and controlled by radio, lines or design by a person on the ground.

4. An owner of property used for the purpose authorized in this subsection may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities.

Mandatory: OAR amendments 2013

I. Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is necessary if it must be situated in the SA zone in order for the service to be provided. An applicant must demonstrate that reasonable alternatives have been considered and that the facility must be sited in an SA zone due to one or more of the following factors as found in OAR 660-33-130(16):

1. Technical and engineering feasibility;
2. The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for special agriculture in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
3. Lack of available urban and nonresource lands;
4. Availability of existing rights-of-way;
5. Public health and safety; and
6. Other requirements of state and federal agencies.

a. Costs associated with any of the factors listed above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

b. The owner of a utility facility approved under this section shall be responsible for restoring, to its former condition as nearly as possible, any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

c. The applicant shall address the requirements of MCC 17.137.060(A)(1).

d. In addition to the provisions above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in a special agriculture zone shall be subject to the provisions of OAR 660-011-0060.

e. The provisions of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

f. If the criteria contained in subsection (I) of this section for siting a utility facility on land zoned for exclusive farm use are met for a utility facility that is a transmission line, the utility provider shall, after the route is approved by the siting authorities and before construction of the transmission line begins, consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two weeks after the certified

mail is sent, the utility provider has satisfied the provider's obligation to consult. The requirement to consult under this section is in addition to and not in lieu of any other legally required consultation process. For the purposes of this subsection:

i. "Consult" means to make an effort to contact for purpose of notifying the record owner of the opportunity to meet.

ii. "Transmission line" means a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users.

7. An associated transmission line shall be considered necessary for public service solely based on the criteria below:

a. "Associated transmission line" means a new transmission line constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

b. An associated transmission line is necessary for public service if it is demonstrated to meet either (A) or (B) below:

(A) An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

(i) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;

(ii) The associated transmission line is co-located with an existing transmission line;

(iii) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or

(iv) The associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.

(B) After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to paragraphs (C) and (D) of this subsection, two or more of the following criteria:

(i) Technical and engineering feasibility;

(ii) The associated transmission line is locationally-dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(iii) Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;

(iv) Public health and safety; or

(v) Other requirements of state or federal agencies.

(C) As pertains (B), the applicant shall present findings to the governing body of the county or its designee on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland.

(D) The governing body of a county or its designee may consider costs associated with any of the factors listed in paragraph (B) of this subsection, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.

Mandatory: HB 2704 (2013)

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:

D. The following commercial uses:

7. Composting Facilities.

a. Existing composting operations and facilities that do not meet MCC 17.137.020(J) may be maintained, enhanced, or expanded on the same tract subject to meeting the performance and permitting requirements of the Department of Environmental Quality (DEQ) under OAR 340-093-0050 and 340-096-006-, **subject to compost facility operators preparing, implementing and maintaining a site-specific Odor Minimization Plan that:**

(a) Meets the requirements of OAR 340-096-0150;

(b) Identifies the distance of the proposed operation to the nearest residential zone;

(c) Includes a complaint response protocol;

(d) Is submitted to the DEQ with the required permit application; and

(e) May be subject to annual review by the county to determine if any revisions are necessary.

b. New composting operations and facilities that do not meet MCC 17.137.020(J) may be established on land not defined as high-value farmland subject to the following:

i. Meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-006; and

ii. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility; and

iii. On-site sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

iv. Compost facility operators must prepare, implement and maintain a site-specific Odor Minimization Plan that:

- (a) Meets the requirements of OAR 340-096-0150;**
- (b) Identifies the distance of the proposed operation to the nearest residential zone;**
- (c) Includes a complaint response protocol;**
- (d) Is submitted to the DEQ with the required permit application; and**
- (e) May be subject to annual review by the county to determine if any revisions are necessary.**

Optional: Adds odor control plan. Suggested by model code.

17.137.090 Minimum parcel size, divisions of land, and property line adjustments.

The following regulations shall apply when property line adjustments and partitioning of land within the SA zone subject to the provisions of Chapter 17.172 MCC are proposed:

B. Requirements for Creation of New Non-Farm Parcels.

- 7. A portion of a lot or parcel that has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan may be divided off from and the portion of the lot or parcel that remains outside the urban growth boundary and zoned for resource use even if the resource use portion is smaller than the minimum lot or parcel size established under ORS 215.780, subject to the following:**
- a. The partition must occur along the urban growth boundary and:**
 - b. If the parcel contains a dwelling, the parcel must be large enough to support continued residential use.**
 - c. If the parcel does not contain a dwelling, the parcel:**
 - (i) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;**
 - (ii) May not be considered in approving or denying an application for siting any other dwelling; and**
 - (iii) May not be considered in approving a redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.**
 - d. The owner of the parcel shall record with the county clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.**

Optional: HB 2457 (2015)

C. Property Line Adjustments.

4. A property line adjustment may not be used to:

- a. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;
- b. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
- c. Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.

d. Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver so that any lawfully established unit of land affected by the property line adjustment is larger than the size granted by the waiver.

Mandatory: HB 2831 (2015)

5. Any property line adjustment that results in an existing dwelling being located on a different parcel shall not be subject to the standards in MCC 17.137.030(A) so long as the adjustment:

- a. Does not increase any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and
 - b. Does not increase the potential number of dwellings on the resulting parcels. [Ord. 1330 § 4 (Exh. A), 2013; Ord. 1326 § 4 (Exh. A), 2012; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 9, 2000. RZ Ord. § 137.090.]
- c. Does not allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.**

Optional: Include an amendment that was part of a earlier update that inadvertently not codified.

17.137.120 Consideration of soil classification changes.

For the purposes of approving an application for a lot-of-record dwelling under MCC 17.137.030(D) or for a dwelling not in conjunction with farm use under MCC 17.137.050(A), the soil class, soil rating, or other soil designation of a specific lot or parcel may be changed if the property owner:

B. For dwellings not in conjunction with farm use, submits a ~~report from a consulting soils scientist whose credentials have been certified as acceptable to the State Department of Agriculture that the soil class, soil rating, or other soil designation should be changed, and the report satisfies the most recent requirements in Oregon Administrative Rules for acceptable soils reports.~~ **a soil assessment prepared by a professional soil classifier that has been reviewed and approved by the Department of Land Conservation and Development as meeting the requirements in OAR 660-033-0045.** [Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 9, 2000. RZ Ord. § 137.120.]

Mandatory: OAR amendments 2012

Chapter 17.138
TC (TIMBER CONSERVATION) ZONE

17.138.020 Permitted uses.

Within a TC zone no building, structure or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

E. Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.138.060(B), when the dwelling:

- ~~1. Has a “percentage good” rating of 40 percent or more in the current county assessor’s records.~~
- ~~2. In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the final inspection or occupancy of the replacement dwelling.~~
- ~~3. In the case of replacement of a manufactured dwelling, the unit to be replaced is a manufactured home as defined in ORS 446.003 (manufactured after June 15, 1976).~~

- 1. Is assessed in the current County Assessor’s records as a site-built dwelling or manufactured home.**
- 2. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:**
 - a. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or**
 - b. If the dwelling to be replaced is in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and**
 - c. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.**
- 3. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted to a non-residential use.**
4. In the case of replacement, the replacement dwelling shall be situated in the same location as the existing dwelling **as possible**.
- 5. Replacement under this section includes dwelling replaced pursuant to 17.138.070 (C) when a fire report is provided at the time building permits are applied for.**

Optional: Amendment to be consistent with other resource zones.

17.138.030 Dwellings permitted subject to standards.

The following dwellings may be established in the TC zone subject to approval by the director, based on satisfaction of the standards and criteria listed for each type of dwelling, pursuant to the procedures in Chapter 17.115 MCC.

- C. Large Parcel Dwelling. A single-family dwelling, subject to the special use and siting requirements in MCC 17.138.060, may be allowed, provided:

1. The lot or parcel on which the dwelling will be located was created before January 1, 1994, or is a consolidated parcel comprised entirely of contiguous lots or parcels that were created before January 1, 1994.
2. The lot or parcel contains at least 160 acres in the TC zone.
3. The lot or parcel on which the dwelling will be sited does not include a dwelling.
4. The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including MCC 17.110.830 through 17.110.838.
5. The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.

6. All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions:

“It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling. These covenants, conditions, and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions is located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.”

Mandatory: 2016 OAR Amendments.

17.138.050 Conditional use review criteria.

The uses identified in MCC 17.138.040 shall satisfy the criteria in the applicable subsections below.

D. Temporary Accommodations for Fishing or Hunting. Private seasonal accommodations for fishing or fee hunting shall meet the following criteria:

1. Accommodations shall be limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code.
2. Only minor incidental and accessory retail sales are permitted.
3. Accommodations are occupied temporarily for the purpose of:
 - a. Hunting during game **either** bird and big game hunting seasons **or both bird and big game hunting seasons** authorized by the Oregon Fish and Wildlife Commission; or
 - b. Fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission, and are located within one-quarter mile of fish-bearing Class I waters.
 - c. Accommodations shall comply with the special use and site requirements in MCC 17.138.060, except subsection (E) of that section.

Mandatory: OAR amendments 2013

17.138.080 Minimum parcel size, divisions of land, and property line adjustments.

The following regulations shall apply when property line adjustments and partitioning of land within a TC zone subject to the provisions of Chapter 17.172 MCC are proposed:

A. Minimum Parcel Sizes for Newly Created Parcels.

- 4. A portion of a lot or parcel that has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan may be divided off from and the portion of the lot or parcel that remains outside the urban growth boundary and zoned for resource use even if the resource use portion is smaller than the minimum lot or parcel size established under ORS 215.780, subject to the following:**
 - a. The partition must occur along the urban growth boundary and:**
 - b. If the parcel contains a dwelling, the parcel must be large enough to support continued residential use.**
 - c. If the parcel does not contain a dwelling, the parcel:**
 - (i) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;**
 - (ii) May not be considered in approving or denying an application for siting any other dwelling; and**
 - (iii) May not be considered in approving a redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.**
 - d. The owner of the parcel shall record with the county clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.**

Optional: 2016 rule amendments.

B. Property Line Adjustments.

1. Parcels larger than 80 acres may not be reduced to below 80 acres.
2. Parcels smaller than 80 acres may be reduced or enlarged provided:
 - a. If the tract does not include a dwelling and does not qualify for a dwelling under MCC 17.138.030(A) or (B), any reconfiguration after November 4, 1993, cannot in any way enable the lot or parcel to meet the criteria for a new dwelling under MCC 17.138.030(A) or (B).
 - b. Except as provided in subsection (B)(2)(c) of this section, a lot or parcel that is reduced will be better suited for management as part of a commercial forest; and if capable of producing 5,000 cubic feet per year of commercial tree species will not be reconfigured so that the cubic feet per year capability of the lot or parcel is reduced.
 - c. A lot or parcel may be reduced to the minimum size necessary for the use if the lot or parcel:

- i. Was approved as a non-farm or non-forest parcel; or
 - ii. Is occupied by an approved non-farm or non-forest dwelling; or
 - iii. More than half of the parcel is occupied by a use in MCC 17.138.020 or 17.138.040 other than a dwelling or farm or forest use; or
 - iv. The lot or parcel is occupied by a dwelling established before January 1, 1994, and is not capable of producing 5,000 cubic feet per year of commercial tree species (see MCC 17.138.120(B) for definitions).
- d. A property line adjustment may not be used to:
- i. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;
 - ii. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
 - iii. Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard. [Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1168 § 5, 2002; Ord. 1125 § 10, 2000. RZ Ord. § 138.080.]
 - iv. Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver so that any lawfully established unit of land affected by the property line adjustment is larger than the size granted by the waiver.**

Mandatory: Amendment to be confirming with other resources zones.

17.138.120 Definition of terms used in this chapter.

The following terms apply only to this chapter and have no relevance to the same terms used in other chapters of this title unless specifically stated:

- D. “Primary processing of forest products” means the initial treatments of logs or other forest plant or fungi materials to prepare them for shipment for further processing or to market, in a building or buildings that do not exceed 10,000 square feet in total floor area, or an outdoor area that does not exceed one acre excluding laydown and storage yards, or both, that are adequately separated from surrounding properties to reasonably mitigate noise, odor and other impacts generated by the facility that adversely affect forest management and other existing uses, as determined by the governing body. Treatments may include, but are not limited to, debarking, peeling, drying, cleaning, sorting, chipping, grinding, sawing, shaping, notching, biofuels conversion, or other similar methods of initial treatments.**

Mandatory: OAR amendments 2015

Chapter 17.139
FT (FARM/TIMBER) ZONE

17.139.010 Purpose.

The FT (farm/timber) zone is intended to be applied in areas where the soils are suitable for farm or forest uses as defined in the Forest Lands Goal, and where the existing land use pattern is a mixture of agricultural ownerships, forest management units and some acreage homesites. The farm operations range widely in size and often include an area managed as a woodlot or a small timber tract. The forest management units range from small timber tracts managed by the owner resident to commercial forest ownerships managed as commercial timber. The mixture of farm and forest use and the range in size of management units present no significant conflicts and allow optimum resource production from areas with variable terrain and soils. These areas are a transition between the large farm operations in the EFU zones and the large, almost exclusively commercial timber tracts in the TC zones. It is not deemed practical or necessary to the continuation of the forest and farm uses that contiguous ownerships be consolidated into large parcels suitable for large-scale management.

The EFU zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water and land resources of the county.

This zone allows the flexibility in management needed to obtain maximum resource production for these lands. It places equal emphasis on farming and timber production. Subdivisions and planned developments are not consistent with the purpose and intent of this zone and are prohibited. The FT zone is intended to be applied in areas designated farm/timber in the Marion County Comprehensive Plan and to comply with statewide Goals 3 and 4. [Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 11, 2000. RZ Ord. § 139.010.]

Optional: Clarification of purpose statement suggested by model code.

17.139.020 Permitted uses.

Within an FT zone no building, structure or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

E. Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.139.070(B), when the dwelling:

- ~~1. Has a "percentage good" rating of 40 percent or more in the current county assessor's records.~~
- ~~2. In the case of replacement, the replaced dwelling is removed, demolished or converted to an allowable nonresidential use within three months of the final inspection or occupancy of the replacement dwelling.~~
- ~~3. In the case of replacement of a manufactured dwelling, the unit to be replaced is a manufactured home as defined in ORS 446.003 (manufactured after June 15, 1976).~~
- 1. Is assessed in the current County Assessor's records as a site-built dwelling or manufactured home.**
- 2. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:**
 - a. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or**

b. If the dwelling to be replaced is in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and

c. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.

3. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted to a non-residential use.

4. If the lot or parcel was predominantly devoted to farm use on January 1, 1993, **the replacement dwelling may sited on any part of the same lot or parcel.** If and the dwelling to be replaced is located on a portion of the lot or parcel not zoned FT or EFU the applicant shall execute and record in the deed records a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling.

5. If the lot or parcel was predominantly devoted to forest use on January 1, 1993, the replacement dwelling shall be situated in the same location as the existing dwelling.

6. Replacement under this section includes dwelling replaced pursuant to 17.139.080 (C) when a fire report is provided at the time building permits are applied for.

Optional: HB 2746 (2013)

17.139.030 Dwellings permitted subject to standards.

The following dwellings may be established in the FT zone, with filing of the declaratory statement in MCC 17.139.070(B), subject to approval by the director, based on satisfaction of the standards and criteria listed for each type of dwelling, pursuant to the procedures in Chapter 17.115 MCC. Subsections (A) through (D) of this section provide criteria for siting a dwelling based on the predominant use of the tract on January 1, 1993, for forest land. Subsections (E) through (I) of this section list criteria for siting a dwelling based on the predominant use of the tract on January 1, 1993, for farm use.

C. Large Parcel Dwellings. A single-family dwelling, subject to the special use and siting requirements in MCC 17.139.070, may be allowed on a lot or parcel predominantly devoted to forest use on January 1, 1993, provided:

1. The lot or parcel on which the dwelling will be located was created before January 1, 1994, or is a consolidated parcel comprised entirely of contiguous lots or parcels that were created before January 1, 1994.
2. The lot or parcel contains at least 160 acres in the FT or TC zone, or a combination of these zones.
3. The tract on which the dwelling will be sited does not include a dwelling.
4. The proposed dwelling is not prohibited by and will comply with land use regulations and other provisions of law including MCC 17.110.830 through 17.110.836.
5. The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.

6. All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions:

“It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling. These covenants, conditions, and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions is located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.”

Mandatory: 2016 OAR Amendments.

E. Primary Farm Dwellings. A single-family dwelling, subject to the special use and siting requirements in MCC 17.139.070, customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

4. It is in conjunction with a commercial dairy farm as defined in this chapter and if:
 - a. The subject tract will be employed as a commercial dairy as defined; and
 - b. The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy; and
 - c. Except as ~~permitted by ORS 215.283(1)(p) (1999 Edition) (seasonal farmworker housing)~~, **for seasonal farmworker housing approved prior to 2001**, there is no other dwelling on the subject tract; and

Optional: 2016 rule amendments

5. The applicant had previously operated a commercial farm use and if:
 - a. Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by subsection (E)(1) or (2) of this section, whichever is applicable;
 - b. The subject lot or parcel on which the dwelling will be located is:
 - i. Currently employed for the farm use, as defined in this title, that produced in the last two years, three of the last five years, or the average of the best three of the last five years, the gross farm income required by subsection (E)(1) or (2) of this section, whichever is applicable; and
 - ii. At least the size of the applicable minimum lot size in this chapter; and
 - iii. Except as ~~permitted by ORS 215.283(1)(p) (1999 Edition) (seasonal farmworker housing)~~, **for seasonal farmworker housing approved prior to 2001**, there is no other dwelling on the subject tract; and

Optional: 2016 rule amendments

- iv. The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (E)(5)(a) of this section;

v. In determining the gross income required by subsections (E)(5)(a) and (E)(5)(b)(i) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract, and only gross income from land owned, not leased or rented, shall be counted;

I. Dwelling Alteration and Replacement. Alteration, restoration or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.139.070(B), other than as permitted in MCC 17.139.020(E), when the dwelling:

~~1. Has intact exterior walls and roof structure.~~

~~2. Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system.~~

~~3. Has interior wiring for interior lights.~~

~~4. Has a heating system.~~

~~5. In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the final inspection or occupancy of the replacement dwelling.~~

~~6. For the case in which the applicant has requested a deferred replacement permit, the dwelling to be replaced shall be removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of consideration. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.~~

~~7. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned FT, SA or EFU, the applicant shall execute and record in the deed records a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. [Ord. 1326 § 4 (Exh. A), 2012; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 11, 2000. RZ Ord. § 139.030.]~~

1. The dwelling to be altered, restored or replaced has or formerly had:

a. Intact exterior walls and roof structure;

b. Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

c. Interior wiring for interior lights; and

d. A heating system; and

2. The dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five property tax years, or, if the dwelling has existed for less than five years, from the time the dwelling was established; and

3. If the value of the dwelling was eliminated as a result of either of the following circumstances, the dwelling had to have been assessed as a dwelling until such time as the value of the dwelling was eliminated:
 - a. The destruction (i.e by fire or natural hazard), or demolition in the case of restoration, of the dwelling; or
 - b. The applicant establishes to the satisfaction of the permitting authority that the dwelling was improperly removed from the tax roll by a person other than the current owner. "Improperly removed" means that the dwelling has taxable value in its present state, or had taxable value when the dwelling was first removed from the tax roll or was destroyed by fire or natural hazard, and the county stopped assessing the dwelling even though the current or former owner did not request removal of the dwelling from the tax roll.
4. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:
 - a. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or
 - b. If the dwelling to be replaced is, in the discretion of the permitting authority, in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and
 - c. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.
5. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted.
6. As a condition of approval, if the dwelling to be replaced is located on a portion of the lot or parcel that is not zoned for exclusive farm use, the applicant shall execute and cause to be recorded in the deed records of the county in which the property is located a deed restriction prohibiting the siting of another dwelling on that portion of the lot or parcel. The restriction imposed is irrevocable unless the county planning director, or the director's designee, places a statement of release in the deed records of the county to the effect that the provisions of 2013 Oregon Laws, Chapter 462, Section 2 and either ORS 215.213 or 215.283 regarding replacement dwellings have changed to allow the lawful siting of another dwelling.
7. A replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. However, the standards may not be applied in a manner that prohibits the siting of the replacement dwelling.
8. When a dwelling formerly had the features described in (1) or was removed from the tax roll as described in (3)(a), then, the replacement dwelling must be sited on the same lot or parcel consistent with the following:
 - a. Using all or part of the footprint of the replaced dwelling or near a road, ditch, river, property line, forest boundary or another natural boundary of the lot or parcel; and

b. If possible, for the purpose of minimizing the adverse impacts on resource use of land in the area, within a concentration or cluster of structures or within 500 yards of another structure.

9. Replacement dwellings that currently have the features described in (1) and that have been on the tax roll as described in (2) may be sited on any part of the same lot or parcel.

10. The approval to replace a dwelling under this section shall expire on January 1, 2024.

Mandatory: HB 2746 (2013)

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.

A. Farm Stand. Farm stand subject to the following standards:

~~1. Structures shall be designed and used for the sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area.~~

~~a. As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this section, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.~~

~~b. As used in this section, "local agricultural area" is limited to the state of Oregon.~~

~~2. The sale of incidental retail items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand is permitted, provided the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand.~~

~~3. Farm stand shall not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.~~

1. The structures shall be designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the in State of Oregon, including processed food items, and the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand; and,

2. Annual sales of the incidental items and fees from promotional activity, sales of farm crops produced outside the State of Oregon, and sales of prepared food items together cannot make up more than 25 percent of the total annual sales of the farm stand; and

3. The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

4. As used in this section, "processed food items" means farm crops and livestock that have been converted into other products through canning, drying, baking, freezing, pressing, butchering or other similar means of adding value to the farm product, such as such as jams, syrups, apple cider, and similar animal products, but not prepared food items.

5. As used in this section, “prepared food items” means that food products that are prepared for immediate consumption, such as pies, short cake, milk shakes, smoothies, and baked goods.
6. Adequate off-street parking shall be provided and all vehicle maneuvering will be conducted on site. No vehicle backing or maneuvering shall occur within adjacent roads, streets or highways.
7. No farm stand building or parking is permitted within the right-of-way.
8. Roadways, driveway aprons, driveways and parking surfaces shall be surfaces that prevent dust, and may include paving, gravel, cinders, or bark/wood chips.
9. Approval is required from the County Public Works Department regarding adequate egress and access including compliance with vision clearance standards. All egress and access points shall be clearly marked.
10. All outdoor light fixtures shall be directed downward, and have full cutoff and full shielding to preserve views of the night sky and to minimize excessive light spillover onto adjacent properties, roads and highways.
11. Signs are permitted consistent with Marion County Code Chapter 191.
12. All required permits shall be obtained from the Marion County Health Department or the Department of Agriculture, as required.
13. When requested by the Planning Director, the farm stand operator/land owner shall submit a statement demonstrating how the farm stand complies with this policy certified by the landowner’s/operator’s accountant or attorney as being accurate and complete.

Optional: Incorporates county/ Board policy on farm stands with model code suggestions

B. Winery. A winery subject to the standards in MCC 17.125.030 or 17.125.035.

Mandatory: Conforming reference to revised winery standards

F. Facility for the Processing of Farm Crops. A facility for the processing of farm crops, an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038, or the production of biofuel as defined in ORS 315.141, subject to the following:

1. Except for an establishment for the slaughter, processing or selling of poultry or poultry products, the farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. For an establishment for the slaughter, processing or selling of poultry or poultry products, all of the poultry must have been raised on the farm operation consistent with ORS 603.038.
2. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use.
3. The processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits siting of the processing facility.
4. Division of a lot or parcel that separates a processing facility from the farm operation on which it is located shall not be approved.

Mandatory: HB 2393 (2013)

G. Model Aircraft. A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary subject to the following:

1. Buildings and facilities **associated with a site for the takeoff and landing of model aircraft** shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility pre-existed the use.
2. The site shall not include an aggregate surface or hard area surface unless the surface pre-existed the use.
3. As used in this section, “model aircraft” means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and controlled by radio, lines or design by a person on the ground.
4. An owner of property used for the purpose authorized in this subsection may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator’s cost to maintain the property, buildings and facilities.

Mandatory: OAR amendments 2013

I. Utility facilities necessary for public service, including wetland waste treatment systems, but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A facility is “necessary” if it must be situated in the FT zone in order for the service to be provided. An applicant must demonstrate that reasonable alternatives have been considered and that the facility must be sited in an FT zone due to one or more of the following factors as found in OAR 660-33-130(16):

1. Technical and engineering feasibility;
2. The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for farm/timber in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
3. Lack of available urban and nonresource lands;
4. Availability of existing rights-of-way;
5. Public health and safety; and
6. Other requirements of state and federal agencies.
 - a. Costs associated with any of the factors listed above may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.
 - b. The owner of a utility facility approved under this section shall be responsible for restoring, to its former condition as nearly as possible, any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.
 - c. The applicant shall address the requirements of MCC 17.139.060(A)(1).

d. In addition to the provisions above, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in a farm/timber zone shall be subject to the provisions of OAR 660-011-0060.

e. The provisions of this subsection do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

f. If the criteria contained in subsection (I) of this section for siting a utility facility on land zoned for exclusive farm use are met for a utility facility that is a transmission line, the utility provider shall, after the route is approved by the siting authorities and before construction of the transmission line begins, consult the record owner of high-value farmland in the planned route for the purpose of locating and constructing the transmission line in a manner that minimizes the impact on farming operations on high-value farmland. If the record owner does not respond within two weeks after the first documented effort to consult the record owner, the utility provider shall notify the record owner by certified mail of the opportunity to consult. If the record owner does not respond within two weeks after the certified mail is sent, the utility provider has satisfied the provider's obligation to consult. The requirement to consult under this section is in addition to and not in lieu of any other legally required consultation process. For the purposes of this subsection:

i. "Consult" means to make an effort to contact for purpose of notifying the record owner of the opportunity to meet.

ii. "Transmission line" means a linear utility facility by which a utility provider transfers the utility product in bulk from a point of origin or generation, or between transfer stations, to the point at which the utility product is transferred to distribution lines for delivery to end users.

7. An associated transmission line shall be considered necessary for public service solely based on the criteria below:

a. "Associated transmission line" means a new transmission line constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

b. An associated transmission line is necessary for public service if it is demonstrated to meet either (A) or (B) below:

(A) An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

(i) The associated transmission line is not located on high-value farmland, as defined in ORS 195.300, or on arable land;

(ii) The associated transmission line is co-located with an existing transmission line;

(iii) The associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or

(iv) The associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.

- (B) After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to paragraphs (C) and (D) of this subsection, two or more of the following criteria:**
- (i) Technical and engineering feasibility;**
 - (ii) The associated transmission line is locationally-dependent because the associated transmission line must cross high-value farmland, as defined in ORS 195.300, or arable land to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;**
 - (iii) Lack of an available existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground;**
 - (iv) Public health and safety; or**
 - (v) Other requirements of state or federal agencies.**
- (C) As pertains (B), the applicant shall present findings to the governing body of the county or its designee on how the applicant will mitigate and minimize the impacts, if any, of the associated transmission line on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmland.**
- (D) The governing body of a county or its designee may consider costs associated with any of the factors listed in paragraph (B) of this subsection, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.**

Mandatory: HB 2704 (2013)

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.

D. The following commercial uses:

7. Composting Facilities.

a. Existing composting operations and facilities that do not meet MCC 17.139.020(S) may be maintained, enhanced, or expanded on the same tract subject to meeting the performance and permitting requirements of the Department of Environmental Quality (DEQ) under OAR 340-093-0050 and 340-096-006-, **subject to compost facility operators preparing, implementing and maintaining a site-specific Odor Minimization Plan that:**

(a) Meets the requirements of OAR 340-096-0150;

(b) Identifies the distance of the proposed operation to the nearest residential zone;

(c) Includes a complaint response protocol;

(d) Is submitted to the DEQ with the required permit application; and

(e) May be subject to annual review by the county to determine if any revisions are necessary.

b. New composting operations and facilities that do not meet MCC 17.139.020(S) may be established on land not defined as high-value farmland subject to the following:

i. Meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-006; and

ii. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility; and

iii. On-site sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

iv. Compost facility operators must prepare, implement and maintain a site-specific Odor Minimization Plan that:

(a) Meets the requirements of OAR 340-096-0150;

(b) Identifies the distance of the proposed operation to the nearest residential zone;

(c) Includes a complaint response protocol;

(d) Is submitted to the DEQ with the required permit application; and

(e) May be subject to annual review by the county to determine if any revisions are necessary.

Optional: Adds odor control plan. Suggested by model code.

17.139.060 Conditional use review criteria.

The uses identified in MCC 17.139.050 shall satisfy the criteria in the applicable subsections below.

G. Temporary Accommodations for Hunting or Fishing. The following criteria apply to private seasonal accommodations for fee hunting and private accommodations for fishing:

1. Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code.

2. Only minor incidental and accessory retail sales are permitted.

3. Accommodations are occupied temporarily for the purpose of:

a. Hunting during game **either** bird and big game hunting seasons **or both bird and big game hunting seasons** authorized by the Oregon Fish and Wildlife Commission; or

b. Fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission, and are located within one-quarter mile of fish-bearing Class I waters.

4. Accommodations shall comply with the special use and siting requirements in MCC 17.139.070, except subsection (E).

Mandatory: OAR amendments 2013

17.139.090 Minimum parcel size, divisions of land, and property line adjustments.

The following regulations shall apply when property line adjustments and partitions of land within a FT zone subject to the provisions of Chapter 17.172 MCC are proposed:

B. Requirements for creation of new non-farm parcels if the land was predominantly devoted to farm use on January 1, 1993. A new parcel smaller than 80 acres may be created only for those uses listed in MCC 17.139.040(C) and 17.139.050, except the residential uses in MCC 17.139.050(A) and (B).

3. A portion of a lot or parcel that has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan may be divided off from and the portion of the lot or parcel that remains outside the urban growth boundary and zoned for resource use even if the resource use portion is smaller than the minimum lot or parcel size established under ORS 215.780, subject to the following:

- a. The partition must occur along the urban growth boundary and:**
- b. If the parcel contains a dwelling, the parcel must be large enough to support continued residential use.**
- c. If the parcel does not contain a dwelling, the parcel:**
 - (i) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;**
 - (ii) May not be considered in approving or denying an application for siting any other dwelling; and**
 - (iii) May not be considered in approving a redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.**
- d. The owner of the parcel shall record with the county clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.**

Optional: HB 2457 (2015)

C. Requirements for creation of new non-forest parcels if the land was predominantly devoted to forest use on January 1, 1993:

4. A portion of a lot or parcel that has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan may be divided off from and the portion of the lot or parcel that remains outside the urban growth boundary and zoned for resource use even if the resource use portion is smaller than the minimum lot or parcel size established under ORS 215.780, subject to the following:

- a. The partition must occur along the urban growth boundary and:**
- b. If the parcel contains a dwelling, the parcel must be large enough to support continued residential use.**

c. If the parcel does not contain a dwelling, the parcel:

- (i) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;**
- (ii) May not be considered in approving or denying an application for siting any other dwelling; and**
- (iii) May not be considered in approving a redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.**

d. The owner of the parcel shall record with the county clerk an irrevocable deed restriction prohibiting the owner and all successors in interest from pursuing a cause of action or claim of relief alleging injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

Optional: 2016 rule amendments

D. Property Line Adjustments.

2. A property line adjustment may not be used to:

- a. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;
 - b. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
 - c. Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.
- d. Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver so that any lawfully established unit of land affected by the property line adjustment is larger than the size granted by the waiver.**

Mandatory: HB 2831 (2015)

3. Any property line adjustment that results in an existing dwelling being located on a different parcel shall not be subject to the standards in MCC 17.139.030(E) so long as the adjustment:

- a. Does not increase any adverse impacts on the continued practice of commercial agriculture on the resulting parcels; and
 - b. Does not increase the potential number of dwellings on the resulting parcels.
- c. Does not allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard.**

Optional: Include an amendment that was part of a earlier update that inadvertently not codified.

E. Property line adjustments if the land was predominantly devoted to forest use on January 1, 1993:

1. Parcels larger than 80 acres may not be reduced to below 80 acres.
2. Parcels smaller than 80 acres may be reduced or enlarged, provided:
 - a. If the tract does not include a dwelling and does not qualify for a dwelling under MCC 17.139.030(A) or (B), any reconfiguration after November 4, 1993, cannot in any way enable the lot or parcel to meet the criteria for a new dwelling under MCC 17.139.030(A) or (B).
 - b. Except as provided in subsection (E)(2)(c) of this section, a lot or parcel that is reduced will be better suited for management as part of a commercial forest; and, if capable of producing 5,000 cubic feet per year of commercial tree species, will not be reconfigured so that the cubic feet per year capability of the lot or parcel is reduced.
 - c. A lot or parcel may be reduced to the minimum size necessary for the use if the lot or parcel:
 - i. Was approved as a non-farm or non-forest parcel; or
 - ii. Is occupied by an approved non-farm or non-forest dwelling; or
 - iii. More than half of the parcel is occupied by a use in MCC 17.139.020 or 17.139.050 other than a dwelling or farm or forest use; or
 - iv. The lot or parcel is occupied by a dwelling established before January 1, 1994, and is not capable of producing 5,000 cubic feet per year of commercial tree species as defined in MCC 17.139.130(H).
 - d. A property line adjustment may not be used to:
 - i. Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling;
 - ii. Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling; or
 - iii. Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard. [Ord. 1330 § 4 (Exh. A), 2013; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 11, 2000. RZ Ord. § 139.090.]
 - iv. Adjust a property line that resulted from a subdivision or partition authorized by a Measure 49 waiver so that any lawfully established unit of land affected by the property line adjustment is larger than the size granted by the waiver.**

Mandatory: HB 2831 (2015)/confirming amendment

17.139.120 Consideration of soil classification changes.

For the purposes of approving an application for a lot-of-record dwelling under MCC 17.139.030(H) or for a dwelling not in conjunction with farm use under MCC 17.139.050(A) or for a forest land dwelling under MCC

17.139.030(A), (B), or (C), the soil class, soil rating, or other soil designation of a specific lot or parcel may be changed if the property owner:

B. For dwellings not in conjunction with farm use, submits a report from a consulting soils scientist whose credentials have been certified as acceptable to the State Department of Agriculture that the soil class, soil rating, or other soil designation should be changed, and the report satisfies the most recent requirements in Oregon Administrative Rules for acceptable soils reports. a soil assessment prepared by a professional soil classifier that has been reviewed and approved by the Department of Land Conservation and Development as meeting the requirements in OAR 660-033-0045.

Mandatory: OAR amendments 2012

17.139.130 Definition of terms used in this chapter.

The following terms apply only to this chapter and have no relevance to the same terms used in other chapters of this title unless specifically stated:

I. “Primary processing of forest products” means the initial treatments of logs or other forest plant or fungi materials to prepare them for shipment for further processing or to market, in a building or buildings that do not exceed 10,000 square feet in total floor area, or an outdoor area that does not exceed one acre excluding laydown and storage yards, or both, that are adequately separated from surrounding properties to reasonably mitigate noise, odor and other impacts generated by the facility that adversely affect forest management and other existing uses, as determined by the governing body. Treatments may include, but are not limited to, debarking, peeling, drying, cleaning, sorting, chipping, grinding, sawing, shaping, notching, biofuels conversion, or other similar methods of initial treatments.

Mandatory: OAR amendments 2015

**Chapter 17.143
CC (COMMUNITY COMMERCIAL) ZONE**

17.143.060 Property development standards.

G. In addition to the provisions in Chapter 118, for a new use in a stormwater management area of an urban unincorporated community, except for a single-family dwelling on a lot, all driveways, parking and loading areas shall be developed and maintained as follows: all parking and loading areas and driveways thereto shall be paved to provide an all-weather surface with asphalt concrete, portland cement concrete, clay bricks or concrete blocks. The type of surfacing shall be approved by the Marion County department of public works. Parking and loading areas shall be adequately designed, graded, and drained. Drainage connections to a public storm drain system shall be approved by the Marion County department of public works. A storm water detention system conforming to the Marion County department of public works’ standards may be required. Alternate paving materials and methods may be allowed if approved by the Public Works Director.

Optional: Requires paving in urban unincorporated community of Brooks-Hopmire.

**Chapter 17.150
ID (INTERCHANGE DISTRICT) ZONE**

17.150.150 General requirements for all uses.

L. In addition to the provisions in Chapter 118, for a new use in a stormwater management area of an urban unincorporated community, except for a single-family dwelling on a lot, all driveways, parking and loading areas shall be developed and maintained as follows: all parking and loading areas and driveways

thereto shall be paved to provide an all-weather surface with asphalt concrete, portland cement concrete, clay bricks or concrete blocks. The type of surfacing shall be approved by the Marion County department of public works. Parking and loading areas shall be adequately designed, graded, and drained. Drainage connections to a public storm drain system shall be approved by the Marion County department of public works. A storm water detention system conforming to the Marion County department of public works' standards may be required. Alternate paving materials and methods may be allowed if approved by the Public Works Director.

Optional: Requires paving in urban unincorporated community of Brooks-Hopmere.

Chapter 17.164

IUC (UNINCORPORATED COMMUNITY INDUSTRIAL) ZONE

17.164.060 Property development standards.

I. In addition to the provisions in Chapter 118, for a new use in a stormwater management area of an urban unincorporated community, except for a single-family dwelling on a lot, all driveways, parking and loading areas shall be developed and maintained as follows: all parking and loading areas and driveways thereto shall be paved to provide an all-weather surface with asphalt concrete, portland cement concrete, clay bricks or concrete blocks. The type of surfacing shall be approved by the Marion County department of public works. Parking and loading areas shall be adequately designed, graded, and drained. Drainage connections to a public storm drain system shall be approved by the Marion County department of public works. A storm water detention system conforming to the Marion County department of public works' standards may be required. Alternate paving materials and methods may be allowed if approved by the Public Works Director.

Optional: Requires paving in urban unincorporated community of Brooks-Hopmere.

Chapter 17.172

SUBDIVISION AND PARTITION REQUIREMENTS

17.172.120 Property line adjustments.

The following requirements shall apply to all property line adjustments:

A. Regardless of the size of the adjustment, when a property line to be adjusted is part of a division of land previously approved by Marion County it shall be subject to the approval of the planning director.

B. Except as provided in subsection (A) of this section, no approval is necessary for property line adjustments in the RM (multiple-family residential), C (commercial), CC (community commercial), ID (interchange district), I (industrial), or IUC (unincorporated community industrial) zones.

C. ~~Repealed by Ord. 1313.~~ Except as provided in subsections (A) and (B) of this section, all property line adjustments shall require approval under the partitioning procedure if the adjustment exceeds 10 percent of the total land area of the smallest affected parcel.

D. Any adjustment or removal of a property line or public easement involving a parcel in a recorded partition plat or lot line in a recorded subdivision shall be performed by means of the replat process specified in ORS 92.180 through 92.190.

E. Property line adjustment deeds shall be recorded with the Marion County clerk's office prior to submitting the property line adjustment survey, if a survey is required. Deed recording reference numbers shall be noted on the required survey. [Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1191 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1169 § 4, 2002. RZ Ord. § 172.12.]

Optional: Consistency with the urban 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.

Optional: Permits the county to adopt minor amendments to properties and portions of maps by zoning code reference. New studies and new maps would still require hearing and adoption by county.

17.178.040 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 17.178.050.

~~D. Prior to any mining, dredging, filling, grading, paving or excavation within the 500-year floodplain of the Mill Creek Basin Flood Hazard Area (MCBFHA), as shown on the Marion County zoning maps, a floodplain development permit shall be obtained.~~

Optional: Removes permit requirement. Lack of studies in these areas make it difficult to comply with criteria.

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:

~~7. A garage attached to a residential structure, constructed with the garage floor slab below the base flood elevation, may be constructed to wet floodproofing standards; provided, that:~~

~~a. The garage shall meet the standards for openings in subsection (A)(5) of this section; and~~

~~b. The garage shall be constructed with unfinished materials acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;~~

7. A garage attached to a residential structure, constructed with the garage floor slab below the base flood elevation, or a fully enclosed space beneath a dwelling that does not constitute a basement may be constructed to wet floodproofing standards; provided, that:

a. The garage or enclosed space shall be constructed with unfinished materials, acceptable for wet floodproofing to two feet above the base flood elevation or, where no BFE has been established, to two feet above the highest adjacent grade;

b. The garage or enclosed space shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must comply with the following standards:

i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

ii. The bottom of all openings shall be no higher than one foot above grade;

iii. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters;

c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment shall be elevated to one foot above the level of the base flood elevation. Where the base flood elevation is not available, the electrical, heating, ventilation, plumbing and air-conditioning equipment shall be elevated to one foot above the highest adjacent natural grade (within five feet) of the building site;

d. The garage or enclosed space shall be limited to vehicle parking, building access, and storage of items having low damaged potential when submerged by water (no workshops, offices, recreation rooms, etc.);

e. The garage or enclosed space shall not be used for human habitation;

f. A declaratory statement is recorded requiring compliance with the standards in subsections (a) through (e) of this section.

Mandatory: corrects wet floodproofing standards to be consistent with federal requirements.

8. A detached residential accessory structure may be constructed to wet floodproofing standards; provided, that:

g. The accessory structure shall be limited to vehicle parking and ~~limited storage~~ storage of items having low damaged potential when submerged by water (no workshops, offices, recreation rooms, etc.);

h. The accessory structure shall not be used for human habitation;

h. i. A declaratory statement is recorded requiring compliance with the standards in ~~(b)(d)~~ **(f)** through ~~(f)(h)~~ **(f)** and ~~(F)(3)~~ of this section. ~~The accessory structure shall not be used for human habitation;~~

~~i. A declaratory statement shall be recorded requiring compliance with the standards in subsections (A)(8)(d) through (h) of this section.~~

Mandatory: corrects wet floodproofing standards to be consistent with federal requirements.

C. Nonresidential Development.

3. An agricultural structure may be constructed to wet floodproofing standards; provided, that:

- h. A declaratory statement shall be recorded requiring compliance with the standards in subsections (A)(3)(c) through (g) of this section.

Mandatory: corrects wet floodproofing standards to be consistent with federal requirements.

Chapter 17.191 SIGNS

17.191.060 Signs permitted in residential zones.

Except as provided in MCC 17.191.040, no sign shall be erected or maintained in residential zones except as set forth in this section:

2. AR Zone.

- b. For uses other than those in subsection (A)(2)(a) of this section, one internally or indirectly illuminated freestanding sign or one electronic display sign not exceeding 32 square feet with a dwell time of one hour, except changes to correct hour-and-minute or temperature information, which may change no more often than once every three seconds, ~~may be erected in place of a freestanding sign.~~

3. RM Zone.

- b. For uses other than those in subsection (A)(3)(a) of this section, one internally or indirectly illuminated freestanding sign or one electronic display sign not exceeding 32 square feet with a dwell time of one hour, except changes to correct hour-and-minute or temperature information, which may change no more often than once every three seconds, ~~may be erected in place of a freestanding sign.~~

17.191.065 Signs in public, farm and forest zones.

Except as provided in MCC 17.191.040, no sign shall be erected or maintained in public, farm and forest zones except as set forth in this section:

- D. On property developed for religious organizations, museums, educational institutions and schools as defined in MCC 17.110.505 and 17.110.510, and subject to the standards above, one electronic display sign not exceeding 32 square feet with a dwell time of one hour, except changes to correct hour-and-minute or temperature information, which may change no more often than once every three seconds, ~~may be erected in place of a freestanding sign.~~

17.191.070 Signs for integrated business centers in an interchange district zone.

Except as provided in MCC 17.191.040, only signs permitted in this section are allowed in an integrated business center in an ID zone:

- A. Integrated Business Center Sign. One freestanding sign structure designed to be read from the freeway:

5. Subject to the standards above, one electronic display sign with a dwell time of eight seconds, except changes to correct hour-and-minute or temperature information, which may change no more often than once every three seconds, ~~may be erected in place of a freestanding sign~~ not exceeding 80 percent of the total square footage allowed and included in square footage maximum.

17.191.080 Signs in other zones.

Except as provided in MCC 17.191.040, no sign shall be erected or maintained except as set forth in this section:

- G. Subject to the standards above, one electronic display sign ~~in place of a freestanding sign~~ with a dwell time of eight seconds, except changes to correct hour-and-minute or temperature information, which may change no more often than once every three seconds.

Optional: Clarifies that an electronic display sign can be part of an existing sign, not only a separate freestanding sign.