COMPREHENSIVE PLAN

INTRODUCTION

PLAN AMENDMENTS:

To maintain the Comprehensive Plan as an accurate statement of County land use goals and policies based on current inventory data, it is necessary to periodically review and evaluate it. If changes in the social, physical or economic conditions of Marion County occur it will be necessary to restate the land use goals and policies as well as the land use designations on the Plan Map. In any case Plan amendments must be consistent with the State Land Use Goals and applicable land use laws.

> Policy 1. The Comprehensive Plan and implementing measures shall be reviewed and updated at least every five years. The review process shall include opportunity for the general public, area advisory committees and state and federal agencies to submit proposed changes and to review and comment on any amendments being considered by the Planning Commission and the Board of Commissioners.

Plan amendments may range from individual property requests to a complete Plan revision. The need to revise the Plan on an individual property can be considered through an application by an affected property owner at any time. The complete planning process described earlier will be followed in the review of major Plan changes or complete Plan revisions.

The flexibility of the planning program through amendments and changes based on new information is important but, at the same time, the integrity of the goals and policies must be maintained through long term stability and consistency in their application.

> Policy 2. The procedures which Marion County will use to consider Comprehensive Plan amendments in addition to the requirements in State law, is as follows:
>
> Individual Property or Quasi-Judicial Amendments:
>
> Plan changes directly involving five or less properties will be considered a quasi-judicial amendment. Quasi-judicial amendments may be initiated by the subject property owners with an application form supplied by the Marion County Planning Division. The amendment will be reviewed by the zone change procedure established in the Marion County Zoning Ordinance. A Plan amendment application of this type may be processed simultaneously with a zone change request.
>
> Area-wide or Legislative Amendments:
>
> Where ~~more than~~ six **or more** properties are involved, or where a change in the text of the Plan is proposed, the amendment will be considered a legislative amendment. Legislative plan amendments may be initiated only by the County Planning Commission

or the Board of Commissioners. Any interested person may request changes in the Land Use Map or the text of the Plan by letter or petition, or with respect to the County Urban Growth Management Framework by request of a majority of the cities in the County. If the Commission or Board accepts the request and initiate a change, the review will follow the planning process described earlier.

Urban Area Plan and Boundary Amendments:

Urban Area Plan and Urban Growth Boundary changes shall be accomplished by the amendment procedure included in each city/county urban growth boundary and policy agreement or growth management agreement/compact.

Clarifies the requirements for a land use application.

COMPREHENSIVE PLAN

AGRICULTURAL LANDS

Agriculture is the leading industry in the Marion County economy and it is a major user of land resources within the County. Marion County is also the leading farm revenue producing county in the state. This plus the tremendous diversity of crop type makes agriculture a dominate facet of life in Marion County.

Protection and preservation of farmland is primarily for the purpose of maintaining the soil resource and farm industry as a basis for food and fiber production now and in the future. Because of its dependence on the land resource, farming is sensitive to the effects of land use change and intensity. As explained in the rural issues and problems discussion, the division of land into small parcels and the presence of non-farm activities can drastically affect farm operations. Therefore, to achieve the goal of protecting and preserving the agricultural industry, non-farm activities in rural farm areas of Marion County must be strictly controlled.

It is further necessary to preserve and protect the maximum amount of the prime agricultural land resource in blocks as large as possible to help assure future commercial agricultural production. In areas having special or unique agricultural resource circumstances, the intent is to maximize agricultural production by intensifying management practices on a diversity of parcel sizes.

Preservation of this land has the secondary benefit of conserving the natural resources that are an asset to the physical, social and economic quality of life in Marion County. Public support for agricultural preservation has been repeatedly expressed through public workshops and hearings, advisory committee meetings and citizen attitude surveys.

Legislative policy and the Land Conservation and Development Commission Goal No. 3 on agricultural lands also indicates a need to preserve agricultural lands. This State Goal defines agricultural lands in western Oregon as land predominantly comprised of Class I - IV soils identified by the Natural Resource Conservation Service (NRCS) classification system and other lands which are suitable for farm use. Farm use is also defined as set forth in ORS 215.293 (2) (a) (1997 edition): ....."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 by the feeding, breeding management and sale of, or the produce of, livestock, poultry, fur-bearing 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 use and 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 provide 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 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 subsection. "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 subsection (3) of this section, or land described in ORS 321.267 (1) (e) or 321.415 (5). The State goal as amended in 1994 indicates that these lands shall be preserved by applying Exclusive Farm Use zoning consistent with the requirements in OAR 660-033. These statutes and rules define high-value farmland and establish review criteria for many of the uses allowed in EFU zones. As a result, the state land use program provides greater protection for high value farmland compared with other farmland protected under Goal 3.

Most lands presently in farm use in the County are of the Natural Resource Conservation Service agricultural soil capability Class I through IV. This soil classification system is explained in the Background and Inventory Report. The General Soils Map also included in the report shows the location and extent of the soil classes. Agricultural production is not limited to the Class I - IV soils, and soil fertility is not the sole determinant of what constitutes farmland. Therefore, it is necessary to describe more adequate criteria to define farmland in Marion County. The following criteria are used to determine which lands the agricultural preservation goal and policies should apply to.

a. Soils that are suitable for agricultural production using accepted farming practices, especially Class I - IV soils.

b. Areas of open land that are relatively free for non-farm conflicts.

c. Areas that are presently in farm production or are capable of being farmed now or in the future.

d. Those other lands that are necessary to protect farm uses by limiting adjoining non-farm activities.

Applying these criteria to the lands in the County reveals those areas that are defined as farmland to which farm zoning and the farmland protection policies will apply.

It is the intent of Marion County to maintain the ability to economically farm these lands by limiting conflicts with non-farm uses. This will be accomplished by prohibiting incompatible non-farming activities and by limiting land division to those compatible with agricultural needs consistent with the requirements of either ORS 215.213 or 215.283 and OAR 660-033.

The primary tools available to accomplish this goal are farm zoning and land division controls. Through the exercise of these controls, the agricultural industry can be maintained in the future. Even though land use controls can be effective in preserving agricultural lands, by far the most important aspect of this program is public attitude. Public support, particularly from farmers, farm related industry, and those people owning farm land in the County, is the real foundation upon which agricultural land preservation policies will be maintained.

Agricultural lands intended for preservation are shown on the Land Use Plan Map. There are two land use categories used to maintain agricultural production capabilities.

The first and most extensive is the Primary Agriculture designation which covers high value agricultural lands intended for preservation that are predominantly large scale, extensive, commercial agricultural operations. The second is the Special Agriculture designation that is applied to areas with a mixture of non-irrigated cropland, grazing, small scale or specialty farming, and non-farm homesites. Each is intended to recognize and protect the resource value of their respective areas, while using slightly different techniques.

PRIMARY AGRICULTURE

Areas identified as Primary Agriculture on the Land Use Plan Map are intended, as the name implies, primarily for agricultural use in large commercial farm units. The existing commercial agricultural enterprise of these areas is characterized by extensive irrigated agricultural use, a large variety of crop types and a lack of significant areas of non-farm uses. And, quite importantly, there is widespread support from property owners for maintaining these areas for the exclusive use of farming and protecting them from non-farm conflicts. These areas are the foundation of the agricultural industry in Marion County and are intended to be maintained for long term agricultural production.

The intent of the Primary Agriculture designation will be implemented by applying the EFU (EXCLUSIVE FARM USE) zone. To make the farmland protection program effective it is necessary to apply the Primary Agriculture designation and consequent EFU (EXCLUSIVE FARM USE) zoning to large areas and in a blanket-like manner. Those lands on which EFU zoning is applied are predominantly high value farmland with Class I - IV soil classifications. There are, however, intermingled, occasional parcels that are not economic or commercial farm units by virtue of size, shape, soils or use. Where they are few in number and in areas, these parcels are included within the Primary Agriculture designation to maintain the solidarity and preference for the farming community and to minimize conflicts on surrounding lands. Often these parcels can be leased for farm use or be combined with a farm operation. Allowing them to be divided into even smaller parcels encourages non-farm uses and increases the potential for conflicts with farming operations on adjacent lands. For the same reason, it is important that any marginal farmland be retained in a commercial agricultural unit. In EFU zones maintaining the land in large tracts is preferred over attempts to increase productivity by creating smaller management units. There are many smaller tracts existing within the zone that can be used to support intensive small scale farm operations that need high value farmland.

The EFU zone applies, at a minimum, use limitations on high value farmland included in OAR 660-033 and ORS 215.283. ~~It does not allow lot of record dwellings [OAR 660-033-130 (3)], nor does it allow creation of new non-farm dwelling parcels [OAR 660- 033-199 (11)] because these uses are not compatible with the intensive agricultural practices common on high value farmlands.~~ Farm and forest uses and other activities necessary to accommodate agricultural production are the main uses allowed on these primary agricultural lands.

Additional uses which should be allowed are certain forest related uses and natural resource uses. Dwellings in conjunction with farm use are allowed if past income from the sale of farm products demonstrates that the farm use is a commercial agricultural enterprise. Certain businesses conducted in dwellings or in conjunction with farm use, mineral, aggregate, oil and

gas uses, transportation uses, utility and solid waste facilities, parks and other public and non-profit uses as prescribed in ORS 215.283 and OAR 660-033 may be allowed as a conditional use subject to meeting criteria that ensure there are no significant impacts on farming and other natural resources and that the use will have adequate services.

In primary agricultural areas, non-farm residences are considered a secondary use having a low priority and represent a potential farm use conflict. Where conflicts occur between non-farm residents and farming, the non-farmers are considered the intruders and are expected to tolerate necessary farm practices on adjacent lands and to control conflicting activities on their land. Where the property is predominantly on non high-value soils and compatibility and service criteria can be met non-farm residences may be permitted as a conditional use on existing parcels within the Primary Agriculture area. The approval of non-farm residences shall be based upon a critical determination of compliance with the applicable criteria.

Only where there is a tight cluster of a number of small parcels that are developed or committed to non-farm related residential or other developments are such areas considered appropriate for designation for location of other non-farm uses and justifiable as exceptions to the Agricultural Goal. Careful consideration shall be given to the adverse impact on the integrity of the farmland preservation program when considering the approval of non-farm uses in the midst of areas designated Primary Agriculture.

An important aspect of the agricultural preservation program is the control of land divisions to maintain parcel sizes adequate to continue the commercial agricultural enterprise in the area. Unless the County determines that there are areas where a smaller minimum parcel size is appropriate, the state statues and rules provide that the minimum parcel size be at least 80 acres. In the primary agriculture designation there are areas where, because of the requirements of commonly grown crops, parcels represent field sizes larger than 80 acres. To ensure the continued availability of land in parcels large enough to efficiently farm, land divisions are regulated to ensure that new parcels are consistent with the size of existing fields in the vicinity. This is achieved by increasing the minimum parcel size requirement where the average of all farm parcels in the immediate vicinity is more than 80 acres.

Other land division criteria are included in the zone to ensure that parcels created for any approved non-farm uses are no larger than necessary to accommodate the use, and that lot line adjustments involving parcels smaller than the minimum are consistent with the intent of the designation.

Permits EFU zone to add lot of record dwelling provisions to the EFU zone consistent with provisions in state law.

AGRICULTURAL GOAL

To preserve and maintain agricultural lands for farm use consistent with the present and future need for agricultural products, forest and open space.

AGRICULTURAL LANDS POLICIES

1. Preserve lands designated as Primary Agriculture by zoning them EFU (EXCLUSIVE FARM USE). Lands designated as Special Agriculture should be protected by the corresponding SA zone and farmland in the Farm/Timber designation should be protected by the Farm/Timber zone.

2 Maintain primary agricultural lands in the largest areas with large tract to encourage larger scale commercial agricultural production.

3. Discourage development of non-farm uses on high value farmland and ensure that if such uses are allowed that they do no cause adverse impacts on farm uses.

4. Limit residential uses on high value lands to those dwellings where past income from the sale of farm products demonstrate that the dwelling will be in conjunction with the farm use. Non-farm dwellings should be limited to existing parcels ~~composed of non-high value soils~~ where the dwelling will be compatible with the surrounding farm area. The approval of non-farm residences shall be based upon findings that the proposed dwelling meets the applicable criteria in OAR 660-033. Approval of a dwelling in the Farm/Timber designation shall be based on the applicable criteria in OAR 660-033 or OAR 660-006.

5. Divisions of agricultural lands shall be reviewed by the County and comply with the applicable minimum parcel size and the criteria for the intended use of the property.

6. Farmland should be taxed at agricultural use value.

7. Additional housing allowed on farmlands shall be necessary for farm management purposes. These dwellings ~~shall~~ **should** be manufactured homes so they can be removed when not needed, or be occupied by a relative of the farm operator and sited on the same parcel as the principal dwelling. A deed restriction shall be recorded requiring removal of the dwelling when the occupancy or use no longer complies with the criteria or standards under which the dwelling was originally approved.

8. The location of new dwellings must comply with density limitations intended to protect major and peripheral big game habitat.

9. When creation of a non-farm parcel is warranted, the size of the parcel shall be as small as possible to preserve the maximum amount of farmland in the farm parcel. Requirements may need to be imposed when non-farm parcels are allowed in farm use areas to minimize the potential for conflicts with accepted farm management practices on nearby land. These may include special setbacks, deed restrictions and vegetative screening.

Permits EFU zone to add lot of record dwelling provisions to the EFU zone consistent with provisions in state law. Recognizes that different types of dwellings may be secondary farm dwellings as permitted by state law.

COMPREHENSIVE PLAN

URBANIZATION

URBAN AREA PLANNING

To achieve the desired objectives of managing urban expansion, it is necessary to develop urban growth programs jointly with the cities, Marion County and special districts. These programs should be developed primarily through the comprehensive planning processes of each community with concurrence by the County and the State. The Land Conservation and Development Commission Goal 14 – Urbanization, provides the basis for development of these programs as part of each city's comprehensive plan.

Each urban growth program should consist of an urban growth boundary, urban development policies or ordinances to achieve the desired purpose, and joint city-county agreements to coordinate land use planning activities.

The purpose of an urban growth program is to provide for orderly, efficient development of urban areas. As discussed in the problems and issues section, uncontrolled development to urban densities is costly and an inefficient use of land. The adoption of an urban program for each community in Marion County will limit urban sprawl and its adverse impacts while providing better resource protection in rural areas. The development of these programs will serve the dual role in providing for adequate areas for urban expansion.

Each city is required by State law to comply with the LCDC Urbanization Goal 14 by establishing an urban growth boundary. These boundaries are for the purpose of identifying the geographic limit to which urban development will expand during the foreseeable future, which for cities is the 20-year planning horizon of their acknowledged comprehensive plans. The main intent of boundaries is to logically contain urban sprawl and separate urbanizable lands from rural lands.

The establishment of each urban growth boundary which also involves proposals to expand the existing, acknowledged growth boundary, should be based upon the following criteria as indicated in the Land Conservation and Development Commission Urbanization Goal.

a. Demonstrated need to accommodate long-range urban population, consistent with a 20-year population forecast coordinated with affected local governments;

b. Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories;

c. Orderly and economic provision of public facilities and services;

d. Efficient accommodation of identified land needs;

e. Comparative environmental, energy, economic and social consequences;

f. Evaluating alternative boundary locations consistent with ORS 197.298; and

g. Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

The state goal requires each community to establish an urban growth boundary as part of its Comprehensive Plan program. The extent and location of each urban growth boundary will be based upon the individual community needs, conditions and growth expectations. The area identified for future urbanization should be considered flexible with any changes occurring based upon changing needs of the community~~,~~ **and** consideration of the above LCDC Statewide Land Use Planning Goal 14 criteria.

Marion County and each of the 20 cities in the County have jointly agreed upon and adopted an urban growth boundary as part of each city's comprehensive plan. These boundaries are shown on the General Land Use/Transportation Plan Map. The County and each of the cities have adopted intergovernmental agreements in the form of Urban Growth Boundary and Policy Agreements or Urban Growth Boundary Coordination Agreements for establishment of the urban growth boundaries, to address coordination requirements regarding Plan amendments and changes to the boundaries, and for identification of areas of special mutual concern.

A list of the acreage of land contained within each city's urban growth boundary is included in the Background and Inventory Report. These boundaries, when established in the late 1970s and early 1980s, included sufficient land to accommodate the projected 267,000 persons by the year 2000. This indicated an increase of more than 115,900 persons between the years 1978 and 2000. ORS 195.036 provisions adopted in 1995 designated counties with the responsibility for establishing and maintaining a coordinated population forecast for the entire area including cities within its boundary, for use in maintaining and updating comprehensive plans. In October 1998, the County adopted new, coordinated population projections for the incorporated and unincorporated portions of Marion County. The projected year 2020 population for the County is 350,952 which is an increase of 83,252 over the 1997 base year population of 267,700 used for the projections. The 2000 Census population count for the County was 284,838. The population projections for each city are one of the primary factors used in determining urban growth boundary areas and are included in each city's comprehensive plan as plans are updated or through a city's periodic review process of their plan, and in the County Background and Inventory Report.

The management of the urbanizable land area between the city limits and the urban growth boundary requires special coordination between the city and the County. The city has an interest in the future of this area since it may eventually become a part of the city through annexation and extension of services. The County retains legal authority to control land use actions in this area, and therefore, is responsible for the conditions that are inherited by the city upon annexation. This makes it necessary for the city and county to coordinate the planning and land use control for this transition or urbanizable area.

The Comprehensive Plan for each city projects the city's growth through a land use plan for its urban area. With the County's concurrence, these plans, with their implementing policies, can be carried out by the County in the areas immediately outside of each city limits. The relationship

of the city providing leadership in planning the future of urbanizable lands while the County implements the plans through land use control, is crucial to accomplishing the urbanization goals.

Corrects scrivener's error.

URBAN GROWTH POLICIES

In defining urbanizable land areas with urban growth boundaries, it is necessary to provide implementation measures to effect their purpose. Urban Growth Policies can provide guidance in making the land use decisions that will direct the future of the urbanizable land areas. The mutual agreement of the cities and the County to these policies is vital to the effective coordination and cooperation necessary to implement each urban growth program. The following are urban growth policies that should guide the conversion of the urbanizable areas adjacent to each city to urban uses.

1. The type and manner of development of the urbanizable land shall be based upon each community's land use proposals and development standards that are jointly agreed upon by each city and Marion County and are consistent with the LCDC Goals.

2. The provision of urban services and facilities should be in an orderly economic basis according to a phased growth plan.

3. Development of the urban area should proceed from its center outward.

4. Development should occur in areas of existing services before extending new services.

5. Divisions of urbanizable land shall consider the maximum utility of the land resource and enable the logical and efficient extension of services to such parcels.

6. Generally cities are the most logical providers of urban services. Where special service districts exist beyond the city limits and within the urban growth boundary such as around Salem, all parties shall work towards the development of the most efficient and economical method of providing needed services. Urban services shall not be extended beyond the urban growth boundary, except as provided for in Special District Policies 6, 7 and 8.

7. Urban densities shall be established only within recognized urban growth boundaries unless an exception to Goal 14 (Urbanization) is obtained.

8. The majority of the projected population increases in Marion County should be directed to the urban areas.

9. Sufficient developable land shall be made available to provide choices in the market place.

10. The annexation of rural lands into the legal boundary of any city shall be limited to the area contained within the mutually adopted Urban Growth Boundary. Exceptions to this prohibition may be allowed as follows:

    a. Consistent with Special District Policies 6, 7 and 8. The annexation of lands outside of an Urban Growth Boundary shall be limited to lands having a prior exception to Statewide Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands).

    b. All or portions of Keizer Rapids Park owned by the City of Keizer or with an option to purchase by the city, including Chemawa Road, to be included in the park. Lands annexed outside the urban growth boundary shall remain designated and zoned for rural resource use consistent with state law until the annexed properties are brought into the urban growth boundary. The annexed lands shall be subject to terms of a separate intergovernmental agreement between the city and the county.

    Annexation procedures shall be consistent with the requirements of state law and the local coordination policies contained in the Urban Growth Boundary and Policy Agreement or Urban Growth Boundary Coordination Agreement.

11. Any city proposing to annex rural lands located outside of an Urban Growth Boundary into a city limits shall carry the burden of proving compliance with the applicable goals and policies of the Marion County Comprehensive Plan, the city's comprehensive plan, the Urban Growth Boundary and Policy Agreement or Urban Growth Boundary Coordination Agreement and state statute and administrative rules.

12. An updated intergovernmental agreement between the County and a city that is consistent with the Urban Growth Policies ~~shall~~ **may** be required ~~as each~~ **when a** city goes through Periodic Review or updates its comprehensive plan where County concurrence is necessary.

Clarifies requirement and reflects current process that an updated agreement is not always required.

Chapter 16.01

GENERAL ZONING PROVISIONS

16.01.030 Comprehensive Plan designation and zone classifications.

Zone classifications implement the Comprehensive Plan designations. Because this title implements several city comprehensive plans and not all plan designations are identical for all cities, those in the Salem/Keizer Comprehensive Plan are used below. For cities other than Salem, the zoning administrator shall decide which of the following zones implement the applicable plan designation on the basis of the intent in the applicable comprehensive plan. The zone classifications below are listed in order of most restrictive to least restrictive under the appropriate plan designation. Following are the zones allowed in the Salem Area Comprehensive Plan designations:

Comprehensive Plan Designation	Zone Classification
Developing Residential	RS, UT, UD, RL, RM
Single-Family Residential	RS, UT, UD
Multifamily Residential	RL, RM, UT, UD
Commercial	CO, CR, CG, HC, UT, UD
Industrial	IC, IP, IG, IH, UT, UD
Community Service	**P**

[Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 1.30.]

Adds Public zone as classification for Public comprehensive plan designation.

Chapter 16.02

SINGLE-FAMILY RESIDENTIAL – RS ZONE

16.02.010 Uses.

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

A. Detached single-family dwelling* on a lot.

B. Child care home* for 12 or fewer children.

C. Utility* substations.

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

1. Mobile home* on a lot in a mobile home subdivision or as a replacement for a legally nonconforming mobile home (see MCC 16.26.020).

2. Two-family shared housing (see MCC 16.26.040).

3. Duplex* on a corner lot (see MCC 16.26.060).

4. Zero side yard dwelling units* (see MCC 16.26.080).

5. Home occupations, limited* (see MCC 16.26.200).

6. Residential sales offices (see MCC 16.26.300).

7. Boat and RV storage area (see MCC 16.26.340).

8. Religious organizations* (see MCC 16.26.600).

9. Planned developments (see MCC 16.26.800).

10. Mobile home parks (see MCC 16.26.901).

11. Elementary and secondary schools, SIC 8211 (see MCC 16.26.620).

12. Manufactured home on a lot (see MCC 16.26.030).

E. Signs subject to Chapter 16.31 MCC.

F. The following accessory uses are permitted on a lot in conjunction with a permitted dwelling or mobile home:

1. Decks and patios (open, covered or enclosed);

2. Storage building for firewood, equipment used in conjunction with dwelling and yard maintenance, personal property (except vehicles) not in conjunction with any commercial or industrial business other than a home occupation;

3. Greenhouse;

4. Sauna;

5. Hobby shop;

6. Shelter for pets;

7. Fallout shelters;

8. Swimming pools and hot tubs;

9. Guest facility* subject to MCC 16.25.200(A)(9);

10. Rooming* or boarding* of up to two persons in a dwelling;

11. Pets*. Not more than 10 mammals over four months old are allowed as pets unless a conditional use permit is obtained;

12. One recreational vehicle space* subject to MCC 16.26.410;

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

13. One additional kitchen in a single-family dwelling, subject to the filing of a declaratory statement.

Clarifies standards for placing second kitchen into a dwelling.

14. Offering for sale five or fewer vehicles* owned by the occupants of the dwelling in any calendar year;

15. Garages* and carports* for covered vehicle parking;

16. Child foster home*;

17. Sleeping quarters in the dwelling or mobile home for domestic employees of the resident of the dwelling or mobile home;

18. Fences subject to the requirements in Chapter 16.28 MCC;

~~19. Vegetable gardens, orchards and crop cultivation for personal use. No sale of produce is permitted. No birds or furbearing animals, other than pets*, and no livestock, poultry or beekeeping permitted;~~

Provision is already included in permitted uses generally.

20. Parking of vehicles* in a structure, or outdoors provided:

a. All of the vehicles are owned by the owner or lessee of the lot or their guests;

b. Vehicles may be parked outdoors:

i. Within the front yard in a driveway that meets the standards in MCC 16.30.150;

ii. In the lot area where accessory buildings are permitted, provided the parking area is screened by a six-foot-high sight-obscuring fence, wall or hedge from other lots in a residential use and has an all-weather surface drained to prevent standing water;

iii. Not more than three vehicles shall be parked on a lot within required yards abutting streets;

c. Parked vehicles shall be for the personal use of the occupants of the dwelling;

d. Two vehicles used in conjunction with a home occupation or other employment may be parked on a lot;

e. Any vehicle used in conjunction with a home occupation or other employment that is parked on a lot and is rated at more than one ton capacity must be parked in an enclosed structure.

G. Temporary uses permitted in MCC 16.25.300.

H. Transit and school bus stop shelters. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 1204 § 4, 2004; Ord. 964 § 4, 1994; Ord. 894 § 4, 1991; Ord. 882 § 4, 1990; Ord. 863 § 5, 1990. UZ Ord. § 2.01.]

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 Administrator in a scientific and engineering report entitled the "Flood Insurance Study for Marion County, Oregon and Unincorporated Areas" dated October 18, 2019, with accompanying Flood Insurance Rate Maps (FIRMs) and subsequent FEMA issued letter of map amendments and letter of map revisions related to these adopted studies and maps, which are hereby adopted by reference and declared to be a part of this chapter. ~~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.

Removes a reference to maps the code no longer implements.

A. Coordination with the State of Oregon Specialty Codes. Pursuant to the requirement established in ORS 455 that Marion County administers and enforces the State of Oregon Specialty Codes, Marion County does hereby acknowledge that the Oregon Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in special flood hazard areas. Therefore, this chapter is intended to be administered in conjunction with the Oregon Specialty Codes.

B. Compliance and Penalties for Noncompliance. All development within the floodplain (including areas of special flood hazard), is subject to the terms of this chapter and required to comply with its provisions and all other applicable regulations.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall be enforced pursuant to MCC 16.35.270 and Chapter 1.25 MCC. Nothing contained herein shall prevent Marion County from taking such other lawful action as is necessary to prevent or remedy any violation.

C. Abrogation. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement,

covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

D. Severability. This chapter and the various parts thereof are hereby declared to be severable. If any section, clause, sentence, or phrase of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this chapter.

E. Interpretation. In the interpretation and application of this chapter, all provisions shall be:

1. Considered as minimum requirements;

2. Liberally construed in favor of the governing body; and

3. Deemed neither to limit nor repeal any other powers granted under state statutes.

F. Designation of the Floodplain Administrator. The county zoning administrator is hereby appointed as the floodplain administrator to administer, implement, and enforce this chapter by granting or denying development permits in accordance with its provisions. The floodplain administrator may delegate authority to implement these provisions.

G. Duties of the floodplain administrator, or their designee, shall include, but not be limited to:

1. Review all development permits to determine that the permit requirements of this title have been satisfied.

2. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.

3. Review building permits where elevation data is not available either through the FIS or from another authoritative source, to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available.

4. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of MCC 16.19.140(J) are met.

5. Provide to building officials the base flood elevation (BFE) and any required freeboard applicable to any building requiring a development permit.

6. Review all development permit applications to determine if the proposed development qualifies as a substantial improvement.

7. Review all development permits to determine if the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, ensure compliance with the relevant provisions of this chapter.

8. Review all development permits to determine if the proposed development activity includes the placement of fill or excavation.

H. Information to Be Obtained and Maintained.

1. Obtain, record, and maintain the actual elevation (in relation to mean sea level) of the lowest floor (including basements) and all attendant utilities of all new or substantially improved structures where base flood elevation (BFE) data is provided through the Flood Insurance Study (FIS), Flood Insurance Rate Map (FIRM), or obtained in accordance with this section.

2. Obtain and record the elevation (in relation to mean sea level) of the natural grade of the building site for a structure prior to the start of construction and the placement of any fill and ensure that the requirements of MCC 16.19.140 are adhered to.

3. Upon placement of the lowest floor of a structure (including basement) but prior to further vertical construction, obtain documentation, prepared and sealed by a professional licensed surveyor or engineer, certifying the elevation (in relation to mean sea level) of the lowest floor (including basement).

4. Where base flood elevation data are utilized, obtain as-built certification of the elevation (in relation to mean sea level) of the lowest floor (including basement) prepared and sealed by a professional licensed surveyor or engineer, prior to the final inspection.

5. Maintain all elevation certificates (EC) submitted to Marion County.

6. Obtain, record, and maintain the elevation (in relation to mean sea level) to which the structure and all attendant utilities were floodproofed for all new or substantially improved floodproofed structures where allowed under this chapter and where base flood elevation (BFE) data is provided through the FIS, FIRM, or obtained in accordance with MCC 16.19.140.

7. Maintain all floodproofing certificates required under this chapter.

8. Record and maintain all variance actions, including justification for their issuance.

9. Obtain and maintain all hydrologic and hydraulic analyses performed as required under MCC 16.19.140(J).

10. Record and maintain all substantial improvement and substantial damage calculations and determinations as required under subsection (J) of this section.

11. Maintain for public inspection all records pertaining to the provisions of this chapter.

I. Requirement to Notify Other Entities and Submit New Technical Data.

1. The floodplain administrator shall notify the Federal Insurance Administrator in writing whenever the boundaries of the community have been modified by annexation or the

community has otherwise assumed authority or no longer has authority to adopt and enforce floodplain management regulations for a particular area, to ensure that all Flood Hazard Boundary Maps (FHBM) and Flood Insurance Rate Maps (FIRM) accurately represent the community's boundaries. Include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.

2. Notify adjacent communities, the Department of Land Conservation and Development, and other appropriate state and federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration. This notification shall be provided by the applicant to the Federal Insurance Administration as a letter of map revision (LOMR) along with either:

a. A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or

b. Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

The applicant shall be required to submit a conditional letter of map Revision (CLOMR) when required under subsection (I) of this section.

3. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Section 44 of the Code of Federal Regulations (CFR), Section 65.3. The community may require the applicant to submit such data and review fees required for compliance with this section through the applicable FEMA letter of map change (LOMC) process.

The floodplain administrator shall require a conditional letter of map revision prior to the issuance of a floodplain development permit for:

a. Proposed floodway encroachments that increase the base flood elevation; and

b. Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.

An applicant shall notify FEMA within six months of project completion when an applicant has obtained a conditional letter of map revision (CLOMR) from FEMA. This notification to FEMA shall be provided as a letter of map revision (LOMR).

J. Substantial Improvement and Substantial Damage Assessments and Determinations. Conduct substantial improvement (SI) (as defined in MCC 16.19.010) reviews for all structural development proposal applications and maintain a record of SI calculations within permit files in accordance with subsection (G) of this section. Conduct substantial damage (SD) (as defined in

MCC 16.19.010) assessments when structures are damaged due to a natural hazard event or other causes. Make SD determinations whenever structures within the special flood hazard area are damaged to the extent that the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. [Ord. 1405 § 4 (Exh. B), 2019; Ord. 1397 § 4 (Exh. B), 2019; Ord. 1369 § 4 (Exh. B), 2016; Ord. 1301 § 4 (Exh. A), 2010; Ord. 1167 § 5, 2002; Ord. 1121 § 5, 1999; Ord. 1094 § 6, 1998; Ord. 1061 § 5, 1997; Ord. 1030 § 5, 1995; Ord. 951 § 5, 1993; Ord. 863 § 5, 1990. UZ Ord. § 19.10.]

16.19.140 Flood protection standards.

In all areas of identified floodplain (which include all areas of special flood hazard), the following requirements apply:

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

1. Residential structures shall have the top of the lowest floor, including basement, elevated on a permanent foundation to two feet above base flood elevation and the bottom of the lowest floor constructed a minimum of one foot above the base flood elevation. Where the base flood elevation is not available, the top of the lowest floor, including basement, shall be elevated on a permanent foundation to two feet above the highest adjacent natural grade (within five feet) of the building site and the bottom of the lowest floor elevated to one foot above the highest adjacent natural grade (within five feet) of the building site.

2. Manufactured dwellings shall have the bottom of the longitudinal chassis frame beam, including basement, elevated on a permanent foundation to two feet above base flood elevation. Where the base flood elevation is not available, the finished floor, including basement, shall be elevated on a permanent foundation to two feet above the highest adjacent natural grade (within five feet) of the building site.

3. Manufactured dwellings shall be anchored in accordance with subsection (D) of this section and all electrical crossover connections shall be a minimum of one foot above the base flood elevation.

4. No new residential structures, including manufactured dwellings, shall be placed in a floodway. An exception to this prohibition may be granted if a floodplain development permit, and variance consistent with MCC 16.19.160, are obtained.

5. All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) are subject to the following requirements. Enclosed areas below the base flood elevation, including crawlspaces, shall:

a. Be designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters;

b. Be used solely for parking, storage, or building access;

c. Be certified by a registered professional engineer or architect to meet or exceed all of the following minimum criteria:

i. A minimum of two openings,

ii. The total net area of non-engineered openings shall be not less than one square inch for each square foot of enclosed area, where the enclosed area is measured on the exterior of the enclosed walls,

iii. The bottom of all openings shall be no higher than one foot above grade,

iv. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they shall allow the automatic flow of floodwater into and out of the enclosed areas and shall be accounted for in the determination of the net open area.

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

a. 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;

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

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

d. Interior grade of the crawlspace shall not exceed two feet below the lowest adjacent exterior grade;

e. The height of the crawlspace when measured from the interior grade of the crawlspace (at any point on grade) to the bottom of the lowest horizontal structural member of the lowest floor shall not exceed four feet;

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

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

h. Below-grade crawlspace construction in accordance with the requirements listed above will not be considered basements for flood insurance purposes. However, below-grade crawlspace construction in the special flood hazard area is not the recommended construction method because of the increased likelihood of problems with foundation

damage, water accumulation, moisture damage, and drainage. Applicants shall be advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade).

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 residential structure 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 and constructed with flood openings to automatically equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwaters, in full compliance with the standards in subsection (A)(5) of this section;

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 only be used for parking, storage, and building access, and for storage of items having low damage 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)(7)(a) through (e) of this section;

g. The floors are at or above grade on not less than one side;

h. The garage or enclosed space must be constructed in compliance with subsections (D), (E), and (H) of this section.

8. A detached residential accessory structure may be constructed to wet floodproofing standards with relief from elevation or floodproofing requirements for residential and nonresidential structures in riverine (noncoastal) flood zones; provided, that the following requirements are met:

a. Appurtenant structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in subsection (J) of this section;

b. Appurtenant structures must only be used for parking, access, and/or storage and shall not be used for human habitation;

c. In compliance with State of Oregon Specialty Codes, appurtenant structures on properties that are zoned residential are limited to one-story structures less than 200 square feet, or 400 square feet if the property is greater than two acres in area and the proposed appurtenant structure will be located a minimum of 20 feet from all property lines. Appurtenant structures on properties that are zoned as nonresidential are limited in size to 120 square feet;

d. The portions of the appurtenant structure located below two feet above the base flood elevation, or where no BFE has been established, below two feet above the highest adjacent grade shall be built using flood resistant materials;

e. The appurtenant structure must be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood;

f. The appurtenant structure must be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood openings in subsection (A) of this section;

g. Appurtenant structures shall be located and constructed to have low damage potential;

h. Appurtenant structures shall not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed in compliance with subsection (L) of this section;

i. 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 or shall be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood;

j. A declaratory statement is recorded requiring compliance with the standards in subsections (A)(8)(b) through (i) of this section.

B. Reserved.

C. Nonresidential Development.

1. New construction and substantial improvement of any commercial, industrial or other nonresidential structures shall either have the lowest floor, including basement, elevated to two feet above the level of the base flood elevation, and where the base flood elevation is not

available, the lowest floor, including basement, shall be elevated to two feet above the highest adjacent natural grade (within five feet) of the building site; or together with attendant utility and sanitary facilities, shall:

a. Be floodproofed to an elevation of two feet above base flood elevation or, where base flood elevation has not been established, two feet above the highest adjacent grade, so that the structure is watertight with walls substantially impermeable to the passage of water.

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. This certificate shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed and shall be provided to the floodplain administrator.

Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (A)(5) of this section.

Applicants floodproofing nonresidential buildings shall be notified by the zoning administrator that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).

2. New construction of any commercial, industrial or other nonresidential structures is prohibited in the floodway. An exception to this prohibition may be granted if a floodplain development permit, and variance consistent with MCC 16.19.160, are obtained. This prohibition does not apply to functionally dependent uses.

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

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

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 subsections (C)(3)(c) through (g) of this section.

D. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

2. All manufactured dwellings must likewise be anchored to prevent flotation, collapse or lateral movements, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. Anchoring methods shall be consistent with the standards contained in the Oregon Manufactured Dwelling Installation Specialty Code.

E. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer’s or architect’s review of the plans and specifications.

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.

F. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system as approved by the State Health Division.

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.

3. On-site waste disposal systems shall be designed and located to avoid impairment to them or contamination from them during flooding consistent with the requirements of the Oregon State Department of Environmental Quality.

4. Electrical, heating, ventilation, plumbing, duct systems, air conditioning, and other equipment and service facilities **not installed so as to prevent water from entering or accumulating within the components during conditions of the base flood,** 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. If replaced as part of a substantial improvement the utility equipment and service facilities shall meet all the requirements of this subsection.

Establishes standards so that utilities may be installed below the BFE.

G. Developments, Generally. Residential developments involving more than one single-family residential structure, including subdivisions, manufactured dwelling parks, multiple-family residential structures, planned developments, and other proposed developments including development regulated under subsections (A) and (C) of this section, shall meet the following requirements:

1. Be designed to minimize flood damage.

2. Have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

3. Have adequate drainage provided to reduce exposure to flood hazards.

4. Base flood elevation data shall be provided by the developer. In cases where no base flood elevation is available, analysis by standard engineering methods will be required to develop base flood elevation data.

H. Storage of Materials and Equipment. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the

materials and equipment have low damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.

I. Alteration of Watercourses. When considering a conditional use permit to allow alteration or modification of a watercourse, the following shall apply:

1. Adjacent communities, the Oregon Division of State Lands and the Department of Land Conservation and Development, and other affected state and federal agencies shall be notified prior to any alteration or relocation of a watercourse and evidence of such notification shall be submitted to the Federal Insurance Administration. This notification shall be provided by the applicant to the Federal Insurance Administration as a letter of map revision (LOMR) along with either:

a. A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or

b. Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

2. Maintenance shall be provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

3. The applicant shall be required to submit a conditional letter of map revision (CLOMR) when required under MCC 16.19.100(I).

J. Floodways. Located within areas of floodplain established in MCC 16.19.100 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply in addition to the requirements in subsection (I) of this section:

1. Prohibit encroachments, including fill, new construction, substantial improvements and other development, within the adopted regulatory floodway unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. If subsection (J)(1) of this section is satisfied, all new construction, substantial improvements, and other development shall comply with all applicable flood hazard reduction provisions of this section.

3. The area below the lowest floor shall remain open and unenclosed to allow the unrestricted flow of floodwaters beneath the structure.

K. Standards for Shallow Flooding Areas (AO Zones). Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from one to three feet where a clearly defined channel does not exist, or where the path of flooding is

unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

1. New construction and substantial improvements of residential structures and manufactured dwellings within AO zones shall have the lowest floor (including basement) elevated above the highest adjacent grade (within five feet) of the building site, to two feet above the depth number specified on the FIRM or three feet if no depth number is specified.

2. New construction and substantial improvements of nonresidential structures within AO zones shall either:

a. Have the lowest floor (including basement) elevated above the highest adjacent grade (within five feet) of the building site, to two feet above the depth number specified on the FIRM or three feet if no depth number is specified; or

b. Together with attendant utility and sanitary facilities, be completely floodproofed to or above two feet above the depth number specified on the FIRM or three feet if no depth number is specified so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in subsection (E) of this section.

3. Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

4. In AO zones, new and substantially improved accessory structures must comply with the standards in subsection (A)(7) or (8) of this section.

5. In AO zones, enclosed areas beneath elevated structures shall comply with the requirements in subsection (A)(5) of this section.

L. Tanks.

1. Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the base flood.

2. Above-ground tanks shall be installed to one foot above the base flood level or shall be anchored to prevent flotation, collapse, and lateral movement under conditions of the base flood.

3. Tanks shall be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood. [Ord. 1405 § 4 (Exh. B), 2019; Ord. 1397 § 4 (Exh. B), 2019; Ord. 1369 § 4 (Exh. B), 2016; Ord. 1301 § 4 (Exh. A), 2010; Ord. 1167 § 5, 2002; Ord. 1094 § 6, 1998; Ord. 951 § 5, 1993; Ord. 863 § 5, 1990. UZ Ord. § 19.14.]

Chapter 16.25

PERMITTED USES GENERALLY

16.25.200 Permitted secondary and accessory structures and uses.

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

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

1. Decks and patios (open, covered, or enclosed);

2. Storage building for firewood, equipment used in conjunction with dwelling and yard maintenance, personal property (except vehicles) not in conjunction with any commercial or industrial business other than a home occupation;

3. Vegetable gardens, orchards and crop cultivation for personal use, including greenhouses. No sale of produce is permitted;

4. Sauna;

5. Hobby shop;

6. Shelter for pets;

7. Fallout shelters;

8. Swimming pools and hot tubs;

9. Guest facility*:

a. Only one guest facility is allowed per contiguous property ownership; and

b. Total combined maximum floor area shall not exceed 600 square feet, including all levels and basement floor areas; and

c. No stove top, range, or conventional oven is allowed; and

d. All water, sewer, electricity and natural gas services for the guest facility shall be extended from the primary dwelling services; no separate meters for the guest facility shall be allowed; and

e. The guest facility shall be located within 100 feet of the primary use dwelling on the same property measured from the closest portion of each structure; and

f. The guest facility shall use the same septic system as the primary use dwelling, except when a separate system is required by the building inspection division due to site constraints, or failure of the existing system, or where the size or condition of the existing system precludes its use, additional drain lines may be added to an existing system, when appropriate; and

g. The guest facility shall not be occupied as a dwelling unit; and

h. The guest facility shall not have an address;

i declaratory statement shall be recorded requiring compliance with the standards in this subsection;

Adds requirement to record declaratory statement.

10. Rooming* or boarding* of up to two persons in a dwelling;

11. Pets*, provided a conditional use permit is required if there are more than 10 mammals over four months old. No birds or furbearing animals, other than pets, and no livestock, poultry, other than hens as outlined in Chapter 6.15 MCC, or beekeeping are permitted in residential zones;

12. One recreational vehicle space* (see MCC 16.26.410);

13. ~~Additional kitchens in a dwelling provided all kitchens in the dwelling are used by only one family and provided the kitchens are not located in separate dwelling units and are connected by open, livable space between the kitchens (i.e., no doorways exist between the kitchens and no area between kitchens consists of unfinished or nonlivable space, such as a garage). One additional kitchen in a dwelling unit may be constructed inside an existing dwelling, or as an addition to a dwelling, as part of a suite of rooms consisting of a kitchen, one or more bathrooms, one or more bedrooms, and other domestic rooms if the suite of rooms is connected to the main dwelling by a door in a common wall;~~

13. One additional kitchen in a single-family dwelling, subject to the filing of a declaratory statement.

Clarifies standards for placing second kitchen into a dwelling.

14. Offering to sell five or less vehicles* owned by the occupants of the dwelling in any calendar year;

15. Garages* and carports* for covered vehicle parking;

16. Child foster home*;

17. Sleeping quarters for domestic employees of the resident of the dwelling or mobile home.

B. Fences are a permitted accessory or secondary use in all zones subject to the requirements in Chapter 16.28 MCC.

C. Transit stop shelters and school bus stop shelters are a permitted secondary use in all zones. Shelters shall not be located within a required vision clearance area and shall not be located more than 10 feet from a street right-of-way.

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

1. The vehicles are owned by the occupant of the lot or domestic employees of the occupant; and

2. Vehicles parked outdoors in a residential zone may be parked in a space within the front yard meeting the requirements for required parking in MCC 16.30.140; or they may be parked elsewhere on the lot where accessory buildings are permitted provided the parking area is screened by a six-foot-high sight-obscuring fence, wall or hedge from other lots in a residential zone. On a lot in the RS zone, not more than three vehicles shall be parked within required yards adjacent to streets; and

3. Vehicles parked on a lot in a residential zone shall be for the personal use of the occupants of the dwelling or the personal use of an employee of an approved conditional use home occupation. One vehicle used in conjunction with other employment may be parked on the lot; provided, that in the RS, RL, and RM zones the vehicle shall be parked in an enclosed structure if it is rated at more than one ton capacity.

E. One manager's office of 200 square feet or less for rental of dwellings is a permitted accessory use in the RL and RM zones.

F. Mobile classrooms and dormitories* for students are a permitted accessory use in conjunction with public or private elementary and secondary schools (SIC 8211).

G. Parsonage in conjunction with a religious organization*.

H. Subject to the requirements in subsection (H)(2) of this section, uses permitted outright in certain zones are permitted as an accessory use in a more restrictive zone as follows:

1. Uses permitted in MCC 16.05.010 of the CO zone are allowed as an accessory use in the RM zone when the lot is contiguous to a commercial zone. Uses permitted in MCC 16.06.010 of the CR zone, other than a medical marijuana dispensary*, are an accessory use in the CO zone. Uses permitted in MCC 16.07.010 of the CG zone are allowed as an accessory use in the CR zone. Uses permitted in MCC 16.11.010 of the IG zone are permitted as accessory uses in the IP zone.

2. Requirements.

a. The area occupied by accessory uses permitted in subsection (H)(1) of this section shall not exceed 40 percent of the area occupied by uses permitted outright or conditionally in the primary or overlay zones.

b. Any development requirements in Chapter 16.24 MCC and Chapters 16.26 through 16.34 MCC shall be met for the accessory use as if it was a primary use.

c. The accessory use shall be located on the same lot as the primary use and any structures associated with the accessory use shall be owned or leased by the owner of the primary business.

d. The allowance of accessory uses in a more restrictive zone shall not be considered a basis for a zone change to a less restrictive zone.

I. Parking of vehicles in a structure or outdoors is a permitted accessory or secondary use in the CR, CG, HC, IC, IP, P, and UT zones provided:

1. The vehicles are owned by the occupant of the lot or employees of the occupant;

2. If vehicles are stored outdoors, the parking area is enclosed by a six-foot-high sight-obscuring fence, wall, hedge or berm; surfaced as required in MCC 16.30.210; and lighting complies with MCC 16.30.220; and

3. If vehicles are parked outdoors, the vehicles shall be operational, used in conjunction with the primary use of the lot, and if more than one vehicle is parked, the area is screened by a six-foot-high sight-obscuring fence, wall or hedge from lots in residential zones and from streets.

J. Drop stations* are permitted in CR, CG and HC zones.

K. One manager’s office for rental of space in an industrial zone provided the office is within a development with at least 10 separately rentable buildings.

L. Retail sales or offices in a building in conjunction with a use in an industrial zone provided:

1. The floor area of the retail sales or offices shall not be more than 30 percent of the floor area of the industrial use;

2. The development requirements in Chapter 16.24 MCC and Chapters 16.26 through 16.34 MCC are met for the accessory use as if it was a primary use; and

3. The accessory use shall be located on the same lot as the primary use and the building shall be owned or leased by the industrial business owner.

M. Accessory and secondary uses not otherwise permitted may be allowed as a conditional use provided the use is consistent with the definition of accessory or secondary and is compatible with the purpose of the zone and land uses on adjacent lots.

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.

O. One accessory dwelling unit provided as follows:

1. In a single-family residential or urban development zone, an interior, attached or detached accessory dwelling unit subject to the standards in MCC 16.26.100;

2. In an urban transition zone, an interior or attached accessory dwelling unit subject to the standards in MCC 16.26.100;

3. The area of the parcel containing an ADU cannot be divided from the area of the parcel containing the main dwelling;

4. A property owner constructing an ADU shall record a deed restriction acknowledging the use and development standards in this subsection and MCC 16.26.100;

5. A recreational vehicle is not permitted to be used as an ADU;

6. ADUs are exempted from the density standards in MCC 16.27.050;

7. An existing, nonconforming ADU may be determined to be conforming through the adjustment process provided for in Chapter 16.41 MCC; and

8. As used in this subsection, interior means construction inside a dwelling or attached garage; attached means an addition to a dwelling or attached garage or a new structure constructed within five feet of a dwelling or attached garage; detached means an existing or new structure, including manufactured dwelling, located more than five feet from a dwelling or attached garage. [Ord. 1397 § 4 (Exh. B), 2019; Ord. 1382 § 4 (Exh. B), 2017; Ord. 1372 § 4 (Exh. A), 2016; Ord. 1369 § 4 (Exh. B), 2016; Ord. 1360 § 4 (Exh. A), 2015; Ord. 1301 § 4 (Exh. A), 2010; Ord. 1204 § 4, 2004; Ord. 1170 § 4, 2002; Ord. 863 § 5, 1990. UZ Ord. § 25.20.]

Chapter 16.26

USE STANDARDS Revised 3/18

Sections:

Article I. Special Use Standards

Article II. Planned Developments

* Terms defined in Chapter 16.49 MCC.

Article I. Special Use Standards

16.26.020 Mobile homes on a lot.

A single-family mobile home on a lot in a subdivision designated by the developer for mobile home use shall meet the following use and development standards:

A. In zones other than the RS zone the mobile home shall be:

1. Manufactured after June 15, 1976, and exhibit the Oregon Department of Commerce "Insignia of Compliance" that indicates conformance with Federal Housing and Urban Development Standards; or
2. Manufactured after January 1, 1962, and prior to June 15, 1976, and meet the construction requirements of Oregon Mobile Home Laws in effect at the time of manufacture; and
~~3. At least 10 feet wide, with exterior dimensions enclosing a space of not less than 420 square feet; and~~
4. Located on a lot in a subdivision platted and designated for mobile home use after the effective date of the ordinance codified in this title; ~~and~~
~~5. Have a carport or garage for at least one vehicle.~~

B. In the RS zone the mobile home shall be:

1. Manufactured after June 15, 1976, and exhibit the Oregon Department of Commerce "Insignia of Compliance" that indicates conformance with Federal Housing and Urban Development (HUD) standards; and
~~2. Multi-sectional and enclose a space of not less than 1,000 square feet; and~~
~~3. Have a pitched roof with a nominal height of two to three feet for each 12 feet in width; and~~
~~4. Placed on an excavated and backfilled foundation enclosed at the perimeter; and~~
5. Located on a lot in a subdivision platted and designated for mobile home use after the effective date of the ordinance codified in this title; ~~and~~
~~6. Have a garage or carport for at least one vehicle.~~ [Ord. 1204 § 4, 2004; Ord. 1170 § 4, 2002; Ord. 863 § 5, 1990. UZ Ord. § 26.02.]

Optional amendments to be consistent with requirements in HB 4064 (2022)

16.26.030 Manufactured home on a lot.

A single-family manufactured home on a lot shall meet the following use and development standards:

A. Be manufactured after June 15, 1976, and exhibit the U.S. Housing and Urban Development (HUD) certification label pursuant to OAR 918-500-450(2); and

~~B. Be multi-sectional (double-wide or larger) and enclose a space of not less than 1,000 square feet; and~~

~~C. Have a pitched roof with a minimum nominal height of three feet for each 12 feet in width; and~~

~~D. Be placed on an excavated and backfilled* foundation enclosed at the perimeter; and~~

~~E. Have a garage or carport for at least one vehicle located on the same lot; and~~

F. Have an exterior thermal envelope meeting performance standards that reduce heat loss to levels equivalent to the performance standards required of single-family dwellings constructed under the State Building Code as defined in ORS 455.010. Evidence demonstrating that the manufactured home meets "Super Good Cents" energy efficiency standards is deemed to satisfy the exterior thermal envelope requirement. Additional evidence shall not be required. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 1204 § 4, 2004; Ord. 1170 § 4, 2002; Ord. 964 § 5, 1994; Ord. 894 § 4, 1991; Ord. 863 § 5, 1990. UZ Ord. § 26.03.]

Amendments to be consistent with requirements in HB 4064 (2022)

16.26.100 Accessory dwelling unit.

An accessory dwelling unit (ADU) shall meet the following additional use and development standards:

A. An ADU shall be a maximum of 900 square feet in floor area or 75 percent of the size of the footprint of the main dwelling, whichever is less;

B. If interior or attached:

1. An ADU shall meet the same height requirements as the primary dwelling on the property.

2. An ADU shall meet the same setbacks as the primary dwelling on the property;

C. If detached:

1. An ADU shall not exceed 25 feet in height.

2. An ADU shall be located in side or rear yard only.

3. In the urban area of Salem, an ADU shall maintain setbacks of three feet from property lines where located in a side yard and five feet from property lines where located in a rear yard.

4. In urban growth boundaries other than the urban area of Salem, an ADU shall meet the setbacks for accessory structures in Chapter 16.28 MCC;

D. ~~One additional parking space shall be required.~~ No additional curb cuts are permitted. Existing curb cuts may be expanded with an approved access permit up to the maximum width allowed;

SB 2001 (2019) prohibited the code from requiring parking in conjunction with ADUs.

E. An ADU, if rented, shall be rented for a minimum duration of 30 days;

F. If a manufactured dwelling is used as an ADU, then it shall be Energy Star certified and exhibit the U.S. Housing and Urban Development (HUD) certification label pursuant to OAR 918-500-0450; and

G. As used in this section, interior means construction inside a dwelling or attached garage; attached means an addition to a dwelling or attached garage or a new structure constructed within five feet of a dwelling or attached garage; detached means an existing or new structure, including manufactured dwelling, located more than five feet from a dwelling or attached garage. [Ord. 1382 § 4 (Exh. B), 2017.]

Article III. Mobile Home Parks

16.26.903 Low density mobile home parks.

Mobile home parks in RS zones established after the effective date of the ordinance codified in this title are subject to the minimum standards and conditions set forth in this section and in MCC 16.26.905.

A. Type of Mobile Home Permitted. Mobile homes shall meet the following standards:

1. Be manufactured after June 15, 1976, and exhibit the Oregon Department of Commerce "Insignia of Compliance" that indicates conformance with Housing and Urban Development (HUD) standards; and

~~2. Be multi-sectional and enclose a space of not less than 1,000 square feet; and~~

~~3. Have a pitched roof with a nominal height of two to three feet for each 12 feet in width; and~~

~~4. Unless the mobile home is set on a ground level foundation, skirting.~~

B. Minimum Area. No mobile home space shall contain less than 3,000 square feet, except that a space, any portion of which is within 15 feet of the boundary of the mobile home park property, shall be not less than 4,000 square feet. [Ord. 1204 § 4, 2004; Ord. 1170 § 4, 2002; Ord. 863 § 5, 1990. UZ Ord. § 26.903.]

Optional amendments to be consistent with requirements in HB 4064 (2022)

16.26.904 Mobile home parks in RL and RM zones – Minimum requirements.
Mobile home parks in RL and RM zones established after the effective date of the ordinance codified in this title shall meet all requirements of MCC 16.26.905 and the following minimum requirements:

~~A. Types of Mobile Homes Permitted. Mobile homes used as permanent residences shall be at least 10 feet wide, with exterior dimensions enclosing a space of not less than 420 square feet. The mobile homes that do not meet the criteria specified in this subsection may only be located in parks in RL and RM zones established prior to the adoption of this title.~~

Optional amendments to be consistent with requirements in HB 4064 (2022)

Chapter 16.27

GENERAL DEVELOPMENT STANDARDS AND REGULATIONS

16.27.300 Historical sites and structures.

The following procedures and standards apply to historic sites and structures:

A. Historic sites and structures regulated by this section shall be those sites and structures identified in the applicable city comprehensive plan, **the Marion County Comprehensive Plan, or on the National Register of Historic Places. National Register of Historic Places properties are not subject to alteration review unless they are also listed in the Marion County Comprehensive Plan or the applicable city comprehensive plan.**

B. For the purposes of this section the following definitions apply:

a. "Demolition" means any act that destroys, removes, or relocates, in whole or part, a significant historic resource such that its historic, cultural, or architectural character and significance is lost.

b. "Owner"

i. means the owner of fee title to the property as shown in the deed records of the county where the property is located; or

ii. means the purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or

iii. means, if the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner; and

iv. does not include individuals, partnerships, corporations, or public agencies holding easements or less than fee interests (including leaseholds) of any nature; or

v. means, for a locally significant historic resource with multiple owners, including a district, a simple majority of owners as defined in i-iv.

~~B.~~ C Alteration of any structure, or any change of use of land or structure designated as a historic site or structure shall be a conditional use. The criteria for approval of a conditional use are:

1. Any use of the building or property should be compatible with the historical nature of the property.

2. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any acquisition, protection, stabilization, preservation, rehabilitation, restoration or reconstruction project.

3. The alteration to the designated historic building, structure or site and its environment shall be only the minimum necessary to achieve the intended use.

4. The distinguishing original qualities or character of a designated building, structure or site and its environment should not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided or done pursuant to a plan approved by the city.

5. All designated buildings, structures and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance should be discouraged.

6. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment.

These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

7. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.

8. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities to the extent possible. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

9. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historical building materials shall not be undertaken.

~~C.~~**D** Demolition or removal of any structure designated as an historic site or structure is subject to the following procedures and criteria:

1. Demolition or removal of a structure designated as an historic site or structure shall require a conditional use permit.

2. No building, alteration, demolition or removal permits for any improvement, building, or structure shall be issued while the public hearing or any appeal is pending or prior to a final decision.

~~3. The county shall consider the state of repair of the building, the reasonableness of the cost of restoration or repair, taking into account the purpose of preserving the designated site or structure, and all other factors which it finds appropriate. The county may approve the application in which case the applicant can proceed subject to all applicable codes and ordinances.~~

~~The county may reject the application if it determines that in the interest of preserving historic values, the structure should not be demolished or removed, and in that event issuance of approval shall be suspended for a period fixed by the county, but not exceeding 30 days from the date of decision.~~

~~4. Within the suspension period, if the county determines that there is a program or project underway which could result in the public or private acquisition of the building or site and the preservation or restoration of such building or site, and that there is a reasonable ground to believe that the program or project may be successful, then the county, in its discretion, may extend the suspension period for an additional period not exceeding 60 days, to a total of not more than 90 days from the date of decision for demolition or removal. If at the end of 90 days the program or project is unsuccessful and the applicant has not withdrawn his application for demolition or removal, the council shall approve the application. [Ord. 1170 § 4, 2002; Ord. 863 § 5, 1990. UZ Ord. § 27.30.]~~

3. The county shall consider condition, historic integrity, age, historic significance, value to the community, economic consequences, design or construction rarity, and consistency with and consideration of other policy objectives in the acknowledged comprehensive plan. The county may approve, approve with conditions, or deny the request for demolition based on consideration of all review factors.

4. Approval of demolition is not final until all opportunities for appeal have passed, including appeals to LUBA or the Oregon Court of Appeals.

5. A demolition request for a property listed on the National Register of Historic Resources must be reviewed by the Hearings Officer after a public hearing is held. A demolition request for a property not listed on the National Register of Historic Resources is reviewed by Marion County Planning Staff unless otherwise requested.

Adds definitions and modifies criteria for demolition.

Chapter 16.28

DEVELOPMENT STANDARDS

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 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 required front yard. Structures located in the non-required front **or side** yard shall meet the setbacks for the primary structure.

C. Structures accessory or secondary to a use allowed on property in a commercial, industrial or public designation, exclusive of fences and retaining walls, shall comply with required yards and setbacks for primary structures and shall be set back at least one foot from any alley or roadway. Accessory or secondary structures for a farm use in the UT zone shall not be located closer than 100 feet to a lot line adjacent to a residential zone. [Ord. 1397 § 4 (Exh. B), 2019; Ord. 1369 § 4 (Exh. B), 2016; Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 28.02.]

Clarifies that primary structure setbacks apply in a side yard.

16.28.030 Accessory and secondary structure height.

The following height limitations shall apply to accessory and secondary structures:

A. Structures in **a rear yard in** residential zones or the UD and UT zones shall not project above the following height limits: nine feet at the lot line, increasing one foot for each one foot of distance from the lot line to a maximum height of 20 feet. Roof drainage shall be accommodated within the confines of the property.

Clarifies that height limits only apply in rear yards.

B. The maximum height of any structure in commercial, industrial and P zones shall be the height limits for structures accommodating primary uses in the applicable zone; provided, that where the side or rear lot line of a lot in these zones is adjacent to a lot in a residential zone the height limits in subsection (A) of this section shall apply to any structure within 20 feet of a residential, UD and UT zone. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 28.03.]

Chapter 16.36

APPLICATIONS

Sections:

16.36.020 Filing.

All applications shall be filed with the planning division on forms prescribed under this section, and shall be complete as to all factual information required to be stated on, or furnished with, the application. The application fee shall be paid at the time of the filing of the application. The fees for applications and appeals shall be as prescribed by board order. **A public agency or utility, or an entity authorized by a public agency or utility, may file an application if the public agency or utility holds an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owner.** [Ord. 1301 § 4 (Exh. A), 2010; Ord. 1170 § 4, 2002; Ord. 863 § 5, 1990. UZ Ord. § 36.02.]

Add ability of public agency or utility, or an entity authorized by a public agency or utility, to file an application.

16.36.070 Required signatures.

Applications shall include the following signatures:

A. Signatures of all owners of the subject property; or

B. The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale; or

C. The signatures of lessee in possession of the property with the written consent of all the owners; or

D. The signatures of the agent of those identified in subsection (A), (B) or (C) of this section when authorized in writing by those with the interests described in subsection (B) or (C) of this section, and all the owners of the property; or

E. **For an application filed by an entity authorized by a public agency or utility pursuant to MCC 16.36.020,** ~~T~~**t**he signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners; and

F. The signature of the applicant and the applicant's address and phone number. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 1170 § 4, 2002; Ord. 863 § 5, 1990. UZ Ord. § 36.07.]

Clarifies that public agency or utility shall sign an application submitted by an entity authorized by a public agency or utility.

Chapter 16.38

LEGISLATIVE AMENDMENTS

16.38.040 Hearing notice and procedures.

A. Except as provided in subsection (B) of this section, written notice shall be provided in accordance with the requirements of Chapter 16.44 MCC. Mailed notice shall not be required for subsequent hearings on the same proposal. Notice of the initial hearing shall be provided to the State Department of Land Conservation and Development, to the Chairman of the Area Advisory Committees, recognized neighborhood associations, and to any person who requests, in writing, notice of the initial hearing.

B. If more than 50 ownerships are involved, the zoning administrator may substitute posted and published notice for mailed notice. The notice shall be posted along the nearest public road at the boundaries of the affected area. The notice shall be visible from the public road, indicate "notice of public hearing on proposed land use change" and provide a phone number where information on the proposal can be obtained.

C. Notice of legislative text amendments shall be consistent with the requirement of Measure 56, if applicable.

D. Notice shall be published in a newspaper of general circulation in the affected area once at least ~~12~~ **10** days prior to the date of the hearing. The notice shall provide information prescribed for mailed notice in Chapter 16.44 MCC.

Changed to match rural code.

E. A signed certification of notice describing the types of notice, the date notice was provided, a copy of any mailing list, and other information that demonstrates that the notification requirements have been met, shall be placed in the record of the initial hearing. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 863 § 5, 1990. UZ Ord. § 38.04.]

Chapter 16.44

PROCEDURES FOR HEARINGS BEFORE THE HEARINGS OFFICER

16.44.030 Hearing notice.

A. Notice of a hearing shall be mailed by the zoning administrator to the applicant, owners, contract sellers and mortgage holders of the subject property identified in the application, those on the notification list, and to anyone entitled to notice under state law 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 of anyone to receive mailed notice shall not affect the validity of the proceedings.

B. The notice shall include:

1. The date, time and location of the hearing;

2. The nature of the application, and the proposed uses that could be authorized;

3. The address or other easily understood geographical reference to the subject property;

4. A list of the topical headings and numbers of the criteria from the applicable city comprehensive plan and this title that apply;

5. A statement that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the hearings officer an opportunity to respond to the issue, precludes appeal to the land use board of appeals on that issue;

6. The name of the zoning administrator's staff to contact, and the telephone number where additional information may be obtained;

7. A statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and a copy will be provided at reasonable cost upon request;

8. A statement that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and copies will be provided at reasonable cost upon request;

9. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;

10. All documents or evidence relied upon by the applicant shall be submitted to the zoning administrator and be available to the public at the time notice of the hearing is provided.
[Ord. 1301 § 4 (Exh. A), 2010; Ord. 1170 § 4, 2002; Ord. 863 § 5, 1990. UZ Ord. § 44.03.]

Changed to match rural code.

Chapter 16.45

BOARD PROCEDURES

16.45.030 Hearings procedures.

A. When the board has set a hearing pursuant to MCC 16.37.010 or 16.45.020(C) or when a hearing is required by state law, the zoning administrator shall provide notice as required in MCC 16.44.030(A) and (B) ~~except the notice shall be mailed at least 20 days before the board hearing if there was not a previous hearing before the hearings officer.~~ Failure of anyone to receive mailed notice shall not affect the validity of the proceedings.

B. In the case of hearings set pursuant to MCC 16.45.020, the board may limit the scope of the hearing to those aspects of the application that warrant review.

C. The board's consideration of applications and appeals for which a board hearing is scheduled shall be de novo. All hearings shall be conducted in accordance with procedures adopted by the board and the requirements of this title and state law.

D. The board shall have the same authority as the hearings officer. [Ord. 1301 § 4 (Exh. A), 2010; Ord. 1170 § 4, 2002; Ord. 863 § 5, 1990. UZ Ord. § 45.03.]

16.44 is being amended to clarify at 20 day notice is required before the first evidentiary hearing.

Chapter 16.49

DEFINITIONS

16.49.088 Dwelling unit.

"Dwelling unit" means an independent area in a building or mobile home including permanent provisions for living, sleeping, eating, cooking and sanitation occupied by ~~and serving:~~ **a family as defined in MCC 17.110.220.**

~~A. A single family; or~~

~~B. A single family and rooming or boarding of up to two domestic employees or other persons; or~~

~~C. A single family and residents of a residential home as defined in MCC 16.49.228.~~ [Ord. 1204 § 4, 2004; Ord. 1170 § 4, 2002; Ord. 882 § 4, 1990; Ord. 863 § 5, 1990. UZ Ord. § 49.088.]

Amendments to conform with HB 2583 (2021) which prohibits limitations on maximum occupancy.

16.49.090 Dwelling, single-family.

"Dwelling, single-family" means a detached building on a lot, or portion of a building on a separate lot, containing only one dwelling unit, exclusive of a mobile home**, but including a manufactured dwelling or a modular or pre-fabricated dwelling meeting building code requirements in effect at its time of construction**. [Ord. 1204 § 4, 2004; Ord. 1170 § 4, 2002; Ord. 863 § 5, 1990. UZ Ord. § 49.090.]

Amendments to be consistent with requirements in HB 4064 (2022)

16.49.100 Family.

"Family" means one or two adults and children related by blood**, marriage,** or legal guardianship ~~to one or both of the adults~~ living together in a dwelling unit; or ~~one to five~~ persons ~~any of~~ who~~m~~ are not related by blood, marriage, or legal guardianships, living together in a dwelling unit; ~~one or more persons any of which are not related by blood, marriage, legal guardianship and who qualify as handicapped under the Federal Fair Housing Act (42 USC SS3602(H))~~; or residents of a residential home as defined in MCC 16.49.228. [Ord. 1204 § 4, 2004; Ord. 1170 § 4, 2002; Ord. 882 § 4, 1990; Ord. 863 § 5, 1990. UZ Ord. § 49.100.]

Amendments to conform with HB 2583 (2021) which prohibits limitations on maximum occupancy.

16.49.172 Mobile home.

"Mobile home" means a structure constructed for movement on public highways that has sleeping, cooking, and plumbing facilities, is intended for use as a dwelling unit ~~and is at least eight feet wide and at least 35 feet long~~. This definition includes manufactured dwelling, manufactured home, mobile home, and residential trailer as those terms are defined in ORS 446.003 ~~provided they meet the width and length requirements~~. The definition does not include recreational vehicles as defined in MCC 16.49.216, or structures or vehicles which have a state of Oregon or U.S. Government label designating them as a recreational vehicle. It also does not include buildings or structures subject to the Structural Specialty Code adopted pursuant to ORS 455.100 through 455.450. [Ord. 1204 § 4, 2004; Ord. 1170 § 4, 2002; Ord. 863 § 5, 1990. UZ Ord. § 49.172.]

Amendments to be consistent with requirements in HB 4064 (2022)

Chapter 17.110
GENERAL PROVISIONS

17.110.190 Dwelling unit.

"Dwelling unit" means an independent area in a building including permanent provision for living, sleeping, eating, cooking, and sanitation occupied by ~~and serving~~: **a family as defined in MCC 17.110.220.**

~~A. A single family;~~

~~B. A single family and rooming or boarding of up to two domestic employees or other persons; or~~

~~C. A single family and residents of a residential home as defined in MCC 17.110.477.~~ [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. § 110.190.]

Amendments to conform with HB 2583 (2021) which prohibits limitations on maximum occupancy.

17.110.195 Dwelling, single-family.

"Dwelling, single-family" means a detached building on a lot, or portion of a building on a separate lot, containing only one dwelling unit, exclusive of a mobile home**, but including a manufactured dwelling or a modular or pre-fabricated dwelling meeting building code requirements in effect at its time of construction**. [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. § 110.195.]

Amendments to be consistent with requirements in HB 4064 (2022)

17.110.220 Family.

"Family" means ~~one or two~~ adults or adults and children related by blood**, marriage,** or legal guardianship ~~to one or both of the adults~~ living together in a dwelling unit; or, ~~one to five~~ persons ~~any of~~ who~~m~~ are not related by blood, marriage, or legal guardianships, living together in a dwelling unit; ~~one or more persons any of which are not related by blood, marriage, legal guardianship and who qualify as handicapped under the Federal Fair Housing Act (42 USC SS3602 H)~~ or residents of a residential home as defined in MCC 17.110.477. [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. § 110.220.]

Amendments to conform with HB 2583 (2021) which prohibits limitations on maximum occupancy.

17.110.380 Mobile home.

"Mobile home" means a structure constructed for movement on public highways that has sleeping, cooking, and plumbing facilities, is intended for use as a dwelling unit ~~and is at least eight feet wide and at least 35 feet long~~. This definition includes manufactured dwelling, manufactured home, mobile home, and residential trailer as those terms are defined in ORS 446.003, ~~provided they meet the width and length requirements~~. The definition does not include recreational vehicles as defined in MCC 17.110.466, or structures or vehicles that have a state of Oregon or U.S Government label designating them as recreational vehicles. It also does not include buildings or structures subject to the Structural Specialty Code adopted pursuant to ORS 455.100 through 455.450. [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. § 110.380.]

Amendments to be consistent with requirements in HB 4064 (2022)

Chapter 17.116

ADJUSTMENTS Revised 3/19

Sections:

17.116.040 Filing an application.

An application for an adjustment may be filed by one or more of the following:

A. The owner of the property that is the subject of the application;

B. The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;

C. A lessee in possession of the property subject to the application who submits written consent of the owner to make such application;

D. The appropriate local government or state agency when the application is for a public works project;

E. A governmental body that has initiated condemnation procedures on the property that is subject to the application, but has not yet gained title; or

F. A co-tenant if the property that is the subject of the application is owned by tenants in common.

G. A public agency or utility, or an entity authorized by a public agency or utility, if the public agency or utility holds an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owner.

The application shall be filed with the director, in writing, on an application form provided by the planning division. The application shall set forth the adjustment or modification sought, the description or location of the building or premises, and the name or names of the owners of the property. The application shall contain such other information as deemed necessary by the director, planning commission or hearings officer. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003. RZ Ord. § 116.040.]

Add ability of public agency or utility, or an entity authorized by a public agency or utility, to file an application.

17.116.045 Required signatures.

A. Applications shall include the following signatures:

1. Signatures of all owners of the subject property;

2. The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement;

3. The signature of lessee in possession of the property with the written consent of all the owners;

4. The signatures of the agents of those identified in MCC 17.116.040(A), (B), or (C) when authorized in writing by those with the interests described in MCC 17.116.040(B) or (C), and all the owners of the property;

5. **For an application filed by an entity authorized by a public agency or utility pursuant to MCC 17.116.040(G),** ~~T~~**t**he signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners; or

6. The signature of co-tenants owning at least a one-half undivided interest in the property, when the property is owned by tenants in common; provided, that the signing co-tenant provides current addresses for all co-tenants who have not signed the application so the planning division can give them notice of the decision.

B. Prima Facie Proof of Ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any owner, or when any person states that he or she is buying the property under contract, the director, planning commission, hearings officer and the board may accept these statements to be true, unless the contrary be proved, and except where otherwise in this title more definite and complete proof is required. Nothing herein prevents the director, planning commission, hearings officer or board from demanding proof that the signer is the owner, officer, attorney in fact, or agent. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003. RZ Ord. § 116.045.]

Clarifies that public agency or utility shall sign an application submitted by an entity authorized by a public agency or utility.

Chapter 17.119

CONDITIONAL USES Revised 3/19

Sections:

17.119.020 Application.

An application for a conditional use may be filed by the following only:

A. The owner of the property that is the subject of the application;

B. The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;

C. A lessee in possession of the property subject to the application who submits written consent of the owner to make the application;

D. The appropriate local government or state agency when the application is for a public works project;

E. A governmental body that has initiated condemnation proceedings on the property that is subject to the application, but has not yet gained title; or

F. A co-tenant if the property that is the subject of the application is owned by tenants in common.

G. A public agency or utility, or an entity authorized by a public agency or utility, if the public agency or utility holds an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owner.

The application for a proposed conditional use, or to enlarge, expand, or alter a conditional use, shall be on a form provided by the planning division and shall contain such information as the director, planning commission or hearings officer feels is necessary to fully assess the effect of the conditional use on the surrounding area. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1047 § 4, 1996; Ord. 516 § 2, 1978. RZ Ord. § 119.020.]

Add ability of public agency or utility, or an entity authorized by a public agency or utility, to file an application.

17.119.025 Required signatures.

A. Applications shall include the following signatures:

1. Signatures of all owners of the subject property;

2. The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement;

3. The signatures of the lessee in possession of the property with the written consent of all the owners; or

4. The signatures of the agents of those identified in MCC 17.119.020(A), (B), or (C) when authorized in writing by those with the interests described in MCC 17.119.020(B) or (C), and all the owners of the property;

5. **For an application filed by an entity authorized by a public agency or utility pursuant to MCC 17.119.020(G),** ~~T~~**t**he signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners; or

6. The signature of co-tenants owning at least a one-half undivided interest in the property, when the property is owned by tenants in common; provided, that the signing co-tenant provides current addresses for all co-tenants who have not signed the application so the planning division can give them notice of the decision.

B. Prima Facie Proof of Ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any owner, or when any person states that he or she is buying the property under contract, the director, planning commission, hearings officer and the board may accept these statements to be true, unless the contrary be proved, and except where otherwise in this title more definite and complete proof is required. Nothing herein shall prevent the director, planning commission, hearings officer or board from demanding proof that the signer is the owner, officer, attorney in fact, or agent. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002. RZ Ord. § 119.025.]

Clarifies that public agency or utility shall sign an application submitted by an entity authorized by a public agency or utility.

Chapter 17.120

SPECIFIC CONDITIONAL USES

Sections:

Article I. Specific Conditional Uses

17.120.040 Temporary use of mobile home or recreational vehicle during certain hardship conditions.

Use of a temporary mobile home, recreational vehicle, or existing building for the care of someone with a hardship may be approved as a conditional use subject to meeting the following criteria:

A. For the purposes of this section:

1. “Absence” means that the person(s) for whom the hardship dwelling permit was granted has lived away from the hardship dwelling for less than 165 days per calendar year or less than 165 consecutive days;

2. "Aged or infirm person" means the person(s) suffering from a medical hardship or hardship due to age or infirmity that requires care to be provided;

3. "Application" means both an application to obtain approval to place a hardship permit dwelling on a property and the annual renewal of the hardship permit;

4. "Domicile" means the intention of the aged or infirmed person(s) or caregiver(s) to live on the property or in the hardship permit dwelling as that person's primary residence;

5. "Extended absence" means that the person(s) for whom the hardship dwelling permit was granted has not lived at the hardship dwelling for more than 165 days per calendar year or 165 consecutive days;

6. "Hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons;

7. "Hardship permit" means a conditional use permit granted under ORS 215.283(2)(L) and this section to allow for the use of a hardship permit dwelling on the property for a period of one year;

8. "Hardship permit dwelling" means a temporary mobile home, recreational vehicle, or existing building used for the care of an aged or infirmed person who is or will be domiciled on the property;

9. "Medically necessary absence" means an extended absence that is necessary for the aged or infirm person to receive medical care or treatment;

10. "Owner" has the same meaning as defined in MCC 17.110.425; and

11. "Temporary absence" means a period of up to 165 days per calendar year or 165 consecutive days, in which the aged or infirm person(s) has not lived on the property.

B. An application for a hardship permit must be submitted in writing.

1. An application must:

a. Include the name of the aged or infirm person(s) for whom the hardship permit is sought;

b. Include a signed statement from a licensed medical professional indicating whether the aged or infirm person has a hardship as defined in subsection (A) of this section. The statement shall also attest whether the licensed medical professional is convinced the person(s) with the hardship must be provided the care so frequently or in such a manner that the caregiver(s) must reside on the same premises;

c. Identify whether the aged or infirm person(s) and/or caregiver(s) will be residing in the hardship permit dwelling.

2. Only the owner(s) of a property may submit an application for a hardship permit.

3. If additional information is required to clarify any portion of an application, the owner(s) will be notified in writing of the deficiencies within the application.

C. In the EFU, SA, FT and TC zones, occupancy of a hardship permit dwelling is limited to the term of the hardship suffered by the existing resident or a relative as defined in ORS 215.283(2)(L).

D. When the aged or infirm person must be provided care so frequently or in such a manner that caregiver(s) must reside on the same premises, the aged or infirm person and/or those caregivers providing care for the aged or infirm person may temporarily reside in the hardship permit dwelling for the term necessary to provide care.

1. Those providing the care must show that they will be available and have the skills to provide the care required, as described by the licensed medical professional.

2. Caregivers may reside within a hardship permit dwelling during periods of absence and medically necessary absence.

3. Caregivers shall not have any financial or expense obligation increased for residing in the hardship dwelling during periods of absence and medically necessary absence.

E. A temporary absence or medically necessary absence from the property by the aged or infirm person(s) will not result in the revocation or denial of a hardship permit.

1. When a medically necessary absence results in the aged or infirm person(s) living off of the property for more than 165 days in one calendar year or 165 consecutive days they must provide notice of the medically necessary absence to prevent the absence from being considered an extended absence.

2. Notice of a medically necessary absence that will result in the aged or infirm person(s) living off of the property for more than 165 days in one calendar year or 165 consecutive days must be provided within 14 days of learning that the absence from the property will result in the aged or infirm person having to live away from the property for more than 165 days in one calendar year or 165 consecutive days.

3. Notice of a medically necessary absence must:

a. Be submitted in writing;

b. Include a statement from a licensed medical provider outlining that the absence from the property is necessary for the care or medical treatment of the aged or infirm person;

c. Provide an estimate as to when the aged or infirm person(s) will return to the property;

d. Include an assessment from the licensed medical professional on whether or not the aged or infirm person(s) will be able to reside on the property again.

i. If a licensed medical professional cannot provide an assessment on whether the aged or infirm person will be able to return to the property at the time when notice of a medical necessary absence is due, a hardship permit may be approved for the amount of time necessary, not to exceed one year, for the licensed medical professional to make the assessment as to whether the aged or infirm person(s) will be able to return to the property.

ii. If a licensed medical professional cannot provide an assessment after the period of time described in subsection (E)(3)(d)(i) of this section, then a determination will be made as to whether the hardship permit is still necessary for the care of the aged or infirm person(s).

4. Notice of a medically necessary absence may be submitted by the owner(s), aged or infirm person(s), caregiver(s) of the aged or infirm person(s), or other agent of the aged or infirm person(s).

5. Caregivers may not be charged any rent or otherwise required to provide financial compensation to live in the hardship dwelling during a temporary absence or medically necessary absence.

If as a part of any agreement to provide caretaking services, the caregiver was required to provide financial compensation or incur a financial obligation in order to reside within the hardship dwelling then that arrangement will not violate this subsection (E)(5); provided, that the arrangement existed prior to the temporary absence or medically necessary absence.

F. Extended absence from the property by the aged or infirm person(s), or caregiver(s) when the hardship permit dwelling is only being inhabited by caregiver(s), creates a rebuttable presumption that the hardship permit is no longer necessary to provide care to the aged or infirm person(s).

1. Extended absence from the property may result in revocation of the hardship permit; issuance of a citation pursuant to MCC 1.25.030; and/or initiation of civil action in circuit court pursuant to MCC 1.25.050.

2. Notice will be provided to the owner of any substantiated violation of this subsection (F) 30 days prior to the effective date of a revocation of the hardship permit made pursuant to subsection (F)(1) of this section.

G. A mobile home or recreational vehicle being used as a hardship dwelling shall to the extent permitted by the nature of the property and existing development:

1. Be located as near as possible to other residences on the property;

2. On EFU, SA, FT and TC zoned property, be located on the portion of the property that is least suitable for farm or forest use, if it is not feasible to locate it near an existing residence;

3. Not require new driveway access to the street;

4. Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.

H. For an existing building to be used as a hardship dwelling it must:

1. Be suitable for human habitation;

2. Comply with all building and specialty codes (for example, but not limited to, electrical, plumbing, and sanitation) applicable to dwellings;

3. Not require new driveway access to the street; and

4. Be connected to the existing wastewater disposal system if feasible. The disposal system shall be approved by the county sanitarian.

I. One of the residences shall be removed from the property within 90 days of the date the person(s) with the hardship or the care provider no longer reside on the property.

1. In the case of a recreational vehicle, it shall be rendered uninhabitable by disconnection from services.

a. An agreement to comply with this requirement shall be signed by the applicant, and the owner of the recreational vehicle if different than the applicant.

b. Oregon Department of Environmental Quality removal requirements also apply.

2. In the case of an existing building, the renovations or modifications made to an existing building to be used for inhabitation must be removed.

a. The existing building shall be returned to similar conditions as its previous use; or

b. If the existing building is not going to be returned to its previous use then the building must be used for either a permitted use or a new use application for the existing building must be obtained.

3. In the case where an agricultural exemption is sought for an existing building, a new application must be approved regardless of any previously approved agricultural exemption.

J. Applicants are responsible for ensuring that all caregivers and/or other persons residing in the hardship dwelling are removed from the hardship dwelling within 90 days of the date that the person with the hardship or the care provider no longer resides in the hardship dwelling or on the property.

1. Applications for a hardship dwelling must include a description of how the applicant will ensure this condition is met.

K. At the time of renewal of a hardship dwelling permit, if the aged or infirm person has been on a temporary absence or medically necessary absence from the property for at least 30 consecutive days prior to submission of the renewal application, the application must include:

1. In the event of a medically necessary absence, an assessment by a licensed medical professional stating that it is reasonably likely that the aged or infirm person will return to the property within the renewal period; or

2. In the event of a temporary absence, a statement from the owner or aged or infirmed person setting forth the date on which the aged or infirm person will return to the property.

If the aged or infirmed person does not return to the property within the time period described in subsection (A)(5) of this section, then the aged or infirm person's absence will be deemed an extended absence.

L. The use of a hardship permit dwelling is intended to be temporary, shall be subject to review every year, and shall continue to meet the above criteria in order to qualify for renewal. [Ord. 1416 § 4 (Exh. A), 2020; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2004; Ord. 1168 § 5, 2002; Ord. 1125 § 5, 2000. RZ Ord. § 120.040.]

M. For hardships in a resource zone based on a natural hazard event, the temporary residence may include a recreational vehicle or the temporary residential use of an existing building when the temporary residence is established within an existing building if the hardship is located within 100 feet of the primary residence or the temporary residence is located further than 250 feet from adjacent lands planned and zoned for resource use under Goals 3, 4, or both.

Implements LCDC wildfire rules.

17.120.075 Conditional home occupations.

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

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 two persons ("person" includes volunteer, nonresident employee, partner or any other person).

B. The home occupation 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 occupation shall not violate Department of Environmental Quality standards or Chapter 8.45 MCC, Noise.

C. The conditional home occupation shall not significantly interfere with other uses permitted in the zone in which the property is located.

D. A sign shall meet the standards in Chapter 17.191 MCC.

E. The home occupation shall be conducted entirely within the dwelling or accessory building.

F. The total floor area of buildings on the subject property devoted to a home occupation shall not exceed 500 square feet in a residential zone, except in the AR zone where 1,500 square feet is the maximum.

G. No structural alterations shall be made that would be inconsistent with future use of the buildings exclusively for residential purposes.

H. No alteration to or use of the premises shall be made that would reduce the number of required on-site parking spaces.

I. All visits by suppliers or customers shall occur between the hours of 8:00 a.m. and 8:00 p.m. These limitations do not apply to a bed and breakfast use as defined in MCC 17.110.108.

J. There shall be no outside storage or display of materials, equipment, or merchandise used in, or produced in connection with, the conditional home occupation.

K. Deliveries to or from the dwelling shall not involve a vehicle rated at more than one ton. There shall be no more than one commercial vehicle located on the property in conjunction with the home occupation.

L. Where a home occupation involves deliveries, one off-street loading space shall be provided. If visits by customers occur, two additional off-street parking spaces shall be provided if the street along the lot frontage does not provide paved area for at least two parallel parking spaces. During normal loading/unloading or customer parking periods the off-street loading and parking spaces shall be reserved exclusively for that use.

M. The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.

N. Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation. [Ord. 1330 § 4 (Exh. A), 2013; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2004; Ord. 1168 § 5, 2002; Ord. 1125 § 5, 2000. RZ Ord. § 120.075.]

17.120.130 Alteration of a Historical Site or Structure

Alteration of a Historical Site or Structure shall be subject to the following criteria:

A. Historical sites and structures regulated by this section shall be those sites and structures identified in the Marion County Comprehensive Plan or on the National Register of Historic Places. National Register of Historic Places properties are not subject to alteration review unless they are also listed in the Marion County Comprehensive Plan.

B. For the purposes of this section the following definitions apply:

a. "Demolition" means any act that destroys, removes, or relocates, in whole or part, a significant historic resource such that its historic, cultural, or architectural character and significance is lost.

b. "Owner"

i. means the owner of fee title to the property as shown in the deed records of the county where the property is located; or

ii. means the purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or

iii. means, if the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner; and

iv. does not include individuals, partnerships, corporations, or public agencies holding easements or less than fee interests (including leaseholds) of any nature; or

v. means, for a locally significant historic resource with multiple owners, including a district, a simple majority of owners as defined in i-iv.

C. Alteration of any structure, or any change of use of land or structure designated as a historic site or structure shall be a conditional use. The criteria and standards for approval of a conditional use are:

1. Any use of the building or property should be compatible with the historical nature of the property.

2. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any acquisition, protection, stabilization, preservation, rehabilitation, restoration, or reconstruction project.

3. The alteration to the designated historic building, structure or site and its environment shall be only the minimum necessary to achieve the intended use.

4. The distinguishing original qualities or character of a designated building, structure or site and its environment should not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided or done pursuant to a plan approved by the County.

5. All designated buildings, structures, and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance should be discouraged.

6. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

7. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.

8. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities to the extent possible. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures

D. Demolition or removal of any structure designated as a historic site or structure is subject to the following procedures and criteria:

1. Demolition or removal of a structure designated as a historic site or structure shall require a conditional use permit.

2. No building, alteration, demolition or removal permits for any improvement, building, or structure shall be issued while the public hearing or any appeal is pending or prior to a final decision.

3. The county shall consider condition, historic integrity, age, historic significance, value to the community, economic consequences, design or construction rarity, and consistency with and consideration of other policy objectives in the acknowledged comprehensive plan. The county may approve, approve with conditions, or deny the request for demolition based on consideration of all review factors.

4. Approval of demolition is not final until all opportunities for appeal have passed, including appeals to LUBA or the Oregon Court of Appeals.

5. A demolition request for a property listed on the National Register of Historic Resources must be reviewed by the Hearings Officer after a public hearing is held. A demolition request for a property not listed on the National Register of Historic Resources is reviewed by Marion County Planning Staff unless otherwise requested.

Adds definitions and criteria for alteration or demolition of a historic site.

Chapter 17.122

VARIANCES Revised 3/19

Sections:

17.122.040 Filing of application.

An application for a variance may be filed by one or more of the following:

A. The owner of the property that is the subject of the application;

B. The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;

C. A lessee in possession of the property subject to the application who submits written consent of the owner to make such application;

D. The appropriate local government or state agency when the application is for a public works project;

E. A governmental body that has initiated condemnation procedures on the property that is subject to the application, but has not yet gained title; or

F. A co-tenant if the property that is the subject of the application is owned by tenants in common.

G. A public agency or utility, or an entity authorized by a public agency or utility, if the public agency or utility holds an easement or other right that entitles the applicant to

conduct the proposed use on the subject property without the approval of the property owner.

The application shall be filed with the director in writing on an application form provided by the planning division. The application shall set forth the variance or modification sought, the description or location of the building or premises, and the name or names of the owners of the property. The application shall contain such other information as deemed necessary by the director, planning commission or hearings officer. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 6, 2000. RZ Ord. § 122.040.]

Add ability of public agency or utility, or an entity authorized by a public agency or utility, to file an application.

17.122.045 Required signatures.

A. Applications shall include the following signatures:

1. Signatures of all owners of the subject property;

2. The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement;

3. The signatures of lessee in possession of the property with the written consent of all the owners;

4. The signatures of the agents of those identified in MCC 17.122.040(A), (B), or (C) when authorized in writing by those with the interests described in MCC 17.122.040(B) or (C), and all the owners of the property;

5. **For an application filed by an entity authorized by a public agency or utility pursuant to MCC 17.122.040(G),** ~~T~~**t**he signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners; or

6. The signature of co-tenants owning at least a one-half undivided interest in the property, when the property is owned by tenants in common; provided, that the signing co-tenant provides current addresses for all co-tenants who have not signed the application so the planning division can give them notice of the decision.

B. Prima Facie Proof of Ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any such owner, or when any person states that he or she is buying the property under contract, the director, planning commission, hearings officer and the board may accept these statements to be true, unless the contrary be proved, and except where otherwise in this title more definite and complete proof is required. Nothing herein prevents the director, planning commission, hearings officer or board from demanding proof that the signer is the owner, officer, attorney in fact, or agent. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002. RZ Ord. § 122.045.]

Clarifies that public agency or utility shall sign an application submitted by an entity authorized by a public agency or utility.

Chapter 17.125

LIMITED USES

Sections:

17.125.050 Mobile home on a lot in the RS zone.

A single-family mobile home on a lot in the RS zone shall meet the following use and development standards. The mobile home shall:

A. Be manufactured after June 15, 1976, and exhibit the U.S. Housing and Urban Development Department (HUD) certification label pursuant to OAR 918-500-450(2); and

~~B. Be multi-sectional (double-wide or larger) and enclose a space of not less than 1,000 square feet; and~~

~~C. Have a pitched roof with a minimum nominal height of three feet for each 12 feet in width; and~~

~~D. Be placed on an excavated and backfilled foundation enclosed at the perimeter; and~~

~~E. Have a garage or carport for at least one vehicle located on the same lot; and~~

~~F. Vertical rolled goods siding is not allowed; and~~

G. Have an exterior thermal envelope meeting performance standards which reduce heat loss to levels equivalent to the performance standards required of single-family dwellings constructed under the State Building Code as defined in ORS 455.010. Evidence demonstrating that the mobile home meets "Super Good Cents" energy efficiency standards is deemed to satisfy the exterior thermal envelope requirement. Additional evidence shall not be required. [Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1168 § 5, 2002; Ord. 1055 § 4, 1996; Ord. 963 § 4, 1994; Ord. 516 § 2, 1978. RZ Ord. § 125.050.]

Optional amendments to be consistent with requirements in HB 4064 (2022)

17.125.150 Farm brewery.

A farm brewery may be established subject to the following criteria:

A. The following definitions apply to this section:

1. "Agri-tourism or other commercial events" includes outdoor concerts for which ad- mission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of malt beverages produced in conjunction with the farm brewery is a secondary purpose of the event.

2. "Brewer" means a person who makes malt beverages.

3. "Farm brewery" means a facility, located on or contiguous to a hop farm, used primarily for the commercial production, shipping and distribution, wholesale or retail sales, or tasting of malt beverages made with ingredients grown on the hop farm.

4. "Hop farm" means a tract of land planted with hops.

5. "Malt beverage" has the meaning given that term in ORS 471.001.

6. "On-site retail sale" includes the retail sale of malt beverages in person at the

farm brewery site, through a club or over the Internet or telephone.

B. A farm brewery may be established if the farm brewery:

1. Produces less than 150,000 barrels of malt beverages annually, inclusive of malt beverages produced by the farm brewery's owners or operators at the farm brewery or elsewhere, through any entity owned or affiliated with the farm brewery;

2. Produces less than 15,000 barrels of malt beverages annually on the farm brewery site; and

a. Owns an on-site hop farm of at least 15 acres;

b. Owns a contiguous hop farm of at least 15 acres;

c. Has a long-term contract for the purchase of all of the hops from at least 15 acres of a hop farm contiguous to the farm brewery; or

d. Obtains hops from a total of 15 acres from any combination of sources described in this subparagraph.

3. For purposes of this subsection, land planted with other ingredients used in malt beverages produced by the farm brewery counts towards the acreage minimums.

C. In addition to any other activities authorized for a farm brewery, a farm brewery established under this section may:

1. Market malt beverages produced in conjunction with the farm brewery.

2. Conduct operations that are directly related to the sale or marketing of malt beverages produced in conjunction with the farm brewery, including:

a. Malt beverage tastings in a tasting room or other location on the premises occupied by the farm brewery;

b. Malt beverage club activities;

c. Brewer luncheons and dinners;

d. Farm brewery and hop farm tours;

e. Meetings or business activities with farm brewery suppliers, distributors, wholesale customers and malt beverage industry members;

f. Farm brewery staff activities;

g. Open house promotions of malt beverages produced in conjunction with

the farm brewery; and

h. Similar activities conducted for the primary purpose of promoting malt beverages produced in conjunction with the farm brewery.

3. Market and sell items directly related to the sale or promotion of malt beverages produced in conjunction with the farm brewery, the marketing and sale of which is incidental to on-site retail sale of malt beverages, including food and beverages:

a. Required to be made available in conjunction with the consumption of malt beverages on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or

b. Served in conjunction with an activity authorized by paragraph (2), (4), (5) of this subsection.

4. Subject to this section, carry out agri-tourism or other commercial events on the tract occupied by the farm brewery.

5. Host charitable activities for which the farm brewery does not charge a facility rental fee.

6. Site a bed and breakfast as a home occupation on the same tract as, and in association with, the farm brewery.

D. A farm brewery 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 above. Food and beverage services may not utilize menu options or meal services that cause the kitchen facilities to function as a cafe or other dining establishment open to the public.

E. The gross income of the farm brewery from the sale of incidental items or services may not exceed 25 percent of the gross income from the on-site retail sale of malt beverages produced in conjunction with the farm brewery. The gross income of a farm brewery does not include income received by third parties unaffiliated with the farm brewery. At the request of a local government with land use jurisdiction over the site of a farm brewery, the farm brewery shall submit to the local government a written statement prepared by a certified public accountant that certifies the compliance of the farm brewery with this subsection for the previous tax year.

F. A farm brewery in the Willamette Valley may carry out agri-tourism or other commercial events, provided:

1. Events on the first six days of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multiyear license that: has a term of five years; and is subject to an administrative review to determine necessary conditions pursuant to this section.

2. The local government's decision on a license under paragraph (1) of this subsection 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 nor a permit as defined in ORS 215.402 or 227.160.

3. Events on days seven through 18 of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multiyear permit that has a term of five years; is subject to an administrative review to determine necessary conditions pursuant to this section; and is subject to notice as specified in ORS 215.416 (11) or 227.175 (10).

4. The local government's decision on a permit under paragraph (2) of this subsection is: a land use decision as defined in ORS 197.015, is subject to review by the Land Use Board of Appeals, and is a permit as defined in ORS 215.402 or 227.160.

G. A local government with land use jurisdiction over the site of a farm brewery shall ensure that agri-tourism or other commercial events are subordinate to the production and sale of malt beverages and do not create significant adverse impacts to uses on surrounding land. A local government may impose conditions on a license or permit issued pursuant to section as necessary to meet the requirements of this paragraph. The conditions must be related to:

1. The number of event attendees;

2. The hours of event operation;

3. Access and parking;

4. Traffic management;

5. Noise management; and

6. Sanitation and solid waste.

H. A local government may charge a fee for processing a license or permit under this section. The fee may not exceed the actual or average cost of providing the applicable licensing or permitting service.

I. When a bed and breakfast facility is sited as a home occupation on the same tract as a farm brewery:

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 farm brewery.

J. A farm brewery operating under this section shall provide parking for all activities or uses of the tract on which the farm brewery is situated.

K. A local government with land use jurisdiction over the site of a farm brewery shall ensure that the farm brewery complies with:

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

2. Regulations of general applicability for the public health and safety; and

3. Regulations for resource protection acknowledged to comply with any statewide goal relating to open spaces, scenic and historic areas and natural resources.

L. For the purpose of limiting demonstrated conflicts with accepted farm and forest practices on adjacent lands, a local government with land use jurisdiction over the site of a farm brewery shall:

1. Establish a setback of at least 100 feet from all property lines for the farm brewery and all public gathering places. A reduction in the 100 foot setback may be granted through the adjustment process in Chapter 17.116.

2. Require farm breweries to provide direct road access and internal circulation for the farm brewery and all public gathering places.

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:

1. Decks and patios (open, covered, or enclosed);

2. Storage building for: firewood, equipment used in conjunction with dwelling and yard maintenance, personal property (except vehicles) not in conjunction with any commercial or industrial business other than a home occupation;

3. Vegetable gardens, orchards and crop cultivation for personal use, including greenhouses. No sale of produce is permitted;

4. Sauna;

5. Hobby shop;

6. Shelter for pets;

7. Fallout shelters;

8. Swimming pools and hot tubs;

9. Guest facilities not in a primary dwelling unit, provided:

a. Only one guest facility is allowed per contiguous property ownership; and

b. Total combined maximum floor area shall not exceed 600 square feet, including all levels and basement floor areas; and

c. No stove top, range, or conventional oven is allowed; and

d. All water, sewer, electricity and natural gas services for the guest facility shall be extended from the primary dwelling services; no separate meters for the guest facility shall be allowed; and

e. The guest facility shall be located within 100 feet of the primary use dwelling on the same property, measured from the closest portion of each structure; and

f. The guest facility shall use the same septic system as the primary use dwelling, except when a separate system is required by the building inspection division due to site constraints, or failure of the existing system, or where the size or condition of the existing system precludes its use, additional drain lines may be added to an existing system, when appropriate; and

g. The guest facility shall not be occupied as a dwelling unit; and

h. The guest facility shall not have an address;

i. A declaratory statement shall be recorded requiring compliance with the standards in this subsection.

Adds requirement to record declaratory statement.

10. Rooming or boarding of up to two persons in a dwelling unit;

11. Pets, provided a conditional use permit is required in the RS and AR zones if there are more than 10 mammals over four months old. No birds or furbearing animals, other than pets, and no livestock, poultry, or beekeeping are permitted in RS zones;

12. One recreational vehicle space subject to the requirements in MCC 17.126.040;

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

13. One additional kitchen in a single-family dwelling. subject to the filing of a declaratory statement.

Clarifies standards for placing second kitchen into a dwelling.

14. Offering to sell five or less vehicles owned by the occupants of the dwelling unit in any calendar year;

15. Garages and carports for covered vehicle parking;

16. Child foster home;

17. Residential home* (see MCC 17.110.190(C));

18. Sleeping quarters for domestic employees of the resident of the dwelling unit or mobile home;

19. Bed and breakfast establishments in AR zones, provided they do not include more than four lodging rooms and may employ no more than two persons ("person" includes volunteers, nonresident employees, partners or any other person);

20. Ham radio facilities.

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 MCC, 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.

B. Fences are a permitted accessory or secondary use in all zones subject to the requirements in Chapter 17.117 MCC.

C. Transit stop shelters and school bus stop shelters are a permitted secondary use in all zones. Shelters shall not be located within a required vision clearance area.

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

1. The vehicles are owned by the occupant of the lot or domestic employees of the occupant; and

2. Vehicles parked outdoors in a residential zone may be parked in a space within the front yard meeting the requirements for required parking in Chapter 17.118 MCC; or, they may be parked elsewhere on the lot where accessory buildings are permitted, provided the parking area is screened by a six-foot-high sight-obscuring fence, wall or hedge if the vehicle is parked within 100 feet of another lot in a residential zone. On a lot in the RS zone not more than three vehicles shall be parked within required yards adjacent to streets; and

3. Vehicles parked on a lot or parcel shall be for the personal use of the occupants of the dwelling and the personal use of employees of an approved conditional use home occupation.

a. One vehicle used in conjunction with a home occupation and one vehicle used in other employment may be parked on the lot;

b. In the RS zone any vehicle that is rated at more than one ton capacity shall be parked in an enclosed structure.

E. Portable classrooms and dormitories for students are a permitted accessory use in conjunction with elementary and secondary schools (as defined in Chapter 17.110 MCC).

F. Except in SA, EFU, FT and TC zones, a parsonage in conjunction with a religious organization.

G. Parking of vehicles in a structure or outdoors is a permitted accessory or secondary use in the CC, C, IUC, ID and I zones, provided:

1. The vehicles are owned by the occupant of the lot;

2. If vehicles are stored outdoors, the parking area shall be an all-weather surface, and be enclosed by a six-foot-high sight-obscuring fence, wall, hedge or berm; and

3. If vehicles are parked outdoors, the vehicles shall be operational, and used in conjunction with the primary use of the lot. If more than five vehicles are parked outdoors on the lot the parking area shall be screened by a six-foot-high sight-obscuring fence, wall or hedge if located within 100 feet of a lot in a residential zone and from streets.

H. Drop stations are permitted in CC, C, IUC, and I zones.

I. Retail sales or offices in a building in conjunction with a use in an industrial zone, provided:

1. The floor area of the retail sales or offices shall not be more than 30 percent of the floor area of the industrial use;

2. The development requirements are met for the accessory use as if it was a primary use; and

3. The accessory use shall be located on the same lot as the primary use and the building shall be owned or leased by the industrial business owner.

J. Except in SA, EFU, FT and TC zones, accessory and secondary uses not otherwise permitted may be allowed as a conditional use, provided the use is consistent with the definition of accessory or secondary and is compatible with the purpose of the zone and land uses on adjacent lots.

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. 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 ORS 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.

L. In addition to the use permitted in subsection (K) of this section, 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. [Ord. 1397 § 4 (Exh. B), 2019; Ord. 1369 § 4 (Exh. B), 2016; Ord. 1326 § 4 (Exh. A), 2012; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1204 § 4, 2004; Ord. 1191 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 950 § 4, 1993. RZ Ord. § 126.020.]

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 660-033-0020(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 660-033-0130 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 660-033-0130(3). The provisions limiting non-farm dwellings to existing parcels composed on Class IV – VIII soils [OAR 660-033-0130(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. 1369 § 4 (Exh. B), 2016; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1180 § 4, 2003; Ord. 1168 § 5, 2002; Ord. 1125 § 8, 2000. RZ Ord. § 136.010.]

Adds lot of record dwelling provisions to the EFU zone.

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:

A. Farm uses (see farm use definition, MCC 17.110.223), provided a medical marijuana producer as defined in MCC 17.110.378 shall have visible grow lights turned off between the hours 7:00 p.m. and 7:00 a.m. and all activity shall take place indoors.

B. The propagation or harvesting of a forest product.

C. Buildings, other than dwellings, customarily provided in conjunction with farm use.

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. 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 nonresidential 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 a dwelling replaced pursuant to MCC 17.136.080(C) when a fire report is provided at the time building permits are applied for.

6. Accessory farm dwellings destroyed by a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610 may be replaced. The temporary use of modular structures,

manufactured housing, fabric structures, tents and similar accommodations is allowed until replacement under this subsection occurs.

Implements LCDC wildfire rules.

E. Operations for the exploration for geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators, and customary production equipment for an individual well adjacent the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732.

F. Operations for the exploration for minerals as defined by ORS 517.750.

G. Widening of roads including public road and highway projects as follows:

1. Climbing and passing lanes within the street right-of-way existing as of July 1, 1987.

2. Reconstruction or modification of public streets, including the placement of utility facilities overhead and in the subsurface of public roads and highways along public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new parcels result.

3. Temporary public street detours that will be abandoned and restored to original condition or use at such time as no longer needed.

4. Minor betterment of existing public street related facilities such as maintenance yards, weigh stations and rest areas, within rights-of-way existing as of July 1, 1987, and contiguous publicly owned property utilized to support the operation and maintenance of public streets.

H. Creation of, restoration of, or enhancement of wetlands.

I. On-site filming and activities accessory to filming, as defined in MCC 17.136.140(A), if the activity would involve no more than 45 days on any site within a one-year period.

J. Composting operations and facilities limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

K. Single agri-tourism or other commercial event, excluding events that promote the sale of marijuana products or extracts, subject to MCC 17.125.130. [Ord. 1372 § 4 (Exh. A), 2016; Ord. 1369 § 4 (Exh. B), 2016; 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 § 8, 2000. RZ Ord. § 136.020.]

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:

1. It is located on high-value farmland as defined in MCC 17.136.140(D) and satisfies the following standards:

a. There is no dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;

b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $80,000 in gross annual income from the sale of farm products, not including marijuana. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;

c. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section;

d. The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (A)(1)(b) of this section; or

2. It is not located on high-value farmland as defined in MCC 17.136.140(D) and satisfies the following standards:

a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;

b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $40,000 in gross annual income from the sale of the farm products, not including marijuana. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;

c. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(2)(b) of this subsection;

d. The dwelling will be occupied by a person or persons who produced the commodities which generated the income required in subsection (A)(2)(b) of this subsection; or

3. It is not located on high-value farmland, as defined in MCC 17.136.140(D), and satisfies the following standards:

a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;

b. The parcel on which the dwelling will be located is at least 160 acres;

c. The subject tract is currently employed for farm use, as defined in ORS 215.203, other than marijuana production;

d. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing, or caring for livestock, at a commercial scale;

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 for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and

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 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 for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and

(B) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (A)(2)(b) of this section;

(C) In determining the gross income required by subsections (A)(5)(a) and (b) 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;

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.

B. Secondary Farm Dwellings. Secondary (accessory) dwellings customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

1. The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or

year-round assistance in the management of the farm uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.

2. There is no other dwelling on lands in the EFU, SA or FT zone owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.

3. The proposed dwelling will be located:

a. On the same lot or parcel as the primary farm dwelling; or

b. On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or

c. On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (B)(1) of this section; or

d. On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable State Building Code or similar types of farm worker housing as that existing on farm operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

e. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (B)(4) of this section, whichever is applicable.

4. The primary dwelling to which the proposed dwelling would be accessory satisfies the following criteria:

a. On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $40,000 gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years; or

b. On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $80,000 in gross annual income from the sale of farm products, not including marijuana,

in the last two years, three of the last five years, or the average of the best three of the last five years;

c. The primary dwelling is located on a commercial dairy farm as defined in this chapter; and

i. The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

ii. The Oregon Department of Agriculture has approved a permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and

iii. The Oregon Department of Agriculture has approved a producer license for the sale of dairy products under ORS 621.072;

d. In determining the gross income in subsections (B)(4)(a) and (b) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

5. The dwelling will be consistent with the fish and wildlife habitat policies of the Comprehensive Plan if located in a designated big game habitat area.

6. ~~Secondary farm dwellings shall be a manufactured home, or other type of attached multi-unit residential structure allowed by the applicable State Building Code, and~~ ~~a~~ **A** deed restriction filed with the county clerk requiring removal of the ~~manufactured~~ home or removal, demolition or conversion to a nonresidential use if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.

Clarifies that not all secondary farm dwelling must be manufactured consistent with administrative rule.

C. A secondary single-family dwelling on real property used for farm use subject to the following standards:

1. A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, sister, step-sibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use.

2. The farm operator shall continue to play the predominant role in management and use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding, and marketing.

3. A deed restriction is filed with the county clerk requiring removal of the dwelling when the occupancy or use no longer complies with the criteria or standards under which the dwelling was originally approved.

4. For purposes of this subsection, a commercial farm operation is one that meets the income requirements for a primary farm dwelling identified in subsection (A)(1)(b) of this section, ~~and the parcel where the dwelling is proposed contains a minimum of 80 acres.~~

Change would make code consistent with administrative rule.

5. 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 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.

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. 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;~~

2. In addition to the provisions of subsection (1), the dwelling to be replaced meets one of the following conditions;

a. If the dwelling was removed, destroyed or demolished;

i. The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and

ii. Any removal, destruction, or demolition occurred on or after January 1, 1973.

b. If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or

c. A dwelling not described paragraph (a) or (b) of this subsection was assessed as a dwelling for the purposes of ad valorem taxation:

i. For the previous five property tax years; or

ii. From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.

~~4~~3. 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~~4. 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~~5. 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~~6. 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~~7. ~~When a dwelling formerly had the features described in subsection (D)(1) of this section or was removed from the tax roll as described in subsection (D)(3)(a) of this section, then t~~**T**he 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 subsection (D)(1) of this section and that have been on the tax roll as described in subsection (D)(2) of this section 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~~. [Ord. 1372 § 4 (Exh. A), 2016; Ord. 1369 § 4 (Exh. B), 2016; 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.]

Implements HB 3024 (2019) and LCDD 9-2020.

E. Lot-of-Record Dwellings. A single-family dwelling subject to the following standards and criteria:

1. The lot or parcel on which the dwelling will be sited was lawfully created and acquired and owned continuously by the present owner:

a. Since prior to January 1, 1985; or

b. By devise or intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

c. "Owner," as the term is used in this subsection only, includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, step-parent, step-child, grandparent, or grandchild of the owner or business entity owned by any one or a combination of these family members.

2. The tract on which the dwelling will be sited does not include a dwelling.

3. The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, and no dwelling exists on another lot or parcel that was part of that tract.

4. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.

5. The request is not prohibited by, and complies with, the Comprehensive Plan and other provisions of this title, including but not limited to floodplain, greenway, and big game habitat area restrictions.

6. The proposed dwelling will not:

a. Exceed the facilities and service capabilities of the area.

b. Create conditions or circumstances contrary to the purpose of the special agriculture zone.

7. A lot-of-record dwelling approval may be transferred one time only by a person who has qualified under this section to any other person after the effective date of the land use decision.

8. The county assessor shall be notified that the county intends to allow the dwelling.

9. The lot or parcel on which the dwelling will be sited is not high-value farmland as defined in MCC 17.136.140(D); or

10. The lot or parcel on which the dwelling will be sited is high-value farmland as defined in MCC 17.136.140(D)(2) or (3) and:

a. Is 21 acres or less in size;

b. The tract on which the dwelling is to be sited is not a flag lot and is:

i. Bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993; or

ii. Bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. No more than two of the four dwellings may be within an urban growth boundary;

c. The tract on which the dwelling is to be sited is a flag lot and is:

i. Bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The board, or its designee, must interpret the center of the subject tract as the geographic center of the flag lot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flag lot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary.

ii. "Flag lot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

iii. "Geographic center of the flag lot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flag lot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flag lot; or

11. The lot or parcel on which the dwelling is to be sited is high-value farmland as defined in MCC 17.136.140(D)(1) and:

a. The hearings officer determines that:

i. The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot or parcel cannot be practicably managed for farm use. Examples of extraordinary circumstances inherent in the land or its physical setting include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together

with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use; and

ii. The use will not force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm or forest use; and

iii. The dwelling will not materially alter the stability of the overall land use pattern in the area. To address this standard, the following information shall be provided:

(A) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, and why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area;

(B) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm/lot-of-record dwellings that could be approved under subsection (D) of this section and MCC 17.136.050(A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision;

(C) Determine whether approval of the proposed non-farm/lot-of-record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

b. The county shall provide notice of the application for a dwelling allowed under this subsection to the Oregon Department of Agriculture.

Adds lot of record dwelling provisions to the EFU zone.

17.136.040 Uses permitted subject to standards.

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

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

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 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 jams, syrups, apple cider, and similar animal products, but not prepared food items;

5. As used in this section, "prepared food items" means food products that are prepared for immediate consumption, such as pies, shortcake, 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 Chapter 17.191 MCC;

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/landowner 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;

14. A farm stand may not be used for the sale of marijuana products or to promote the sale of marijuana products or extracts.

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

C. Religious Organizations and Cemeteries. Religious organizations and cemeteries in conjunction with religious organizations subject to the following:

1. New religious organizations and cemeteries in conjunction with religious organizations:

a. May not be established on high-value farmland.

b. New religious organizations and cemeteries in conjunction with religious organizations, not on high-value farmland, may be established. All new religious organizations and cemeteries in conjunction with religious organizations within three miles of an urban growth boundary shall meet the following standards:

i. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved, unless an exception is approved pursuant to OAR Chapter 660, Division 004.

ii. Any new enclosed structure or group of enclosed structures subject to this subsection shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract.

iii. For the purposes of this subsection, "tract" means a tract as defined in MCC 17.136.140(F) in existence on May 5, 2010.

2. Existing Religious Organizations and Cemeteries in Conjunction with Religious Organizations.

a. Existing religious organizations and cemeteries in conjunction with religious organizations may be maintained, enhanced, or expanded on the same tract wholly within a farm zone.

b. Existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits in subsections (C)(1)(b)(i) through (iii) of this section.

D. Public and Private Schools. Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, subject to the following:

1. New schools primarily for the residents of the rural area in which the school is located:

a. New schools may not be established on high-value farmland.

b. New schools not on high-value farmland may be established. Any new school within three miles of an urban growth boundary shall meet the following standards:

i. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved, unless an exception is approved pursuant to OAR Chapter 660, Division 004.

ii. Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract.

iii. For the purposes of this subsection, "tract" means a tract as defined in MCC 17.136.140(F) in existence on May 5, 2010.

c. New schools must be determined to be consistent with the provisions contained in MCC 17.136.060(A)(1).

2. Existing Schools Primarily for the Residents of the Rural Area in Which the School Is Located.

a. Existing schools on high-value farmland may be maintained, enhanced, or expanded on the same tract wholly within a farm zone.

b. Existing schools not on high-value farmland may be maintained, enhanced, or expanded consistent with the provisions contained in MCC 17.136.060(A)(1).

c. Existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits in subsections (D)(1)(b)(i) through (iii) of this section.

3. Existing schools that are not primarily for residents of the rural area in which the school is located may be expanded on the tax lot on which the use was established or on a contiguous tax lot owned by the applicant on January 1, 2009; however, existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits in subsections (D)(1)(b)(i) through (iii) of this section.

E. Filming Activities. On-site filming and activities accessory to filming, and defined in MCC 17.136.140(A), if the activity:

1. Involves filming or activities accessory to filming for more than 45 days; or

2. Involves erection of sets that would remain in place longer than any 45-day period;

3. 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.

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 nor 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.~~

1. A processing area of less than 10,000 square feet shall be established. 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.

2. Uses less than 2,500 square feet for its processing area shall be allowed notwithstanding any applicable siting standard. However, applicable standards and criteria pertaining to floodplains, geologic hazards, airport safety and fire siting standards shall apply.

~~4~~**3**. Division of a lot or parcel that separates a processing facility from the farm operation on which it is located shall not be approved.

~~5~~**4**. A medical marijuana processor as defined in MCC 17.110.376 shall:

a. Be conducted entirely indoors; and

b. Emit no light visible to adjacent neighboring property owners or the public; and

c. Ensure odors are not detectable on adjacent neighboring properties.

5. As used in this section, the following definitions apply:

a. "Facility for the processing of farm products" means a facility for:

i. Processing farm crops, including the production of biofuel as defined in ORS 315.141, if at least one-quarter of the farm crops come from the farm operation containing the facility; or

ii. Slaughtering, processing or selling poultry or poultry products from the farm operation containing the facility and consistent with the licensing exemption for a person under ORS 603.038(2).

b. "Processing area" means the floor area of a building dedicated to farm product processing. "Processing area" does not include the floor area designated for preparation, storage or other farm use.

Implements HB 2844 (2019) and LCDD 13-2020.

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.

H. *Repealed by Ord. 1397.*

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 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 660-033-0130(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 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 subsection (I)(7)(b)(i) or (ii) of this section:

i. An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

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

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

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

(D) 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.

ii. After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to subsections (I)(7)(b)(iii) and (iv) of this section, two or more of the following criteria:

(A) Technical and engineering feasibility;

(B) 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;

(C) 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;

(D) Public health and safety; or

(E) Other requirements of state or federal agencies.

iii. As pertains to subsection (I)(7)(b)(ii) of this section, 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.

iv. The governing body of a county or its designee may consider costs associated with any of the factors listed in subsection (I)(7)(b)(ii) of this section, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.

J. Parking of not more than seven log trucks on a tract when the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.

2. Significantly increase the cost of accepted farm or forest practices on surrounding land devoted to farm or forest use.

K. Fire service facilities providing rural fire protection services.

L. Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and features, associated with a district as defined in ORS 540.505.

M. Utility Facility Service Lines. Utility facility service lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

1. A public right-of-way;

2. Land immediately adjacent to a public right-of-way, provided the written consent of all adjacent property owners has been obtained; or

3. The property to be served by the utility.

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

truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

O. Dog training classes or testing trials conducted outdoors or in agricultural buildings existing on June 4, 2012, subject to the following:

1. The number of dogs in each training class shall not exceed 10.

2. There shall be no more than six training classes per day.

3. The number of dogs participating in the testing trials shall not exceed 60.

4. There shall be no more than four testing trials per calendar year.

P. Cider business. A cider business is subject to the standards in MCC 17.125.140. [Ord. 1397 § 4 (Exh. B), 2019; Ord. 1372 § 4 (Exh. A), 2016; Ord. 1369 § 4 (Exh. B), 2016; 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 § 8, 2000. RZ Ord. § 136.040.]

Q. Farm brewery. A farm brewery is subject to the standards in MCC 17.125.150.

Implements in code SB 287 (2019).

17.136.060 Conditional use review criteria.

The uses identified in MCC 17.136.050 shall satisfy criteria in the applicable subsections below:

A. The following criteria apply to all conditional uses in the EFU zone:

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

3. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.

4. Any noise associated with the use will not have a significant adverse impact on nearby land uses.

5. The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.

B. Non-Farm Dwellings. The following additional criteria apply to non-farm dwelling requests:

1. The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation Service in its most recent publication, unless evidence is submitted as required in MCC 17.136.130.

2. The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993, in any way that enables the lot or parcel to meet the criteria for non-farm dwelling.

3. The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings on other lots or parcel in the area similarly situated shall be considered. To address this standard, the following information shall be provided:

a. Identify a study area for the cumulative impact analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

b. Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm dwellings that could be approved under MCC 17.136.050(A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision;

c. Determine whether approval of the proposed non-farm dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, or lease farmland, or acquire waste rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

C. Home Occupations. Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in conjunction with the home occupation and bed and breakfast inns, are subject to the following criteria:

1. A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the home occupation ("person" includes volunteer, nonresident employee, partner or any other person).

2. It shall be operated substantially in:

a. The dwelling; or

b. Other buildings normally associated with uses permitted in the zone in which the property is located.

3. It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

4. A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.

5. A sign shall meet the standards in Chapter 17.191 MCC.

6. The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.

7. Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

D. Commercial Activities in Conjunction with Farm Use.

1. The commercial activity must be primarily a customer or supplier of farm uses.

2. The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.

3. The agricultural and commercial activities must occur together in the local community.

4. The products and services provided must be essential to the practice of agriculture.

E. Forest Products Processing Facility. A portable or temporary facility for the primary processing of forest products is subject to the following criteria and limitations:

1. The use shall not seriously interfere with accepted farming practices.

2. The use shall be compatible with farm uses described in ORS 215.203(2).

3. The use may be approved for a maximum one-year period, which is renewable.

4. The primary processing of forest products, as used in this section, means the use of a chipper, stud mill, or other similar facility for initial treatment of a forest product in order to enable its shipment to market. "Forest products," as used in this section, means timber grown upon a tract where the primary processing facility is located.

F. Power Generation Facility. A power generation facility shall not preclude more than:

1. Twelve acres from use as a commercial agricultural enterprise on high-value farmland unless an exception is taken pursuant to OAR Chapter 660, Division 004.

2. Twenty acres from use as a commercial agricultural enterprise on farmland that is not high-value unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, Division 004.

G. Private Parks and Campgrounds. Private parks, playgrounds, hunting and fishing preserves, and campground expansions shall meet the following criteria:

1. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 004.

2. It shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes, and is established on a site or is contiguous to lands with park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

3. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.

4. A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:

a. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include yurts;

b. The yurt shall be located on the ground or on a wood floor with no permanent foundation.

5. Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.

6. It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

7. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

8. Emergency campgrounds may be authorized when a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610, has destroyed homes or caused residential evacuations, or both within the county or an adjacent county, provided that, in addition to the above:

a. Commercial activities shall be limited to mobile commissary services scaled to meet the needs of campground occupants.

b. Campgrounds approved under this section must be removed or converted to an allowed use within 36 months from the date of the Governor's Executive Order. The county may grant two additional 12-month extensions upon demonstration by the applicant that the campground continues to be necessary to support the natural hazard event recovery efforts because adequate amounts of permanent housing is not reasonably available.

c. Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer hook-ups shall not be provided to individual camp sites.

d. Campgrounds shall be located outside of flood, geological, or wildfire hazard areas identified in adopted comprehensive plans and land use regulations to the extent possible.

e. A plan for removing or converting the temporary campground to an allowed use at the end of the time-frame specified in paragraph (19)(c) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this paragraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal or conversion activities to be completed.

f. The Governor has issued an Executive Order declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.

g. The subject property is not irrigated.

h. The subject property is not high-value farmland.

i. The number of proposed campsites does not exceed 12; or

j. The number of proposed campsites does not exceed 36; and Campsites and other campground facilities are located at least 660 feet from adjacent lands planned and zoned for resource use under Goals 3, 4, or both.

Optional to adopt. Implements LCDC wildfire rules. Planning Commission does not recommend adopting because of the limitations in code. It would be possible to adopt at a later date if necessary.

H. Other Uses.

1. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. "Planted vineyard" means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

2. Living history museum related to resource-based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one-quarter mile of an urban growth boundary.

As used in this subsection:

a. "Living history museum" means a facility designed to depict and interpret the everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

b. "Local historical society" means the local historical society recognized by the county board of commissioners and organized under ORS Chapter 65.

I. The following criteria apply to those uses identified in MCC 17.136.050:

1. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved within three miles of an urban growth boundary unless an exception is approved pursuant to OAR Chapter 660, Division 004.

2. Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract. For the purposes of this subsection, "tract" means a tract as defined in MCC 17.136.140(F) in existence on May 5, 2010.

3. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, but existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits of this subsection. [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 § 8, 2000. RZ Ord. § 136.060.]

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:

A. Minimum Parcel Size for Newly Created Parcels.

1. Farm Parcels. The minimal parcel size for new farm parcels shall be calculated as follows:

a. All parcels wholly or in part within 500 feet of the subject parcel shall be identified.

b. The average (mean) size of all parcels larger than 40 acres identified in subsection (A)(1)(a) of this section shall be determined.

c. The acreage size calculated in subsection (A)(1)(b) of this section, rounded to the nearest 10 acres, is the minimum parcel size unless such parcel size is less than 80 acres, in which case the minimum parcel size is 80 acres.

2. Non-Farm Parcels. A new non-farm parcel created pursuant to subsection (B) of this section shall only be as large as necessary to accommodate the use and any buffer area needed to ensure compatibility with adjacent farm uses.

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

1. A new non-farm parcel may be created for uses listed in MCC 17.136.040(C) and (K) and MCC 17.136.050, except the residential uses in MCC 17.136.050(A) and (B) **or a home occupation.**

2. The criteria in MCC 17.136.060 applicable to the use shall apply to the parcel.

3. A non-farm parcel shall not be approved before the non-farm use is approved.

4. A division of land for non-farm use shall not be approved unless any additional tax imposed for the change has been paid, or payment of any tax imposed is made a condition of approval.

5. A division of land may be permitted to create a parcel with an existing dwelling to be used:

a. As a residential home as described in ORS 197.660(2) only if the dwelling has been approved under MCC 17.136.050(L).

b. For a historic property that meets the definition in ORS 358.480 and is listed on the National Register of Historic Places.

c. Parcels created under this section must meet the following criteria:

i. The new parcel containing the dwelling must be a minimum of one acre in size.

ii. The proposal shall not involve a unit of land containing a farm-relative dwelling previously authorized under the Marion County Code or previous ordinance.

iii. The new parcel shall not be larger than the minimum size necessary for the use, taking into consideration septic system, septic repair area, water source, the dwelling, and accessory buildings.

iv. The new parcel shall be adequately sized so that the existing dwelling meets the special setbacks from parcels in farm and forest use as described in 17.136.070 if it was able to meet the special setbacks previously.

This addition to the Code brings the County into compliance with ORS 215.263(9), which allows the creation of non-farm parcels containing dwellings that qualify either as historic properties or are approved residential homes. The addition of this option to the code provides property owners with flexibility to separate the dwelling from farm land. Clarifies that a home occupation is not a use of land separate from a dwelling which can be divided off.

~~5~~ **6**. If the land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels subject to the following criteria:

a. A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel.

b. A parcel created pursuant to this subsection that does not contain a dwelling:

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;

iii. May not be considered in approving a redesignation or rezoning of forest lands or farmlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and

c. May not be smaller than 25 acres unless the purpose of the land division is:

i. To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or

ii. To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.

~~6~~ **7**. A division of land smaller than the minimum lot or parcel size described in subsections (A) and (B) of this section may be approved to establish a religious organization including cemeteries in conjunction with the religious organization if they meet the following requirements:

a. The religious organization has been approved under MCC 17.136.040(C);

b. The newly created lot or parcel is not larger than five acres; and

c. The remaining lot or parcel, not including the religious organization, meets the minimum lot or parcel size described in subsections (A) and (B) of this section either by itself or after it is consolidated with another lot or parcel.

~~7~~ **8**. 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 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.~~

This is a requirement in forest zones, not farm zones.

9. Land that is divided under this section for a 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 may not later be rezoned by the county for retail, commercial, industrial or other non-resource use, except as provided under the statewide land use planning goals or under ORS 197.732.

Incorporates changes made by SB 408 (2019) and LCDD 5-2020.

C. Property Line Adjustments.

1. When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to subsection (A)(1) of this section, the same number of lots or parcels shall be as large or larger than the minimum parcel size after the adjustment. When all lots or parcels subject to the proposed adjustment are as large or larger than the minimum parcel size, no lot or parcel shall be reduced below the applicable minimum parcel size. If all lots or parcels are smaller than the minimum parcel size before the property line adjustment, the minimum parcel size pursuant to this section does not apply to those lots or parcels.

2. If the minimum parcel size in subsection (A)(1) of this section is larger than 80 acres, and a lot or parcel subject to property line adjustment is smaller than the minimum parcel size but larger than 80 acres, the lot or parcel shall not be reduced in size through property line adjustment to less than 80 acres.

3. Any property line adjustment shall result in a configuration of lots or parcels that are at least as suitable for commercial agriculture as were the parcels prior to the adjustment.

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;

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; or

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.

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;

b. Does not increase the potential number of dwellings on the resulting parcels; and

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. [Ord. 1369 § 4 (Exh. B), 2016; 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.]

17.136.120 Permit expiration dates.

A. Notwithstanding other provisions of this title, a discretionary decision, except for a land division, approving a proposed development in the EFU zone expires two years from the date of the final decision if the development action is not initiated and all required conditions are met in that period. The director may grant an extension period of up to 12 months if:

1. An applicant makes a written request for an extension of the development approval period.

2. The request is submitted to the county prior to expiration of the approval period.

3. The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period.

4. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

B. Approval of an extension granted under this section is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

C. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

D. If a permit is approved for a proposed residential development in the EFU zone, the permit shall be valid for four years. For the purposes of this subsection, “residential development” only includes the dwellings provided for under MCC 17.136.020(D), 17.136.030(D) and 17.136.050(A).

E. ~~An~~ **The first** extension of a permit consistent with subsection (D) of this section and with subsections (A)(1) through (4) of this section and where applicable criteria for the decision have not changed shall be valid for two years.

F. Up to five additional extensions of the permit consistent with subsection (D) of this section and with subsections (A)(1) through (4) of this section and where applicable criteria for the decision have not changed shall be valid for one year each.

[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. § 136.120.]

Modifies code to be consistent with statute.

Chapter 17.137

SA (SPECIAL AGRICULTURE) ZONE

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:

A. Farm uses (see farm use definition, MCC 17.110.223), provided a medical marijuana producer as defined in MCC 17.110.378 shall have visible grow lights turned off between the hours 7:00 p.m. and 7:00 a.m. and all activity shall take place indoors.

B. The propagation or harvesting of a forest product.

C. Buildings, other than dwellings, customarily provided in conjunction with farm use.

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. 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 nonresidential 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 a dwelling replaced pursuant to MCC 17.137.080(C) when a fire report is provided at the time building permits are applied for.

6. Accessory farm dwellings destroyed by a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610 may be replaced. The temporary use of modular structures, manufactured housing, fabric structures, tents and similar accommodations is allowed until replacement under this subsection occurs.

Implements LCDC wildfire rules.

E. Operations for the exploration for geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732.

F. Operations for the exploration for minerals as defined by ORS 517.750.

G. Widening of roads including public road and highway projects as follows:

1. Climbing and passing lanes within the street right-of-way existing as of July 1, 1987.

2. Reconstruction or modification of public streets, including the placement of utility facilities overhead and in the subsurface of public roads and highways along public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new parcels result.

3. Temporary public street detours that will be abandoned and restored to original condition or use at such time as no longer needed.

4. Minor betterment of existing public street related facilities such as maintenance yards, weigh stations and rest areas, within rights-of-way existing as of July 1, 1987, and contiguous publicly owned property utilized to support the operation and maintenance of public streets.

H. Creation of, restoration of, or enhancement of wetlands.

I. On-site filming and activities accessory to filming, as defined in MCC 17.137.130(A), if the activity would involve no more than 45 days on any site within a one-year period.

J. Composting operations and facilities limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance

and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

K. Single agri-tourism or other commercial event, excluding events that promote the sale of marijuana products or extracts, subject to MCC 17.125.130. [Ord. 1372 § 4 (Exh. A), 2016; Ord. 1369 § 4 (Exh. B), 2016; 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. § 137.020.]

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:

1. It is located on high-value farmland, as defined in MCC 17.137.130(D), and satisfies the following standards:

a. There is no dwelling on the subject farm operation on lands zoned EFU, SA, or FT other than seasonal farm worker housing. The term “farm operation” means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;

b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $80,000 in gross annual income from the sale of farm products, not including marijuana. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;

c. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section;

d. The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (A)(1)(b) of this section; or

2. It is not located on high-value farmland, as defined in MCC 17.137.130(D), and satisfies the following standards:

a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;

b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $40,000 in gross annual income from the sale of farm products, not including marijuana. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;

c. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(2)(b) of this section;

d. The dwelling will be occupied by a person or persons who produced the commodities which generated the income required in subsection (A)(2)(b) of this section; or

3. It is not located on high-value farmland, as defined in MCC 17.137.130(D), and satisfies the following standards:

a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;

b. The parcel on which the dwelling will be located is at least 160 acres;

c. The subject tract is currently employed for farm use, as defined in ORS 215.203, other than marijuana production;

d. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing, or caring for livestock, at a commercial scale;

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 for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and

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 for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and

(B) The dwelling will be occupied by a person or persons who produced the commodities that 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;

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 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.

B. Secondary Farm Dwellings. Secondary (accessory) dwellings customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

1. The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.

2. There is no other dwelling on lands in the EFU, SA or FT zone owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.

3. The proposed dwelling will be located:

a. On the same lot or parcel as the primary farm dwelling; or

b. On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or

c. On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (B)(1) of this section; or

d. On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code, or similar types of farm worker housing, as that existing on farm operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

e. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable

minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (B)(4) of this section, whichever is applicable.

4. The primary dwelling to which the proposed dwelling would be accessory satisfies the following criteria:

a. On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $40,000 in gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years; or

b. On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $80,000 in gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years.

c. The primary dwelling is located on a commercial dairy farm as defined in this chapter; and

i. The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

ii. The Oregon Department of Agriculture has approved a permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 to 468B.230; and

iii. The Oregon Department of Agriculture has approved a producer license for the sale of dairy products under ORS 621.072.

d. In determining the gross income in subsections (B)(4)(a) and (b) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

5. The dwelling will be consistent with the fish and wildlife habitat policies of the Comprehensive Plan if located in a designated big game habitat area.

6. ~~Secondary farm dwellings shall be a manufactured home, or other type of attached multi-unit residential structure allowed by the applicable State Building Code, and~~ ~~a~~ **A** deed restriction filed with the county clerk requiring removal of the ~~manufactured~~ home, or removal, demolition or conversion to a nonresidential use if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.

Clarifies that not all secondary farm dwelling must be manufactured consistent with administrative rule.

C. A secondary single-family dwelling on real property used for farm use subject to the following standards:

1. A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step-grandparent, grandchild, parent, step-parent, child, step-child, brother, sister, step-sibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use.

2. The farm operator shall continue to play the predominant role in management and use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding, and marketing.

3. A deed restriction is filed with the county clerk requiring removal of the dwelling when the occupancy or use no longer complies with the criteria or standards under which the dwelling was originally approved.

4. For purposes of this section, a commercial farm operation is one that meets the income requirements for a primary farm dwelling identified in subsection (A)(1)(b) of this section, ~~and the parcel where the dwelling is proposed contains a minimum of 80 acres.~~

Change would make code consistent with administrative rule.

5. 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 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.

D. Lot-of-Record Dwellings. A single-family dwelling subject to the following standards and criteria:

1. The lot or parcel on which the dwelling will be sited was lawfully created and acquired and owned continuously by the present owner:

a. Since prior to January 1, 1985; or

b. By devise or intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

c. "Owner," as the term is used in this subsection only, includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, step-parent, step-child, grandparent, or grandchild of the owner or business entity owned by any one or a combination of these family members.

2. The tract on which the dwelling will be sited does not include a dwelling.

3. The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, and no dwelling exists on another lot or parcel that was part of that tract.

4. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed.

5. The request is not prohibited by, and complies with, the Comprehensive Plan and other provisions of this title, including but not limited to floodplain, greenway, and big game habitat area restrictions.

6. The proposed dwelling will not:

a. Exceed the facilities and service capabilities of the area.

b. Create conditions or circumstances contrary to the purpose of the special agriculture zone.

7. A lot-of-record dwelling approval may be transferred one time only by a person who has qualified under this section to any other person after the effective date of the land use decision.

8. The county assessor shall be notified that the county intends to allow the dwelling.

9. The lot or parcel on which the dwelling will be sited is not high-value farmland as defined in MCC 17.137.130(D); or

10. The lot or parcel on which the dwelling will be sited is high-value farmland as defined in MCC 17.137.130(D)(2) or (3) and:

a. Is 21 acres or less in size;

b. The tract on which the dwelling is to be sited is not a flag lot and is:

i. Bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993; or

ii. Bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. No more than two of the four dwellings may be within an urban growth boundary;

c. The tract on which the dwelling is to be sited is a flag lot and is:

i. Bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The board, or its designee, must interpret the center of the subject tract as the geographic center of the flag lot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flag lot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary.

ii. "Flag lot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

iii. "Geographic center of the flag lot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flag lot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flag lot; or

11. The lot or parcel on which the dwelling is to be sited is high-value farmland as defined in MCC 17.137.130(D)(1) and:

a. The hearings officer determines that:

i. The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot or parcel cannot be practicably managed for farm use. Examples of extraordinary circumstances inherent in the land or its physical setting include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use; and

ii. The use will not force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm or forest use; and

iii. The dwelling will not materially alter the stability of the overall land use pattern in the area. To address this standard, the following information shall be provided:

(A) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, and why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area;

(B) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm/lot-of-record dwellings that could be approved under subsection (D) of this section and MCC 17.137.050(A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision;

(C) Determine whether approval of the proposed non-farm/lot-of-record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

b. The county shall provide notice of the application for a dwelling allowed under this subsection to the Oregon Department of Agriculture.

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. 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;

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;~~

2. In addition to the provisions of subsection (1), the dwelling to be replaced meets one of the following conditions;

a. If the dwelling was removed, destroyed or demolished;

i. The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and

ii. Any removal, destruction, or demolition occurred on or after January 1, 1973.

b. If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or

c. A dwelling not described paragraph (a) or (b) of this subsection was assessed as a dwelling for the purposes of ad valorem taxation:

i. For the previous five property tax years; or

ii. From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.

4**3**. 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~~**4**. 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~~**5**. 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~~**6**. 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~~**7**. ~~When a dwelling formerly had the features described in subsection (E)(1) of this section or was removed from the tax roll as described in subsection (E)(3)(b) of this section, then t~~**T**he 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 subsection (E)(1) of this section and that have been on the tax roll as described in subsection (E)(2) of this section 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~~. [Ord. 1372 § 4 (Exh. A), 2016; Ord. 1369 § 4 (Exh. B), 2016; 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.]

Implements HB 3024 (2019) and LCDD 9-2020.

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. 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 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 jams, syrups, apple cider, and similar animal products, but not prepared food items;

5. As used in this section, “prepared food items” means food products that are prepared for immediate consumption, such as pies, shortcake, 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 Chapter 17.191 MCC;

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/landowner 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;

14. A farm stand may not be used for the sale of marijuana products or to promote the sale of marijuana products or extracts.

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

C. Religious Organizations and Cemeteries. Religious organizations and cemeteries in conjunction with religious organizations subject to the following:

1. New religious organizations and cemeteries in conjunction with religious organizations:

a. May not be established on high-value farmland.

b. New religious organizations and cemeteries in conjunction with religious organizations, not on high-value farmland, may be established. All new religious organizations and cemeteries in conjunction with religious organizations within three miles of an urban growth boundary shall meet the following standards:

i. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved, unless an exception is approved pursuant to OAR Chapter 660, Division 004.

ii. Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract.

iii. For the purposes of this subsection, "tract" means a tract as defined in MCC 17.137.130(F) in existence on May 5, 2010.

2. Existing religious organizations and cemeteries in conjunction with religious organizations:

a. Existing religious organizations and cemeteries in conjunction with religious organizations may be maintained, enhanced, or expanded on the same tract wholly within a farm zone.

b. Existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits in subsections (C)(1)(b)(i) through (iii) of this section.

D. Public and Private Schools. Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, subject to the following:

1. New schools primarily for the residents of the rural area in which the school is located:

a. New schools may not be established on high-value farmland.

b. New schools not on high-value farmland may be established. Any new school within three miles of an urban growth boundary shall meet the following standards:

i. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved, unless an exception is approved pursuant to OAR Chapter 660, Division 004.

ii. Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract.

iii. For the purposes of this subsection, "tract" means a tract as defined in MCC 17.137.130(F) in existence on May 5, 2010.

c. New schools must be determined to be consistent with the provisions contained in MCC 17.137.060(A)(1).

2. Existing schools primarily for the residents of the rural area in which the school is located:

a. Existing schools on high-value farmland may be maintained, enhanced, or expanded on the same tract wholly within a farm zone.

b. Existing schools not on high-value farmland may be maintained, enhanced, or expanded consistent with the provisions contained in MCC 17.137.060(A)(1).

c. Existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits in subsections (D)(1)(b)(i) through (iii) of this section.

3. Existing schools that are not primarily for residents of the rural area in which the school is located may be expanded on the tax lot on which the use was established or on a contiguous tax lot owned by the applicant on January 1, 2009; however, existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits in subsection (D)(1)(b)(i) through (iii) of this section.

E. Filming Activities. On-site filming and activities accessory to filming, defined in MCC 17.137.130(A), if the activity:

1. Involves filming or activities accessory to filming for more than 45 days; or

2. Involves erection of sets that would remain in place longer than any 45-day period;

3. 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.

F. Facilities 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 nor 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.~~

1. A processing area of less than 10,000 square feet shall be established. 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.

2. Uses less than 2,500 square feet for its processing area shall be allowed notwithstanding any applicable siting standard. However, applicable standards and criteria pertaining to floodplains, geologic hazards, airport safety and fire siting standards shall apply.

~~4~~**3**. Division of a lot or parcel that separates a processing facility from the farm operation on which is it is located shall not be approved.

~~5~~**4**. A medical marijuana processor as defined in MCC 17.110.376 shall:

a. Be conducted entirely indoors; and

b. Emit no light visible to adjacent neighboring property owners or the public; and

c. Ensure odors are not detectable on adjacent neighboring properties.

5. As used in this section, the following definitions apply:

a. "Facility for the processing of farm products" means a facility for:

i. Processing farm crops, including the production of biofuel as defined in ORS 315.141, if at least one-quarter of the farm crops come from the farm operation containing the facility; or

ii. Slaughtering, processing or selling poultry or poultry products from the farm operation containing the facility and consistent with the licensing exemption for a person under ORS 603.038(2).

b. "Processing area" means the floor area of a building dedicated to farm product processing. "Processing area" does not include the floor area designated for preparation, storage or other farm use.

Implements HB 2844 (2019) and LCDD 13-2020.

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.

H. *Repealed by Ord. 1397.*

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 660-033-0130(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 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 subsection (I)(7)(b)(i) or (ii) of this section:

i. An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

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

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

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

(D) 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.

ii. After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to subsections (I)(7)(b)(iii) and (iv) of this section, two or more of the following criteria:

(A) Technical and engineering feasibility;

(B) 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;

(C) 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;

(D) Public health and safety; or

(E) Other requirements of state or federal agencies.

iii. As pertains to subsection (I)(7)(b)(ii) of this section, 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.

iv. The governing body of a county or its designee may consider costs associated with any of the factors listed in subsection (I)(7)(b)(ii) of this section, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.

J. Parking of not more than seven log trucks on a tract when the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.

2. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

K. Fire service facilities providing rural fire protection services.

L. Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and features, associated with a district as defined in ORS 540.505.

M. Utility Facility Service Lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

1. A public right-of-way;

2. Land immediately adjacent to a public right-of-way, provided the written consent of all adjacent property owners has been obtained; or

3. The property to be served by the utility.

N. Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249, and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids, or the on-site treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for

irrigation in connection with a use allowed in a special agriculture zone under this chapter. For the purposes of this section, on-site treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which the land application of biosolids is authorized under the license, permit or other approval.

O. Dog training classes or testing trials conducted outdoors or in agricultural buildings existing on June 4, 2012, subject to the following:

1. The number of dogs in each training class shall not exceed 10.

2. There shall be no more than six training classes per day.

3. The number of dogs participating in the testing trials shall not exceed 60.

4. There shall be no more than four testing trials per calendar year.

P. Cider business. A cider business is subject to the standards in MCC 17.125.140. [Ord. 1397 § 4 (Exh. B), 2019; Ord. 1372 § 4 (Exh. A), 2016; Ord. 1369 § 4 (Exh. B), 2016; 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. § 137.040.]

Q. Farm brewery. A farm brewery is subject to the standards in MCC 17.125.150.

Implements in code SB 287 (2019).

17.137.060 Conditional use review criteria.

The uses identified in MCC 17.137.050 shall satisfy the criteria in the applicable subsections below.

A. The following criteria apply to all conditional uses in the SA zone:

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

3. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.

4. Any noise associated with the use will not have a significant adverse impact on nearby land uses.

5. The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.

B. Non-Farm Dwellings. The following additional criteria apply to non-farm dwelling requests:

1. The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation Service in its most recent publication, unless evidence is submitted as required in MCC 17.137.120(B).

2. The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993, in a way that enables the lot or parcel to qualify for a non-farm dwelling.

3. The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated shall be considered. To address this standard, information outlined in MCC 17.137.030(D)(11)(a)(iii) shall be provided.

C. Home Occupations. Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in conjunction with the home occupation, including bed and breakfast inns, are subject to the following criteria:

1. A home occupation or bed and breakfast shall be operated by a resident of the dwelling on the property on which the business is located. Including the residents, no more than five full-time or part-time persons shall work in the home occupation ("person" includes volunteer, nonresident employee, partner or any other person).

2. It shall be operated substantially in:

a. The dwelling; or

b. Other buildings normally associated with uses permitted in the zone in which the property is located.

3. It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

4. A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.

5. A sign shall meet the standards in Chapter 17.191 MCC.

6. The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.

7. Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

D. Forest Products Processing Facility. A portable or temporary facility for the primary processing of forest products is subject to the following criteria and limitations:

1. The use shall not seriously interfere with accepted farming practices.

2. The use shall be compatible with farm uses described in ORS 215.203(2).

3. The use may be approved for a maximum one-year period, which is renewable.

4. The primary processing of a forest product, as used in this section, means the use of a chipper, stud mill, or other similar facility for initial treatment of a forest product in order to enable its shipment to market. "Forest products," as used in this section, means timber grown upon a tract where the primary processing facility is located.

E. Power Generation Facility. A power generation facility shall not preclude more than:

1. Twelve acres from use as a commercial agricultural enterprise on high-value farmland unless an exception is taken pursuant to OAR Chapter 660, Division 004.

2. Twenty acres from use as a commercial agricultural enterprise on farmland that is not high-value unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, Division 004.

F. Private Parks and Campgrounds. Private parks, playgrounds, hunting and fishing preserves, and campgrounds shall meet the following criteria:

1. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 004.

2. It shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes, and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

3. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.

4. A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:

a. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include yurts;

b. The yurt shall be located on the ground or on a wood floor with no permanent foundation.

5. Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.

6. It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

7. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

8. Emergency campgrounds may be authorized when a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610, has destroyed homes or caused residential evacuations, or both within the county or an adjacent county, provided that, in addition to the above:

a. Commercial activities shall be limited to mobile commissary services scaled to meet the needs of campground occupants.

b. Campgrounds approved under this section must be removed or converted to an allowed use within 36 months from the date of the Governor's Executive Order. The county may grant two additional 12-month extensions upon demonstration by the applicant that the campground continues to be necessary to support the natural hazard event recovery efforts because adequate amounts of permanent housing is not reasonably available.

c. Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer hook-ups shall not be provided to individual camp sites.

d. Campgrounds shall be located outside of flood, geological, or wildfire hazard areas identified in adopted comprehensive plans and land use regulations to the extent possible.

e. A plan for removing or converting the temporary campground to an allowed use at the end of the time-frame specified in paragraph (19)(c) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this paragraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance

acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal or conversion activities to be completed.

f. The Governor has issued an Executive Order declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.

g. The subject property is not irrigated.

h. The subject property is not high-value farmland.

i. The number of proposed campsites does not exceed 12; or

j. The number of proposed campsites does not exceed 36; and Campsites and other campground facilities are located at least 660 feet from adjacent lands planned and zoned for resource use under Goals 3, 4, or both.

Optional to adopt. Implements LCDC wildfire rules. Planning Commission does not recommend adopting because of the limitations in code. It would be possible to adopt at a later date if necessary.

G. Golf Course. A golf course is subject to the following limitations:

1. New golf courses shall not be permitted on high-value farmland, as defined in MCC 17.137.130(D).

2. An existing legally established golf course on high-value farmland may be expanded on the same tract consistent with the provisions of MCC 17.137.130(C).

H. Other Uses.

1. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. "Planted vineyard" means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

2. For uses listed in MCC 17.137.050(D)(3), (H)(1) and (I), new facilities on high-value farmland shall not be authorized. Existing legally established facilities on high-value farmland may be maintained, enhanced, or expanded on the same tract.

3. A living history museum related to resource-based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than a special agriculture zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one-quarter mile of an urban growth boundary.

As used in this subsection:

a. "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and event; and

b. "Local historical society" means the local historical society recognized by the county board of commissioners and organized under ORS Chapter 65.

I. Commercial Activities in Conjunction with Farm Use.

1. The commercial activity must be primarily a customer or supplier of farm uses.

2. The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.

3. The agricultural and commercial activities must occur together in the local community.

4. The products and services provided must be essential to the practice of agriculture.

J. The following criteria apply to those uses identified in MCC 17.137.050:

1. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved within three miles of an urban growth boundary unless an exception is approved pursuant to OAR Chapter 660, Division 004.

2. Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract. For the purposes of this subsection "tract" means a tract as defined in MCC 17.137.130(F) in existence on May 5, 2010.

3. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, but existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits of this subsection. [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 § 9, 2000. RZ Ord. § 137.060.]

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:

A. Minimum Parcel Size for Newly Created Parcels.

1. Farm Parcels. The minimum parcel size for any new parcel in the SA zone is 80 acres, except as provided in subsection (A)(2) of this section.

2. Non-Farm Parcels. A new non-farm parcel created pursuant to subsection (B) of this section shall only be as large as necessary to accommodate the use and any buffer area needed to ensure compatibility with adjacent farm uses.

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

1. A new non-farm parcel may be created for uses listed in MCC 17.137.040(C) and (K) and MCC 17.137.050, except the residential uses in MCC 17.137.050(A) and (B) **or a home occupation.**

2. The criteria in MCC 17.137.060 applicable to the use shall apply to the creation of the parcel.

3. A non-farm parcel shall not be approved before the non-farm use is approved.

4. A division of land for non-farm use shall not be approved unless any additional tax imposed for the change has been paid, or payment of any tax imposed is made a condition of approval.

5. A division of land may be permitted to create a parcel with an existing dwelling to be used:

a. As a residential home as described in ORS 197.660(2) only if the dwelling has been approved under MCC 17.136.050(L).

b. For a historic property that meets the definition in ORS 358.480 and is listed on the National Register of Historic Places.

c. Parcels created under this section must meet the following criteria:

i. The new parcel containing the dwelling must be a minimum of one acre in size.

ii. The proposal shall not involve a unit of land containing a farm-relative dwelling previously authorized under the Marion County Code or previous ordinance.

iii. The new parcel shall not be larger than the minimum size necessary for the use, taking into consideration septic system, septic repair area, water source, the dwelling, and accessory buildings.

iv. The new parcel shall be adequately sized so that the existing dwelling meets the special setbacks from parcels in farm and forest use as described in 17.136.070 if it was able to meet the special setbacks previously.

This addition to the Code brings the County into compliance with ORS 215.263(9), which allows the creation of non-farm parcels containing dwellings that qualify either as historic properties or are approved residential homes. The addition of this option to the code provides property owners with flexibility to separate the dwelling from farm land. Clarifies that a home occupation is not use of land separate from a dwelling which can be divided off.

~~5~~6. If the land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels subject to the following criteria:

a. A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel;

b. A parcel created pursuant to this subsection that does not contain a dwelling:

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;

iii. May not be considered in approving a redesignation or rezoning of forest lands or farmlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and

c. May not be smaller than 25 acres unless the purpose of the land division is:

i. To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or

ii. To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.

~~6~~7. A division of land smaller than the minimum lot or parcel size described in subsections (A) and (B) of this section may be approved to establish a religious organization including cemeteries in conjunction with the religious organization if they meet the following requirements:

a. The religious organization has been approved under MCC 17.137.040(C);

b. The newly created lot or parcel is not larger than five acres; and

c. The remaining lot or parcel, not including the religious organization, meets the minimum lot or parcel size described in subsections (A) and (B) of this section either by itself or after it is consolidated with another lot or parcel.

~~7~~8. 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 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.~~

This is a requirement in forest zones, not farm zones.

9. Land that is divided under this section for a 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 may not later be rezoned by the county for retail, commercial, industrial or other nonresource use, except as provided under the statewide land use planning goals or under ORS 197.732.

Incorporates changes made by SB 408 (2019) and LCDD 5-2020.

C. Property Line Adjustments.

1. When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to subsection (A)(1) of this section, the same number of lots or parcels shall be as large or larger than the minimum parcel size after the adjustment. When all lots or parcels subject to the proposed adjustment are as large or larger than the minimum parcel size, no lot or parcel shall be reduced below the applicable

minimum parcel size. If all lots or parcels are smaller than the minimum parcel size before the property line adjustment, the minimum parcel size pursuant to this section does not apply to those lots or parcels.

2. If the minimum parcel size in subsection (A)(1) of this section is larger than 80 acres, and a lot or parcel subject to property line adjustment is smaller than the minimum parcel size but larger than 80 acres, the lot or parcel shall not be reduced in size through property line adjustment to less than 80 acres.

3. Any property line adjustment shall result in a configuration of lots or parcels that are at least as suitable for commercial agriculture as were the parcels prior to the adjustment.

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;

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; or

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.

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;

b. Does not increase the potential number of dwellings on the resulting parcels; and

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. [Ord. 1369 § 4 (Exh. B), 2016; 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.]

17.137.110 Permit expiration dates.

A. Notwithstanding other provisions of this title, a discretionary decision, except for a land division, approving a proposed development in the SA zone expires two years from the date of the final decision if the development action is not initiated and all required conditions are met in that period. The director may grant an extension period of up to 12 months if:

1. An applicant makes a written request for an extension of the development approval period.

2. The request is submitted to the county prior to expiration of the approval period.

3. The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period.

4. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

B. Approval of an extension granted under this section is not a land use decision described in ORS 197.015 and is not subject to appeal as a land use decision.

C. Additional ~~one-year~~ extensions may be authorized where applicable criteria for the decision have not changed.

D. If a permit is approved for a proposed residential development in the SA zone, the permit shall be valid for four years. For the purposes of this subsection, "residential development" only includes the dwellings provided for under MCC 17.137.020(D), 17.137.030(D) and (E), and 17.137.050(A).

E. ~~An~~ **The first** extension of a permit consistent with subsection (D) of this section and with subsections (A)(1) through (4) of this section and where applicable criteria for the decision have not changed shall be valid for two years.

F. Up to five additional extensions of the permit consistent with subsection (D) of this section and with subsections (A)(1) through (4) of this section and where applicable criteria for the decision have not changed shall be valid for one year each.

[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. § 137.110.]

Modifies ode to be consistent with statute.

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:

A. Farm uses (see farm use definition, MCC 17.110.223), but not including a medical marijuana processor (see MCC 17.110.376), medical marijuana producer (see MCC 17.110.378), or a medical marijuana dispensary (see MCC 17.110.374).

B. Buildings, other than dwellings, customarily provided in conjunction with farm or forest use.

C. Forest operations or forest practices including, but not limited to, reforestation, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash pursuant to ORS 527 (Forest Practices Act).

D. Temporary forest labor camp.

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. 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 nonresidential 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 a dwelling replaced pursuant to MCC 17.138.070(C) when a fire report is provided at the time building permits are applied for.

F. Temporary on-site structures which are auxiliary, as defined in MCC 17.138.120(A), to and used during the term of a particular forest operation pursuant to ORS 527.

G. Physical alterations to the land auxiliary, as defined in MCC 17.138.120(A), to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities pursuant to ORS 527.

H. Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.

I. Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups.

J. Temporary portable facility for the primary processing of forest products.

K. Exploration for mineral and aggregate resources as defined in ORS Chapter 517.

L. Private hunting and fishing operations without any lodging accommodations.

M. Towers and fire stations for forest fire protection.

N. Widening of roads, including public road and highway projects as follows:

1. Climbing and passing lanes within the street right-of-way existing as of July 1, 1987.

2. Reconstruction or modification of public streets, including the placement of utility facilities overhead and in the subsurface of public roads and highways along public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new parcels result.

3. Temporary public street detours that will be abandoned and restored to original condition or use at such time as no longer needed.

4. Minor betterment of existing public street related facilities such as maintenance yards, weigh stations and rest areas, within rights-of-way existing as of July 1, 1987, and contiguous publicly owned property utilized to support the operation and maintenance of public streets.

O. Water intake facilities, canals and distribution lines for farm irrigation and ponds.

P. Caretaker dwelling for public park or public fish hatchery.

Q. Uninhabitable structures accessory to fish and wildlife enhancement.

R. Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.

S. Destination resorts reviewed and approved pursuant to the destination resort siting requirements in ORS 197.435 through 197.465 and State Land Use Goal 8.

T. Disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation. [Ord. 1372 § 4 (Exh. A), 2016; Ord. 1369 § 4 (Exh. B), 2016; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1168 § 5, 2002; Ord. 1125 § 10, 2000. RZ Ord. § 138.020.]

U. Temporary storage site for nonhazardous debris resulting from recovery efforts associated with damage caused by a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610 subject to Department of Environmental Quality requirements and all other applicable provisions of law.

Implements LCDC wildfire rules.

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.

A. Lot-of-Record Dwellings. A single-family dwelling, subject to the special use and siting requirements in MCC 17.138.060, may be allowed on a lot or parcel, provided:

1. The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner:

a. Since prior to January 1, 1985; or

b. By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel prior to January 1, 1985.

c. "Owner," as the term is used in this section, includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, step-parent, step-child, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

2. The tract on which the dwelling will be sited does not include a dwelling. "Tract" means all contiguous lands in the same ownership.

3. The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract.

4. The subject tract is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species. (See definitions in MCC 17.138.120(B) and (C).)

5. The subject tract is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and be either paved or surfaced with rock, and shall not be:

a. A United States Bureau of Land Management road; or

b. A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

6. 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.

7. The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.

8. The remaining portions of the tract and the subject lot or parcel are consolidated into a single lot or parcel when the dwelling is allowed.

B. Template Dwelling. A single-family dwelling, subject to the special use and siting requirements in MCC 17.138.060, may be allowed on a lot or parcel, provided:

1. The tract on which the dwelling will be sited does not include a dwelling. "Tract" means all contiguous lands in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

2. **If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract.** ~~No dwellings are allowed on other lots or parcels that make up the tract, and~~ ~~t~~**T**he other lots or parcels in the tract cannot be used to justify another forest dwelling. Evidence must be provided that covenants, conditions and restrictions have been recorded with the county clerk of the county or counties where the property is located for any other lot or parcel within the subject tract.

3. The lot or parcel is:

a. Predominantly composed of soils that are capable of producing zero to 49 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least three other lots or parcels that existed on January 1, 1993, and ~~all or part of~~ at least three dwellings that existed on January 1, 1993 **on the lots or parcels**, and continue to exist; or

b. Predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least seven other lots or parcels that existed on January 1, 1993, and ~~all or part of~~ at least three dwellings that existed on January 1, 1993 **on the lots or parcels**, and continue to exist; or

c. Predominantly composed of soils that are capable of producing more than 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least 11 other lots or parcels that existed on January 1, 1993, and ~~all or part of~~ at least three dwellings that existed on January 1, 1993 **on the lots or parcels**, and continue to exist; and

d. If the tract is 60 acres or larger and abuts a road or perennial stream the measurements shall be made by using a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road or stream; and

If a road crosses the tract on which the dwelling will be located, at least one of the required dwellings shall be on the same side of the road as the proposed dwelling and be located within the 160-acre rectangle or within one-quarter mile from the edge of the subject tract and not outside the length of the 160-acre rectangle; or

e. If the tract abuts a road that existed on January 1, 1993, and subsection (B)(3)(d) of this section does not apply, the measurements may be made using a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road.

f. Lots or parcels within an urban growth boundary cannot be used to satisfy the requirements in this subsection.

g. Any property line adjustment to the lot or parcel after January 1, 2019, did not have the effect of qualifying the lot or parcel for a dwelling under this section; and

h. As used in this section, "centered on the subject tract" means the mathematical centroid of the tract.

Incorporates into code HB 2225 (2019) and LCDD 4-2020. Amends language related to existing dwellings to match state rule.

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.

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.

D. Dwelling Alteration and Replacement. Alteration, restoration or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.138.060(B), other than as permitted in MCC 17.138.020(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; 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. In the case of replacement, the replacement dwelling shall meet siting requirements set forth in MCC 17.138.060(A)(2) or (3). [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1168 § 5, 2002; Ord. 1125 § 10, 2000. RZ Ord. § 138.030.]

7. A lawfully established dwelling that is destroyed by wildfire may be replaced within 60 months when the county finds, based on substantial evidence, that the dwelling to be replaced contained those items listed in (1) through (4) above. For purposes of this subsection, substantial evidence includes, but is not limited to, county assessor data. The property owner of record at the time of the wildfire may reside on the subject property in an existing building, tent, travel trailer, yurt, recreational vehicle, or similar accommodation until replacement has been completed or the time for replacement has expired.

Implements LCDC wildfire rules.

E. Relative Forest Dwelling. A single-family dwelling for a relative to assist in the harvesting, processing or replanting of forest products or in the management, operation, planning, acquisition, or supervision of forest lots or parcels of the owner may be established provided:

(1) The new single-family dwelling unit will be on a lot or parcel no smaller than the minimum size in 17.138.080;

(2) The new single-family dwelling unit will be on a lot or parcel that contains exactly one existing single-family dwelling unit that was lawfully;

(A) In existence before November 4, 1993; or

(B) Lawfully established or approved as a replacement dwelling.

(3) The shortest distance between any portion of the new single-family dwelling unit and any portion of the existing single-family dwelling unit is no greater than 200 feet;

(4) The lot or parcel is within a rural fire protection district;

(5) The new single-family dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation;

(6) As a condition of approval of the new single-family dwelling unit shall file the declaratory statement in MCC 17.138.060(B) and in addition, the property owner shall agree to acknowledge and record in the deed records for the county in which the lot or parcel is located, one or more instruments containing irrevocable deed restrictions that;

(A) Prohibit the owner and the owner's successors from partitioning the property to separate the new single-family dwelling unit from the lot or parcel containing the existing single-family dwelling unit; and

(B) Require that the owner and the owner's successors manage the lot or parcel as a working forest under a written forest management plan, as defined in ORS 526.455 that is attached to the instrument.

(7) The existing single-family dwelling is occupied by the owner or a relative;

(8) The new single-family dwelling unit will be occupied by the owner or a relative;

(9) The owner or a relative occupies the new single-family dwelling unit to allow the relative to assist in the harvesting, processing or replanting of forest products or in the management, operation, planning, acquisition, or supervision of forest lots or parcels of the owner; and

(10) If a new single-family dwelling unit is constructed under this section, a county may not allow the new or existing dwelling unit to be used for vacation occupancy as defined in ORS 90.100.

(11) As used in this section, "owner or a relative" means the owner of the lot or parcel, or a relative of the owner or the owner's spouse, including a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew, or first cousin of either.

Incorporates into code HB 2569 (2019) and LCDD 4-2020.

17.138.050 Conditional use review criteria.

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

A. The following criteria apply to all conditional uses in the TC zone:

1. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming 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 in exception areas approved under ORS 197.731, or in an acknowledged urban growth boundary.

2. The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

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

4. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, and air and water quality.

5. Any noise associated with the use will not have a significant adverse impact on nearby land uses.

6. The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.

B. Home Occupations. Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in conjunction with home occupations and/or bed and breakfast inns, are subject to the following criteria:

1. A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property on which the business is located. Including residents, no more than five full-time or part-time persons shall work in the home occupation ("person" includes volunteer, nonresident employee, partner or any other person).

2. It shall be operated substantially in:

a. The dwelling; or

b. Other buildings normally associated with uses permitted in the zone in which the property is located.

3. It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

4. A home occupation shall not be authorized in structures accessory to resource use.

5. A sign shall meet the standards in Chapter 17.191 MCC.

6. The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.

7. Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone or mail order off-site sales, and incidental sales related to the home occupation services being provided are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

C. Private Parks and Campgrounds. Private parks and campgrounds shall meet the following criteria:

1. Campgrounds in private parks shall only be those allowed by this subsection.

2. Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.71 and OAR Chapter 660, Division 004.

3. Campgrounds shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes, and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

4. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation and other natural features between campsites.

5. A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:

a. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include yurts;

b. The yurt shall be located on the ground or on a wood floor with no permanent foundation.

6. Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.

7. It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

8. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

9. Emergency campgrounds may be authorized when a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610, has destroyed homes or caused residential evacuations, or both within the county or an adjacent county, provided that, in addition to the above:

a. Commercial activities shall be limited to mobile commissary services scaled to meet the needs of campground occupants.

b. Campgrounds approved under this section must be removed or converted to an allowed use within 36 months from the date of the Governor's Executive Order. The county may grant two additional 12-month extensions upon demonstration by the applicant that the campground continues to be necessary to support the natural hazard event recovery efforts because permanent housing units replacing those lost to the natural hazard event are not available in sufficient quantities.

c. Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer hook-ups shall not be provided to individual camp sites.

d. Campgrounds shall be located outside of flood, geological, or wildfire hazard areas identified in adopted comprehensive plans and land use regulations to the extent possible.

e. A plan for removing or converting the temporary campground to an allowed use at the end of the time-frame specified in paragraph (4)(e)(B) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this subparagraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal or conversion activities to be completed.

f. The Governor has issued an Executive Order declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.

g. The number of proposed campsites does not exceed 12; or

h. The number of proposed campsites does not exceed 36; and Campsites and other campground facilities are located at least 660 feet from adjacent lands planned and zoned for resource use under Goals 3, 4, or both.

Optional to adopt. Implements LCDC wildfire rules. Planning Commission does not recommend adopting because of the limitations in code. It would be possible to adopt at a later date if necessary.

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 either game 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.

E. Youth Camps.

1. Youth camps shall be owned and leased and operated by a state or local government or a nonprofit corporation as defined under ORS 65.001, to provide an outdoor recreational and educational experience for persons 21 years of age or younger. Youth camps do not include any manner of juvenile detention center or facility.

2. The number of overnight camp participants that may be accommodated shall be determined by the board, or its designee, based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp. A youth camp shall not provide overnight accommodations for more than 350 youth camp participants, including staff, except the board, or its designee, may allow up to eight nights during the calendar year when the number of overnight participants may exceed the total number of overnight participants.

Overnight stays for adult programs primarily for individuals over 21 years of age, not including staff, shall not exceed 10 percent of the total camper nights offered by the youth camp.

3. A campground as described in MCC 17.138.040(G)(1) and (2) shall not be established in conjunction with a youth camp.

4. A youth camp shall not be allowed in conjunction with an existing golf course and a youth camp shall not interfere with the exercise of legally established water rights on adjacent properties.

5. The youth camp shall be located on a lawful parcel that provides a forested setting to ensure outdoor experience without depending upon the use of adjacent public and private land. This determination shall be based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp, as well as the number of overnight participants and type and number of proposed facilities. The parcel shall be a minimum of 40 acres with suitable protective buffers to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands. The buffers shall consist of forest vegetation, topographic or other natural features as well as structural setbacks from adjacent public and private lands, roads, and riparian areas. The structural setback from roads and adjacent public and private property shall be 250 feet unless the board, or its designee, sets a different setback based upon the following criteria that may be applied on a case-by-case basis:

a. The proposed setback will prevent conflicts with commercial resource management practices, and will prevent a significant increase in safety hazards associated with vehicular traffic, and will provide an appropriate buffer from visual and audible aspects of youth camp activities from other nearby and adjacent resource lands.

6. The parcel shall be suitable to provide for the establishment of sewage disposal facilities without requiring a sewer system as defined in OAR 660-011-0060(1)(f). Prior to granting

final approval, the board or its designee shall verify that a proposed youth camp will not result in the need for a sewer system.

7. A youth camp may provide for the following facilities:

a. Recreational facilities limited to passive improvements, such as open areas suitable for ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horseback riding or swimming that can be provided in conjunction with the site's natural environment. Intensively developed facilities such as tennis courts, gymnasiums, and golf courses shall not be allowed. One swimming pool may be allowed if no lake or other water feature suitable for aquatic recreation is located on the subject property or immediately available for youth camp use.

b. Primary cooking and eating facilities shall be included in a single building. Except in sleeping quarters, the board or its designee may allow secondary cooking and eating facilities in one or more buildings designed to accommodate other youth camp activities. Food services shall be limited to the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants.

c. Bathing and laundry facilities except that they shall not be provided in the same building as sleeping quarters and up to three camp activity buildings, not including primary cooking and eating facilities.

d. Sleeping quarters including cabins, tents or other structures. Sleeping quarters may include toilets, but, except for the caretaker's dwelling, shall not include kitchen facilities. Sleeping quarters shall be provided only for youth camp participants and shall not be offered as overnight accommodations for persons not participating in youth camp activities or as individual rentals.

e. Administrative, maintenance and storage buildings; permanent structures for administrative services, first aid, equipment and supply storage, and for use as an infirmary if necessary or requested by the applicant, and covered areas that are not fully enclosed.

f. An infirmary may provide sleeping quarters for the medical care provider (e.g., doctor, registered nurse, emergency medical technician, etc.).

g. A caretaker's residence may be established in conjunction with a youth camp prior to or after the effective date of the ordinance codified in this section, if no other dwelling exists on the subject property.

8. A proposed youth camp shall comply with the following safety requirements in OAR 660-006-0035 and shall have a fire safety protection plan developed for each youth camp that includes fire prevention measures; on-site pre-suppression and suppression measures; and the establishment and maintenance of fire safe area(s) in which camp participants can gather in the event of a fire.

a. Except as determined under subsections (E)(8)(b) and (c) of this section, a youth camp's on-site fire suppression capability shall at least include a 1,000-gallon mobile water supply that can access all areas of the camp; and a 30-gallon-per-minute water pump and an adequate amount of hose and nozzles; and a sufficient number of fire-fighting hand tools; and trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.

b. An equivalent level of fire suppression facilities may be determined by the board or its designee. The equivalent capability shall be based on the Oregon Department of Forestry's (ODF) wildfire hazard zone rating system, the response time of the effective wildfire suppression agencies, and consultation with ODF personnel if the camp is within an area protected by the Oregon Department of Forestry and not served by a local structural fire protection provider.

c. The provisions for on-site fire suppression may be waived by the board or its designee if the youth camp is located in an area served by a structural fire protection provider and that provider informs the board in writing that on-site fire suppression at the camp is not needed. [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1168 § 5, 2002; Ord. 1125 § 10, 2000. RZ Ord. § 138.050.]

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.

1. The minimum parcel size is 80 acres, except as provided in subsection (A)(2) of this section.

2. A new parcel less than 80 acres may be approved as follows:

a. For a permitted use listed in MCC 17.138.020(R), (S) and (T); or

b. For a conditional use listed in MCC 17.138.040(C)(1) and (2); (D)(1); (E)(1) through (4); (G)(1) and (3); (H); (I); (J); (L) and (M).

c. Criteria applicable to the use shall apply to the parcel.

d. The parcel shall not be approved before the use is approved.

e. The parcel containing the use described in subsection (A)(2)(a) or (b) of this section shall be the minimum size necessary to accommodate the use.

f. The original parcel was less than 80 acres.

3. A division of land to create two parcels for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase one of the resulting parcels may be approved as follows:

a. A parcel created by the land division that is not sold to a provider of public parks or open space or to a not-for-profit land conservation organization must comply with the following:

i. If the parcel contains a dwelling or another use allowed under ORS Chapter 215, the parcel must be large enough to support continued residential use or other allowed use of the parcel; or

ii. If the parcel does not contain a dwelling, the parcel is eligible for siting a dwelling as may be authorized under ORS 195.120 or as may be authorized under provisions contained in MCC 17.138.030(A), (B), or (C), based on the size and configuration of the parcel.

b. Before approving a proposed division of land under this section, the governing body of a county or its designee shall require as a condition of approval that the provider of public parks or open space, or the not-for-profit land conservation organization, present for recording in the deed records for the county in which the parcel retained by the provider or organization is located an irrevocable deed restriction prohibiting the provider or organization and their successors in interest from:

i. Establishing a dwelling on the parcel or developing the parcel for any use not authorized in a forest zone or mixed farm and forest zone except park or conservation uses; and

ii. Pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

c. If a proposed division of land under this section results in the disqualification of a parcel for a special assessment or the withdrawal of a parcel from designation as riparian habitat, the owner must pay additional taxes before the county may approve the division.

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 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~~**iv**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.

Corrects location of criteria.

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 definition).~~

Removes criterion that parcel be capable of minimum production so that sizes can be adjusted to create larger timber parcels.

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 that the minimum tract size required to qualify the vacant tract for a dwelling;

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; or

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. [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1168 § 5, 2002; Ord. 1125 § 10, 2000. RZ Ord. § 138.080.]

17.138.110 Permit expiration dates.

A. Notwithstanding other provisions of this title, a discretionary decision, except for a land division, approving a proposed development in the TC zone expires two years from the date of the final decision if the development action is not initiated and all required conditions are met in that period. The director may grant an extension period of up to 12 months if:

1. An applicant makes a written request for an extension of the development approval period.

2. The request is submitted to the county prior to expiration of the approval period.

3. The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period.

4. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

B. Approval of an extension granted under this section is not a land use decision described in ORS 197.015 and is not subject to appeal as a land use decision.

C. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

D. If a permit is approved for a proposed residential development in the TC zone, the permit shall be valid for four years. For the purposes of this subsection, "residential development" only includes the dwellings provided for under MCC 17.138.020(E) and 17.138.030.

E. ~~An~~ **The first** extension of a permit consistent with subsection (D) of this section and with subsections (A)(1) through (4) of this section and where applicable criteria for the decision have not changed shall be valid for two years.

F. Up to five additional extensions of the permit consistent with subsection (D) of this section and with subsections (A)(1) through (4) of this section and where applicable criteria for the decision have not changed shall be valid for one year each.

[Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1204 § 4, 2004; Ord. 1168 § 5, 2002; Ord. 1125 § 10, 2000. RZ Ord. § 138.110.]

Modifies code to be consistent with statute.

Chapter 17.139

FT (FARM/TIMBER) ZONE

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:

A. Farm uses (see farm use definition, MCC 17.110.223), but not including a medical marijuana processor (see MCC 17.110.376), medical marijuana producer (see MCC 17.110.378), or a medical marijuana dispensary (see MCC 17.110.374).

B. Buildings, other than dwellings, customarily provided in conjunction with farm use.

C. Forest operations or forest practices including, but not limited to, reforestation, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash pursuant to ORS Chapter 527 (Forest Practices Act).

D. Temporary forest labor camp.

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. 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 nonresidential 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 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 a dwelling replaced pursuant to MCC 17.139.080(C) when a fire report is provided at the time building permits are applied for.

7. Accessory farm dwellings destroyed by a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610 may be replaced. The temporary use of modular structures, manufactured housing, fabric structures, tents and similar accommodations is allowed until replacement under this subsection occurs.

Implements LCDC wildfire rules.

F. Temporary on-site structures auxiliary, as defined in MCC 17.139.130(A), to and used during the term of a particular forest operation pursuant to ORS Chapter 527.

G. Physical alteration to the land auxiliary, as defined in MCC 17.139.130(A), to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities pursuant to ORS Chapter 527.

H. Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources, including creation, restoration, or enhancement of wetlands.

I. Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups.

J. Exploration for mineral and aggregate resources as defined in ORS Chapter 517.

K. Private hunting and fishing operations without any lodging accommodations.

L. Towers and fire stations for forest fire protection.

M. Widening of roads, including public road and highway projects as follows:

1. Climbing and passing lanes within the street right-of-way existing as of July 1, 1987.

2. Reconstruction or modification of public streets, including the placement of utility facilities overhead and in the subsurface of public roads and highways along public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new parcels result.

3. Temporary public street detours that will be abandoned and restored to original condition or use at such time as no longer needed.

4. Minor betterment of existing public street related facilities such as maintenance yards, weigh stations and rest areas, within rights-of-way existing as of July 1, 1987, and contiguous publicly owned property utilized to support the operation and maintenance of public streets.

N. Water intake facilities, canals and distribution lines for farm irrigation and ponds.

O. Caretaker residences for public park or public fish hatchery.

P. Uninhabitable structures accessory to fish and wildlife enhancement.

Q. Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.

R. On-site filming and activities accessory to filming, as defined in MCC 17.139.130(B), if the activity would involve no more than 45 days on any site within a one-year period.

S. Composting operations and facilities limited to those that are accepted farming practices in conjunction with and auxiliary to farm use on the subject tract, and that meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-0060. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

T. Single agri-tourism or other commercial event, excluding events that promote the sale of marijuana products or extracts, subject to MCC 17.125.130. [Ord. 1372 § 4 (Exh. A), 2016; Ord. 1369 § 4 (Exh. B), 2016; 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 § 11, 2000. RZ Ord. § 139.020.]

U. Temporary storage site for nonhazardous debris resulting from recovery efforts associated with damage caused by a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610 subject to Department of Environmental Quality requirements and all other applicable provisions of law.

Implements LCDC wildfire rules.

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~~**E**) 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~~**F**) 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.

A. Lot-of-Record 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 sited was lawfully created and was acquired and owned continuously by the present owner:

a. Since prior to January 1, 1985; or

b. By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel prior to January 1, 1985;

c. "Owner," as the term is used in this section only, includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, step-parent, step-child, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members.

2. The tract on which the dwelling will be sited does not include a dwelling. "Tract" means all contiguous lands in the same ownership.

3. If the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract.

4. The subject tract is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species. (See definitions in MCC 17.139.130(H) and (I).)

5. The subject tract is located within 1,500 feet of a public road as defined under ORS 368.001 that provides or will provide access to the subject tract. The road shall be maintained and be either paved or surfaced with rock, and shall not be:

a. A United States Bureau of Land Management road; or

b. A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

6. 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.

7. The dwelling will be consistent with the density policy if located in the big game habitat area identified in the Comprehensive Plan.

8. The remaining portions of the tract and the subject lot or parcel are consolidated into a single lot or parcel when the dwelling is allowed.

B. Template 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 tract on which the dwelling will be sited does not include a dwelling. "Tract" means all contiguous lands in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

2. **If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract.** ~~No dwellings are allowed on other lots or parcels that make up the tract, and~~ ~~t~~**T**he other lots or parcels in the tract cannot be used to justify another forest dwelling. Evidence must be provided that covenants, conditions and restrictions have been recorded with the county clerk of the county or counties where the property is located for any other lot or parcel within the subject tract.

3. The lot or parcel is:

a. Predominantly composed of soils that are capable of producing zero to 49 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least three other lots or parcels that existed on January 1, 1993, and ~~all or part of~~ at least three dwellings that existed on January 1, 1993 **on the lots or parcels**, and continue to exist; or

b. Predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least seven other lots or parcels that existed on January 1, 1993 and ~~all or part of~~ at least three dwellings that existed on January 1, 1993 **on the lots or parcels**, and continue to exist; or

c. Predominantly composed of soils that are capable of producing more than 85 cubic feet per acre per year of wood fiber, and there are within a 160-acre square centered on the center of the subject tract all or part of at least 11 other lots or parcels that existed on January 1, 1993 and ~~all or part of~~ at least three dwellings that existed on January 1, 1993 **on the lots or parcels**, and continue to exist; and

d. If the tract is 60 acres or larger and abuts a road or perennial stream the measurements shall be made by using a 160-acre rectangle that is one mile long and one-quarter mile

wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road or stream; and

If a road crosses the tract on which the dwelling will be located, at least one of the required dwellings shall be on the same side of the road as the proposed dwelling and be located within the 160-acre rectangle or within one-quarter mile from the edge of the subject tract and not outside the length of the 160-acre rectangle; or

e. If the tract abuts a road that existed on January 1, 1993, and subsection (D) of this section does not apply, the measurements may be made using a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and is to the maximum extent possible aligned with the road.

f. Lots or parcels within an urban growth boundary cannot be used to satisfy the requirements in this subsection.

g. Any property line adjustment to the lot or parcel after January 1, 2019, did not have the effect of qualifying the lot or parcel for a dwelling under this section; and

h. As used in this section, "centered on the subject tract" means the mathematical centroid of the tract.

Incorporates into code HB 2225 (2019) and LCDD 4-2020. Amends language related to existing dwellings to match state rule.

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.

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.

D. 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; and

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

6. In the case of replacement, the replacement dwelling shall meet siting requirements set forth in MCC 17.139.070(A)(2) or (3).

7. A lawfully established dwelling that is destroyed by wildfire may be replaced within 60 months when the county finds, based on substantial evidence, that the dwelling to be replaced contained those items listed in (1) through (4) above. For purposes of this subsection, substantial evidence includes, but is not limited to, county assessor data. The property owner of record at the time of the wildfire may reside on the subject property in an existing building, tent, travel trailer, yurt, recreational vehicle, or similar accommodation until replacement has been completed or the time for replacement has expired.

Implements LCDC wildfire rules.

E. Relative Forest Dwelling. A single-family dwelling for a relative to assist in the harvesting, processing or replanting of forest products or in the management, operation, planning, acquisition, or supervision of forest lots or parcels of the owner may be established provided:

(1) The new single-family dwelling unit will be on a lot or parcel no smaller than the minimum size in 17.139.090;

(2) The new single-family dwelling unit will be on a lot or parcel that contains exactly one existing single-family dwelling unit that was lawfully;

(A) In existence before November 4, 1993; or

(B) Lawfully established or approved as a replacement dwelling.

(3) The shortest distance between any portion of the new single-family dwelling unit and any portion of the existing single-family dwelling unit is no greater than 200 feet;

(4) The lot or parcel is within a rural fire protection district;

(5) The new single-family dwelling unit complies with the Oregon residential specialty code relating to wildfire hazard mitigation;

(6) As a condition of approval of the new single-family dwelling unit shall file the declaratory statement in MCC 17.139.070(B) and in addition, the property owner shall agree to acknowledge and record in the deed records for the county in which the lot or parcel is located, one or more instruments containing irrevocable deed restrictions that;

(A) Prohibit the owner and the owner's successors from partitioning the property to separate the new single-family dwelling unit from the lot or parcel containing the existing single-family dwelling unit; and

(B) Require that the owner and the owner's successors manage the lot or parcel as a working forest under a written forest management plan, as defined in ORS 526.455 that is attached to the instrument.

(7) The existing single-family dwelling is occupied by the owner or a relative;

(8) The new single-family dwelling unit will be occupied by the owner or a relative;

(9) The owner or a relative occupies the new single-family dwelling unit to allow the relative to assist in the harvesting, processing or replanting of forest products or in the management, operation, planning, acquisition, or supervision of forest lots or parcels of the owner; and

(10) If a new single-family dwelling unit is constructed under this section, a county may not allow the new or existing dwelling unit to be used for vacation occupancy as defined in ORS 90.100.

(11) As used in this section, "owner or a relative" means the owner of the lot or parcel, or a relative of the owner or the owner's spouse, including a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew, or first cousin of either.

Incorporates into code HB 2569 (2019) and LCDD 4-2020.

~~E~~**F**. 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:

1. It is located on high-value farmland, as defined in MCC 17.139.130(E) on a lot or parcel predominantly devoted to farm use on January 1, 1993, and satisfies the following standards:

a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.

b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $80,000 in gross annual income from the sale of farm products, not including marijuana. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted.

c. The subject tract is currently employed for the farm use that produced the income required in subsection (E)(1)(b) of this section.

d. The dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (E)(1)(b) of this section; or

2. It is not located on high-value farmland, as defined in MCC 17.139.130(E), on a lot or parcel predominantly devoted to farm use on January 1, 1993, and satisfies the following standards:

a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.

b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $40,000 in gross annual income from the sale of farm products, not including marijuana. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted.

c. The subject tract is currently employed for the farm use that produced the income required in subsection (E)(1)(b) of this section.

d. The dwelling will be occupied by a person or persons who produced the commodities which generated the income required in subsection (E)(1)(b) of this section; or

3. It is not located on high-value farmland, as defined in MCC 17.139.130(E), on a lot or parcel predominantly devoted to farm use on January 1, 1993, and satisfies the following standards:

a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.

b. The parcel on which the dwelling will be located is at least 160 acres.

c. The subject tract is currently employed for farm use, as defined in ORS 215.203, other than marijuana production.

d. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing, or caring for livestock, at a commercial scale;

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 for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and

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 (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 for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and

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;

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.

~~F~~**G**. Secondary Farm Dwellings. Secondary (accessory) dwellings, subject to the special use and siting requirements in MCC 17.139.070, customarily provided in conjunction with farm use, on a lot or parcel predominantly devoted to farm use on January 1, 1993, when:

1. The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.

2. There is no other dwelling on lands in the FT, SA or EFU zones owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.

3. The proposed dwelling will be located:

a. On the same lot or parcel as the primary farm dwelling; or

b. On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or

c. On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (F)(1) of this section; or

d. On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm worker housing as that existing on farm operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

e. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (F)(4) of this section, whichever is applicable.

4. The primary dwelling to which the proposed dwelling would be accessory satisfies the following criteria:

a. On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $40,000 in gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years; or

b. On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $80,000 in gross annual income from the sale of farm products, not including marijuana, in the last two years, three of the last five years, or the average of the best three of the last five years;

c. The primary dwelling is located on a commercial dairy farm as defined in MCC 17.139.130(C); and

i. The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

ii. The Oregon Department of Agriculture has approved a permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and

iii. The Oregon Department of Agriculture has approved a producer license for the sale of dairy products under ORS 621.072;

d. In determining the gross income in subsections (F)(4)(a) and (b) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

5. The dwelling will be consistent with the fish and wildlife habitat policies of the Comprehensive Plan if located in a designated big game habitat area.

6. ~~Secondary farm dwellings shall be a manufactured home, or other type of attached multi-unit residential structure allowed by the applicable State Building Code, and~~ ~~a~~ **A** deed restriction (removal agreement) is filed with the county clerk requiring the removal of the ~~manufactured~~ home, or removal, demolition or conversion to a nonresidential use, if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.

Clarifies that not all secondary farm dwelling must be manufactured consistent with administrative rule.

~~G~~**H**. A secondary single-family dwelling on real property used for farm use since at least January 1, 1993, subject to the special use and siting requirements in MCC 17.139.070, and subject to the following standards:

1. A dwelling on property used for farm use located on the same lot or parcel as the dwelling of the farm operator, and occupied by a relative of the farm operator or farm operator's spouse, which means grandparent, step-grandparent, grandchild, parent, step-parent, step-child, child, brother, sister, step-sibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use.

2. The farm operator shall continue to play the predominant role in management and use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding, and marketing.

3. A deed restriction is filed with the county clerk requiring removal of the dwelling when the occupancy or use no longer complies with the criteria or standards under which the dwelling was originally approved.

4. For purposes of this subsection, a commercial farm operation is one that meets the income requirements for a primary farm dwelling identified in subsection (E)(1)(b) of this section, ~~and the parcel where the dwelling is proposed contains a minimum of 80 acres.~~

Change would make code consistent with administrative rule.

5. 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 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.

~~H~~**I**. Lot-of-Record Dwellings. A lot-of-record dwelling on a lot or parcel predominantly devoted to farm use on January 1, 1993, subject to the special use and siting requirements in MCC 17.139.070, and subject to the following standards and criteria:

1. The lot or parcel on which the dwelling will be sited was lawfully created and acquired and owned continuously by the present owner:

a. Since prior to January 1, 1985; or

b. By devise or intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

c. "Owner," as the term is used in this section only, includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, step-parent, step-child, grandparent, or grandchild of the owner or business entity owned by any one or combination of these family members;

2. The tract on which the dwelling will be sited does not include a dwelling; and

3. If the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract; and

4. When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed; and

5. The request is not prohibited by, and complies with, the Comprehensive Plan and other provisions of this title, including but not limited to floodplain, greenway, and big game habitat area restrictions; and

6. The proposed dwelling will not:

a. Exceed the facilities and service capabilities of the area.

b. Create conditions or circumstances contrary to the purpose of the FT zone; and

7. A lot-of-record dwelling approval may be transferred one time only by a person who has qualified under this section to any other person after the effective date of the land use decision; and

8. The county assessor shall be notified that the county intends to allow the dwelling; and

9. The lot or parcel on which the dwelling will be sited is not high-value farmland as defined in MCC 17.139.130(E); or

10. The lot or parcel on which the dwelling will be sited is high-value farmland as defined in MCC 17.139.130(E)(2) or (3), and:

a. Is 21 acres or less in size; and

b. The tract on which the dwelling is to be sited is not a flag lot and is:

i. Bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on them on January 1, 1993; or

ii. Bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract. No more than two of the four dwellings may be within an urban growth boundary; or

c. The tract on which the dwelling is to be sited is a flag lot and is:

i. Bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within one-quarter mile of the center of the subject tract and on the same side of the public road that provides

access to the subject tract. The board, or its designee, must interpret the center of the subject tract as the geographic center of the flag lot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flag lot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary;

ii. "Flag lot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract;

iii. "Geographic center of the flag lot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flag lot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flag lot;

11. The lot or parcel on which the dwelling is to be sited is high-value farmland as defined in MCC 17.139.130(E)(1) and:

a. The hearings officer determines that:

i. The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrates that a lot or parcel cannot be practicably managed for farm use. Examples of extraordinary circumstances inherent in the land or its physical setting include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use; and

ii. The use will not force a significant change in or significantly increase the cost of farm or forest practices on surrounding lands devoted to farm or forest use; and

iii. The dwelling will not materially alter the stability of the overall land use pattern in the area. To address this standard, the following information shall be provided:

(A) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2,000 acres or a smaller area not less than 1,000 acres if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, location of the subject parcel within this area, why the selected area is representative of the land

use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area;

(B) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm/lot-of-record dwellings that could be approved under subsection (H) of this section and MCC 17.139.050(A), including identification of predominant soil classifications and parcels created prior to January 1, 1993. The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this provision;

(C) Determine whether approval of the proposed non-farm/lot-of-record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase, lease farmland, or acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

b. The county shall provide notice of the application for a dwelling allowed under this subsection to the Oregon Department of Agriculture.

~~I~~**J**. 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. 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;~~

2. In addition to the provisions of subsection (1), the dwelling to be replaced meets one of the following conditions;

a. If the dwelling was removed, destroyed or demolished;

i. The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and

ii. Any removal, destruction, or demolition occurred on or after January 1, 1973.

b. If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or

c. A dwelling not described paragraph (a) or (b) of this subsection was assessed as a dwelling for the purposes of ad valorem taxation:

i. For the previous five property tax years; or

ii. From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.

~~4~~**3**. 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~~4. 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~~**5**. 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~~**6**. 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~~**7**. ~~When a dwelling formerly had the features described in subsection (I)(1) of this section or was removed from the tax roll as described in subsection (I)(3)(b) of this section, then t~~**T**he 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 subsection (I)(1) of this section and that have been on the tax roll as described in subsection (I)(2) of this section 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.~~ [Ord. 1372 § 4 (Exh. A), 2016; Ord. 1369 § 4 (Exh. B), 2016; 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.]

Implements HB 3024 (2019) and LCDD 9-2020.

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. 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 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 jams, syrups, apple cider, and similar animal products, but not prepared food items;

5. As used in this section, "prepared food items" means food products that are prepared for immediate consumption, such as pies, shortcake, 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 Chapter 17.191 MCC;

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/landowner 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;

14. A farm stand may not be used for the sale of marijuana products or to promote the sale of marijuana products or extracts.

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

C. Religious Organizations and Cemeteries. Religious organizations and cemeteries in conjunction with religious organizations subject to the following:

1. New religious organizations and cemeteries in conjunction with religious organizations:

a. May not be established on high-value farmland.

b. New religious organizations and cemeteries in conjunction with religious organizations, not on high-value farmland, may be established. All new religious organizations and cemeteries in conjunction with religious organizations within three miles of an urban growth boundary shall meet the following standards:

i. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved, unless an exception is approved pursuant to OAR Chapter 660, Division 004.

ii. Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract.

iii. For the purposes of this subsection, "tract" means a tract as defined in MCC 17.139.130(F) in existence on May 5, 2010.

2. Existing religious organizations and cemeteries in conjunction with religious organizations:

a. Existing religious organizations and cemeteries in conjunction with religious organizations may be maintained, enhanced, or expanded on the same tract wholly within a farm zone.

b. Existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits in subsections (C)(1)(b)(i) through (iii) of this section.

D. Public and Private Schools. Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, subject to the following:

1. New schools primarily for the residents of the rural area in which the school is located:

a. New schools may not be established on high-value farmland.

b. New schools not on high-value farmland may be established. Any new school within three miles of an urban growth boundary shall meet the following standards:

i. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved, unless an exception is approved pursuant to OAR Chapter 660, Division 004.

ii. Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract.

iii. For the purposes of this subsection, "tract" means a tract as defined in MCC 17.139.130(F) in existence on May 5, 2010.

c. New schools must be determined to be consistent with the provisions contained in MCC 17.139.060(A)(1).

2. Existing schools primarily for the residents of the rural area in which the school is located:

a. Existing schools on high-value farmland may be maintained, enhanced, or expanded on the same tract wholly within a farm zone.

b. Existing schools not on high-value farmland may be maintained, enhanced, or expanded consistent with the provisions contained in MCC 17.139.060(A)(1).

c. Existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits in subsections (D)(1)(b)(i) through (iii) of this section.

3. Existing schools that are not primarily for residents of the rural area in which the school is located may be expanded on the tax lot on which the use was established or on a contiguous tax lot owned by the applicant on January 1, 2009; however, existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits in subsections (D)(1)(b)(i) through (iii) of this section.

E. Filming Activities. On-site filming and activities accessory to filming, as defined in MCC 17.139.130(B), if the activity:

1. Involves filming or activities accessory to filming for more than 45 days; or

2. Involves erection of sets that would remain in place longer than any 45-day period;

3. 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.

F. Facilities 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 nor 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.~~

1. A processing area of less than 10,000 square feet shall be established. 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.

2. Uses less than 2,500 square feet for its processing area shall be allowed notwithstanding any applicable siting standard. However, applicable standards and criteria pertaining to floodplains, geologic hazards, airport safety and fire siting standards shall apply.

~~4~~**3**. Division of a lot or parcel that separates a processing facility from the farm operation on which is it is located shall not be approved.

~~5~~**4**. A medical marijuana processor as defined in MCC 17.110.376 shall:

a. Be conducted entirely indoors; and

b. Emit no light visible to adjacent neighboring property owners or the public; and

c. Utilize an air filtration system to ensure odors are not detectable on adjacent neighboring properties.

5. As used in this section, the following definitions apply:

a. "Facility for the processing of farm products" means a facility for:

i. Processing farm crops, including the production of biofuel as defined in ORS 315.141, if at least one-quarter of the farm crops come from the farm operation containing the facility; or

ii. Slaughtering, processing or selling poultry or poultry products from the farm operation containing the facility and consistent with the licensing exemption for a person under ORS 603.038(2).

b. "Processing area" means the floor area of a building dedicated to farm product processing. "Processing area" does not include the floor area designated for preparation, storage or other farm use.

Implements HB 2844 (2019) and LCDD 13-2020.

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.

H. *Repealed by Ord. 1397.*

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 660-033-0130(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 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 subsection (I)(7)(b)(i) or (ii) of this section:

i. An applicant demonstrates that the entire route of the associated transmission line meets at least one of the following requirements:

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

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

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

(D) 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.

ii. After an evaluation of reasonable alternatives, an applicant demonstrates that the entire route of the associated transmission line meets, subject to subsections (I)(7)(b)(iii) and (iv) of this section, two or more of the following criteria:

(A) Technical and engineering feasibility;

(B) 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;

(C) 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;

(D) Public health and safety; or

(E) Other requirements of state or federal agencies.

iii. As pertains to subsection (I)(7)(b)(ii) of this section, 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.

iv. The governing body of a county or its designee may consider costs associated with any of the factors listed in subsection (I)(7)(b)(ii) of this section, but consideration of cost may not be the only consideration in determining whether the associated transmission line is necessary for public service.

J. Parking of not more than seven log trucks on a tract when the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.

2. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

K. Fire service facilities providing rural fire protection services.

L. Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and features, associated with a district as defined in ORS 540.505.

M. Utility Facility Service Lines. Utility facility service lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

1. A public right-of-way;

2. Land immediately adjacent to a public right-of-way, provided the written consent of all adjacent property owners has been obtained; or

3. The property to be served by the utility.

Uses inadvertently left out of the FT zone which are approved in farm zones.

~~K~~**N**. Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249, and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids or the on-site treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in the farm/timber zone under this chapter. For the purposes of this section, on-site treatment of septage prior to the land application of biosolids is

limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

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

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use.

2. Significantly increase the cost of accepted farm or forest practices on surrounding land devoted to farm or forest use.

~~M~~**P**. Dog training classes or testing trials conducted outdoors or in agricultural buildings existing on June 4, 2012, subject to the following:

1. The number of dogs in each training class shall not exceed 10.

2. There shall be no more than six training classes per day.

3. The number of dogs participating in the testing trials shall not exceed 60.

4. There shall be no more than four testing trials per calendar year.

~~N~~**Q**. Cider business. A cider business is subject to the standards in MCC 17.125.140. [Ord. 1397 § 4 (Exh. B), 2019; Ord. 1372 § 4 (Exh. A), 2016; Ord. 1369 § 4 (Exh. B), 2016; 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 § 11, 2000. RZ Ord. § 139.040.]

R. Farm brewery. A farm brewery is subject to the standards in MCC 17.125.150.

Implements in code SB 287 (2019).

17.139.060 Conditional use review criteria.

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

A. The following criteria apply to all uses in MCC 17.139.050 and other uses where referenced:

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 will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

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

4. The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.

5. Any noise associated with the use will not have a significant adverse impact on nearby land uses.

6. The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.

B. Non-Farm Dwellings. The following additional criteria apply to non-farm dwellings:

1. The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or Class II soils. Soils classifications shall be those of the Soil Conservation Service in its most recent publication, unless evidence is submitted as required in MCC 17.139.120(B).

2. The dwelling will be sited on a lot or parcel that does not currently contain a dwelling and was created before January 1, 1993. The boundary of the lot or parcel cannot be changed after November 4, 1993, in any way that enables the lot or parcel to meet the criteria for a non-farm dwelling.

3. The dwelling will not materially alter the stability of the overall land use pattern of the area. In making this determination the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated shall be considered. To address this standard, information outlined in MCC 17.139.030(H)(11)(a)(iii) shall be provided.

4. Disqualification. Prior to issuance of any residential building permit for an approved non-farm dwelling under MCC 17.139.050(A), the applicant shall provide evidence that the county assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that the additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308A.113 or 308A.724 or 321.359(1)(b), 321.842(1)(A) and 321.716. A parcel that has been disqualified under this section shall not requalify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.

C. Home Occupation. Notwithstanding MCC 17.110.270 and 17.120.075, home occupations, including the parking of vehicles in conjunction with the home occupation, including bed and breakfast inns, are subject to the following criteria:

1. A home occupation or bed and breakfast shall be operated by a resident of the dwelling on the property on which the business is located. Including the residents, no more than five full-time or part-time persons shall work in the home occupation ("person" includes volunteer, non-resident employee, partner or other person).

2. It shall be operated substantially in:

a. The dwelling; or

b. Other buildings normally associated with uses permitted in the zone in which the property is located.

3. It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

4. A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.

5. A sign shall meet the standards in Chapter 17.191 MCC.

6. The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.

7. Retail and wholesale sales that do not involve customers coming to the property, such as Internet, telephone or mail order off-site sales, and incidental sales related to the home occupation services being provided, are allowed. No other sales are permitted as, or in conjunction with, a home occupation.

D. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. "Planted vineyard" means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

E. For uses listed in MCC 17.139.050(D)(3), (H)(1), (2) and (3), and (I), new facilities on high-value farmland shall not be authorized. Existing legally established facilities on high-value farmland may be maintained, enhanced, or expanded on the same tract where the current use is located.

F. Private parks, playgrounds and campgrounds shall meet the following criteria:

1. Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR Chapter 660, Division 004.

2. It shall be devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to

lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground.

3. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites.

4. A camping site shall only be occupied by a tent, travel trailer or recreational vehicle. Private campgrounds may provide yurts for overnight camping subject to the following:

a. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include yurts;

b. The yurt shall be located on the ground or on a wood floor with no permanent foundation.

5. Separate sewer, water or electric service hook-ups shall not be provided to individual campsites.

6. It shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations.

7. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive six-month period.

8. Emergency campgrounds may be authorized when a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610, has destroyed homes or caused residential evacuations, or both within the county or an adjacent county, provided that, in addition to the above:

a. Commercial activities shall be limited to mobile commissary services scaled to meet the needs of campground occupants.

b. Campgrounds approved under this section must be removed or converted to an allowed use within 36 months from the date of the Governor's Executive Order. The county may grant two additional 12-month extensions upon demonstration by the applicant that the campground continues to be necessary to support the natural hazard event recovery efforts because permanent housing units replacing those lost to the natural hazard event are not available in sufficient quantities.

c. Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer hook-ups shall not be provided to individual camp sites.

d. Campgrounds shall be located outside of flood, geological, or wildfire hazard areas identified in adopted comprehensive plans and land use regulations to the extent possible.

e. A plan for removing or converting the temporary campground to an allowed use at the end of the time-frame specified in paragraph (4)(e)(B) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this subparagraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal or conversion activities to be completed.

f. The Governor has issued an Executive Order declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.

g. The subject property is not irrigated.

h. The subject property is not high-value farmland.

i. The number of proposed campsites does not exceed 12; or

j. The number of proposed campsites does not exceed 36; and Campsites and other campground facilities are located at least 660 feet from adjacent lands planned and zoned for resource use under Goals 3, 4, or both.

Implements LCDC wildfire rules.

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 either game 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).

H. Golf Course. A golf course is subject to the following limitations:

1. New golf courses shall not be permitted on high-value farmland, as defined in MCC 17.139.130(E).

2. A legally established existing golf course on high-value farmland may be expanded on the subject tract where the current use is located, consistent with the provisions of MCC 17.139.130(D).

I. A portable or temporary facility for the primary processing of forest products is subject to the following criteria and limitations:

1. The use shall not seriously interfere with accepted farming practices.

2. The use shall be compatible with farm uses described in ORS 215.203(2).

3. The use may be approved for a maximum one-year period, which is renewable.

4. The primary processing of a forest product, as used in this section, means the use of a portable chipper, stud mill, or other similar facility for initial treatment of a forest product in order to enable its shipment to market. "Forest products" as used in this section means timber grown upon a tract where the primary processing facility is located.

J. Youth camps on a lot or parcel predominantly in forest use on January 1, 1993:

1. Youth camps shall be owned and leased and operated by a state or local government or a nonprofit corporation as defined under ORS 65.001, to provide an outdoor recreational and educational experience for persons 21 years of age or younger. Youth camps do not include any manner of juvenile detention center or facility.

2. The number of overnight camp participants that may be accommodated shall be determined by the board, or its designee, based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp. A youth camp shall not provide overnight accommodations for more than 350 youth camp participants, including staff, except the board, or its designee, may allow up to eight nights during the calendar year when the number of overnight participants may exceed the total number of overnight participants.

Overnight stays for adult programs primarily for individuals over 21 years of age, not including staff, shall not exceed 10 percent of the total camper nights offered by the youth camp.

3. A campground as described in MCC 17.139.050(H)(1) through (5) shall not be established in conjunction with a youth camp.

4. A youth camp shall not be allowed in conjunction with an existing golf course and a youth camp shall not interfere with the exercise of legally established water rights on adjacent properties.

5. The youth camp shall be located on a lawful parcel that provides a forested setting to ensure outdoor experience without depending upon the use of adjacent public and private land. This determination shall be based on the size, topography, geographic features and any

other characteristics of the proposed site for the youth camp, as well as the number of overnight participants and type and number of proposed facilities. The parcel shall be a minimum of 40 acres with suitable protective buffers to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands. The buffers shall consist of forest vegetation, topographic or other natural features as well as structural setbacks from adjacent public and private lands, roads, and riparian areas. The structural setback from roads and adjacent public and private property shall be 250 feet unless the board, or its designee, sets a different setback based upon the following criteria that may be applied on a case-by-case basis:

a. The proposed setback will prevent conflicts with commercial resource management practices; and

b. Will prevent a significant increase in safety hazards associated with vehicular traffic; and

c. Will provide an appropriate buffer from visual and audible aspects of youth camp activities from other nearby and adjacent resource lands.

6. The parcel shall be suitable to provide for the establishment of sewage disposal facilities without requiring a sewer system as defined in OAR 660-011-0060(1)(f). Prior to granting final approval, the board or its designee shall verify that a proposed youth camp will not result in the need for a sewer system.

7. A youth camp may provide for the following facilities:

a. Recreational facilities limited to passive improvements, such as open areas suitable for ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horseback riding or swimming that can be provided in conjunction with the site's natural environment. Intensively developed facilities such as tennis courts, gymnasiums, and golf courses shall not be allowed. One swimming pool may be allowed if no lake or other water feature suitable for aquatic recreation is located on the subject property or immediately available for youth camp use.

b. Primary cooking and eating facilities shall be included in a single building. Except in sleeping quarters, the board or its designee may allow secondary cooking and eating facilities in one or more buildings designed to accommodate other youth camp activities. Food services shall be limited to the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants.

c. Bathing and laundry facilities, except that they shall not be provided in the same building as sleeping quarters and up to three camp activity buildings, not including primary cooking and eating facilities.

d. Sleeping quarters including cabins, tents or other structures. Sleeping quarters may include toilets, but, except for the caretaker's dwelling, shall not include kitchen

facilities. Sleeping quarters shall be provided only for youth camp participants and shall not be offered as overnight accommodations for persons not participating in youth camp activities or as individual rentals.

e. Administrative, maintenance and storage buildings; permanent structures for administrative services, first aid, equipment and supply storage, and for use as an infirmary if necessary or requested by the applicant, and covered areas that are not fully enclosed.

f. An infirmary may provide sleeping quarters for the medical care provider (e.g., doctor, registered nurse, emergency medical technician, etc.).

g. A caretaker's residence may be established in conjunction with a youth camp prior to or after the effective date of the ordinance codified in this chapter, if no other dwelling exists on the subject property.

8. A proposed youth camp shall comply with the following safety requirements in OAR 660-006-0035 and shall have a fire safety protection plan developed for each youth camp that includes fire prevention measures; on-site pre-suppression and suppression measures; and the establishment and maintenance of fire safe area(s) in which camp participants can gather in the event of a fire.

a. Except as determined under subsections (J)(8)(b) and (c) of this section, a youth camp's on-site fire suppression capability shall at least include a 1,000-gallon mobile water supply that can access all areas of the camp; and a 30-gallon-per-minute water pump and an adequate amount of hose and nozzles; and a sufficient number of firefighting hand tools; and trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.

b. An equivalent level of fire suppression facilities may be determined by the board or its designee. The equivalent capability shall be based on the Oregon Department of Forestry's (ODF) Wildfire Hazard Zone rating system, the response time of the effective wildfire suppression agencies, and consultation with ODF personnel if the camp is within an area protected by the Oregon Department of Forestry and not served by a local structural fire protection provider.

c. The provisions for on-site fire suppression may be waived by the board or its designee if the youth camp is located in an area served by a structural fire protection provider and that provider informs the board in writing that on-site fire suppression at the camp is not needed.

K. Living history museum (only on a tract predominantly in farm use on January 1, 1993). A living history museum related to resource-based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than a farm/timber zone cannot accommodate the museum and related activities or if

the museum administration buildings and parking lot are located within one-quarter mile of an urban growth boundary.

1. As used in this subsection:

a. "Living history museum" means a facility designed to depict and interpret the everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

b. "Local historical society" means the local historical society recognized by the county board of commissioners and organized under ORS Chapter 65.

L. Commercial Activities in Conjunction with Farm Use.

1. The commercial activity must be primarily a customer or supplier of farm uses.

2. The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.

3. The agricultural and commercial activities must occur together in the local community.

4. The products and services provided must be essential to the practice of agriculture.

M. The following criteria apply to those uses identified in MCC 17.139.050:

1. No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved within three miles of an urban growth boundary unless an exception is approved pursuant to OAR Chapter 660, Division 004.

2. Any new enclosed structure or group of enclosed structures subject to this section shall be situated no less than one-half mile from other enclosed structures approved under OAR 660-33-130(2) on the same tract. For the purposes of this subsection "tract" means a tract as defined in MCC 17.139.130(F) in existence on May 5, 2010.

3. Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, but existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the limits of this subsection. [Ord. 1369 § 4 (Exh. B), 2016; 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. § 139.060.]

Optional to adopt. Implements LCDC wildfire rules. Planning Commission does not recommend adopting because of the limitations in code. It would be possible to adopt at a later date if necessary.

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:

A. Minimum Parcel Size for Newly Created Parcels.

1. The minimum parcel size shall be 80 acres, except as provided in subsections (A)(2), and (B) or (C) of this section.

2. A new parcel less than 80 acres may be approved as follows:

a. The parcel shall only be as large as necessary to accommodate the use and any buffer area needed to ensure compatibility with adjacent farm or forest uses.

b. The criteria in MCC 17.139.060 applicable to the proposed use of the parcel shall apply to the creation of the parcel.

c. A parcel shall not be approved before the use is approved.

d. A division of land for non-farm/forest use shall not be approved unless any additional tax imposed for the change has been paid or payment has been made a condition of approval.

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) **or a home occupation.**

1. If the land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels subject to the following:

a. A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel.

b. A parcel created pursuant to this subsection that does not contain a dwelling:

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;

iii. May not be considered in approving a redesignation or rezoning of forest lands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and

c. May not be smaller than 25 acres unless the purpose of the land division is:

i. To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or

ii. To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.

2. A division of land may be permitted to create a parcel with an existing dwelling to be used:

a. As a residential home as described in ORS 197.660(2) only if the dwelling has been approved under MCC 17.136.050(L).

b. For a historic property that meets the definition in ORS 358.480 and is listed on the National Register of Historic Places.

c. Parcels created under this section must meet the following criteria:

i. The new parcel containing the dwelling must be a minimum of one acre in size.

ii. The proposal shall not involve a unit of land containing a farm-relative dwelling previously authorized under the Marion County Code or previous ordinance.

iii. The new parcel shall not be larger than the minimum size necessary for the use, taking into consideration septic system, septic repair area, water source, the dwelling, and accessory buildings.

iv. The new parcel shall be adequately sized so that the existing dwelling meets the special setbacks from parcels in farm and forest use as described in 17.136.070 if it was able to meet the special setbacks previously.

This addition to the Code brings the County into compliance with ORS 215.263(9), which allows the creation of non-farm parcels containing dwellings that qualify either as historic properties or are approved residential homes. The addition of this option to the code provides property owners with flexibility to separate the dwelling from farm land. Clarifies that a home occupation is not use of land separate from a dwelling which can be divided off.

~~2~~3. A division of land smaller than the minimum lot or parcel size described in subsections (A) and (B) of this section may be approved to establish a religious organization including cemeteries in conjunction with the religious organization if they meet the following requirements:

a. The religious organization has been approved under MCC 17.139.040(C);

b. The newly created lot or parcel is not larger than five acres; and

c. The remaining lot or parcel, not including the religious organization, meets the minimum lot or parcel size described in subsections (A) and (B) of this section either by itself or after it is consolidated with another lot or parcel.

~~3~~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 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;

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; and

~~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.~~

This is a requirement in forest zones, not farm zones.

5. Land that is divided under this section for a 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 may not later be rezoned by the county for retail, commercial, industrial or other nonresource use, except as provided under the statewide land use planning goals or under ORS 197.732.

Incorporates changes made by SB 408 (2019) and LCDD 5-2020.

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

1. For a permitted use listed in MCC 17.139.020(Q); or

2. For a conditional use listed in MCC 17.139.050(C)(1) and (2), (E)(1), (F)(1) through (4), (H)(1), (3) and (5), (I), (J), (K) and (M).

3. A division of land to create two parcels for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase one of the resulting parcels may be approved as follows:

a. A parcel created by the land division that is not sold to a provider of public parks or open space or to a not-for-profit land conservation organization must comply with the following:

i. If the parcel contains a dwelling or another use allowed under ORS Chapter 215, the parcel must be large enough to support continued residential use or other allowed use of the parcel; or

ii. If the parcel does not contain a dwelling, the parcel is eligible for siting a dwelling as may be authorized under ORS 195.120 or as may be authorized under provisions contained in MCC 17.139.030(A), (B), or (C), based on the size and configuration of the parcel.

b. Before approving a proposed division of land under this section, the governing body of a county or its designee shall require as a condition of approval that the provider of public parks or open space, or the not-for-profit land conservation organization, present for recording in the deed records for the county in which the parcel retained by the provider or organization is located an irrevocable deed restriction prohibiting the provider or organization and their successors in interest from:

i. Establishing a dwelling on the parcel or developing the parcel for any use not authorized in a forest zone or mixed farm and forest zone except park or conservation uses; and

ii. Pursuing a cause of action or claim of relief alleging an injury from farming or forest practices for which a claim or action is not allowed under ORS 30.936 or 30.937.

c. If a proposed division of land under this section results in the disqualification of a parcel for a special assessment or the withdrawal of a parcel from designation as riparian habitat, the owner must pay additional taxes before the county may approve the division.

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 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~~**iv**. 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.

Corrects location of criteria.

D. Property Line Adjustments.

1. When one or more lots or parcels subject to a proposed property line adjustment are larger than the minimum parcel size pursuant to MCC 17.136.090(A)(1), the same number of lots or parcels shall be as large or larger than the minimum parcel size after the adjustment. When all lots or parcels subject to the proposed adjustment are as large or larger than the minimum parcel size, no lot or parcel shall be reduced below the applicable minimum parcel size. If all lots or parcels are smaller than the minimum parcel size before the property line adjustment, the minimum parcel size pursuant to this section does not apply to those lots or parcels.

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.

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;

b. Does not increase the potential number of dwellings on the resulting parcels; and

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.

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).~~

Removes criterion that parcel be capable of minimum production so that sizes can be adjusted to create larger timber parcels.

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;

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; or

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. [Ord. 1369 § 4 (Exh. B), 2016; 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.]

17.139.110 Permit expiration dates.

A. Notwithstanding other provisions of this title, a discretionary decision, except for a land division, approving a proposed development in the FT zone expires two years from the date of the final decision if the development action is not initiated and all required conditions are met in that period. The director may grant an extension period of up to 12 months if:

1. An applicant makes a written request for an extension of the development approval period.

2. The request is submitted to the county prior to expiration of the approval period.

3. The applicant states the reasons that prevented the applicant from beginning or continuing development within the approval period.

4. The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

B. Approval of an extension granted under this section is not a land use decision described in ORS 197.015 and is not subject to appeal as a land use decision.

C. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

D. If a permit is approved for a proposed residential development in the FT zone, the permit shall be valid for four years. For the purposes of this subsection, "residential development" only includes the dwellings provided for under MCC 17.139.020(E), 17.139.030(A), (B), (C), (D), (H) and (I), and 17.139.050(A).

E. ~~An~~ **The first** extension of a permit consistent with subsection (D) of this section and with subsections (A)(1) through (4) of this section and where applicable criteria for the decision have not changed shall be valid for two years.

F. Up to five additional extensions of the permit consistent with subsection (D) of this section and with subsections (A)(1) through (4) of this section and where applicable criteria for the decision have not changed shall be valid for one year each.

[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. § 139.110.]

Modifies code to be consistent with statute.

Chapter 17.171

P (PUBLIC) ZONE

17.171.030 Conditional uses.

When authorized under the procedure provided for conditional uses in this title, the following uses will be permitted in a P zone:

A. Airport and airport-related commercial and industrial uses;

B. Public ball park, exposition, fairground, museum, stock show and related commercial uses subject to MCC 17.171.040;

C. Cemeteries, crematoriums and mausoleums;

D. Dwelling for the caretaker or watchman; housing for the staff required for an approved conditional use;

E. Golf courses, public parks and playgrounds, recreational resorts and retreats, related camping and related commercial uses subject to MCC 17.171.040;

F. Religious organizations and related conference and residence facilities;

G. Schools, elementary and secondary (as defined in Chapter 17.110 MCC);

H. Military training facilities and armory;

I. Public instructions for detention or correction;

J. Residential facilities, institutions and schools for the handicapped or mentally retarded;

K. Public service buildings, structures and uses (e.g., field offices, outdoor storage of equipment, reservoir, water tower, pump station, sewage treatment plant, solid waste disposal site, power generation), except fire, police and emergency service stations;

L. Fire and emergency services stations and police substations; training facilities, administrative offices and living quarters for fire, emergency, and police services exceeding 20 full-time persons and 200 day-use visitors. [Ord. 1271 § 5, 2008; Ord. 1227 § 4, 2006; Ord. 1191 § 4, 2004; Ord. 1139 § 5, 2001; Ord. 1131 § 5, 2000; Ord. 1118 § 5, 2000; Ord. 1055 § 4, 1997; Ord. 974 § 4, 1994; Ord. 925 § 6, 1992; Ord. 579 § 5, 1980. RZ Ord. § 171.030.]

M. In the community of Brooks-Hopmere, educational institutions as defined in MCC 17.110.210 and including those in SIC 822.

Adds schools as a conditional use in Brooks-Hopmere to reflect existing uses in the urban community and permit the expansion or change of those uses, as well as the establishment of new uses.

Chapter 17.172

SUBDIVISION AND PARTITION REQUIREMENTS

17.172.540 Conformance with regulations.

Unless a variance is granted as provided herein, partitions shall conform to applicable regulations contained in MCC 17.172.~~140~~ **160** through 17.172.660. The director shall determine if annexation to a fire, sewer or water district is required. If the director determines that annexation is required, annexation or a nonremonstrance agreement must be filed with the appropriate agency. [Ord. 1397 § 4 (Exh. B), 2019; Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1169 § 4, 2002. RZ Ord. § 172.54.]

Corrects reference to standards which are part of the zone code which can be changed through the variance process.

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 Administrator in a scientific and engineering report entitled the "Flood Insurance Study for Marion County, Oregon, Unincorporated Areas" dated October 18, 2019, with accompanying Flood Insurance Rate Maps (FIRMs), and subsequent letter of map amendments and letter of map revisions related to these adopted studies and maps, which are hereby adopted by reference and declared to be part of this chapter. ~~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.

Removes a reference to maps the code no longer implements.

A. Coordination with the State of Oregon Specialty Codes. Pursuant to the requirement established in ORS 455 that Marion County administers and enforces the State of Oregon Specialty Codes, Marion County does hereby acknowledge that the Oregon Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in special flood hazard areas. Therefore, this chapter is intended to be administered in conjunction with the Oregon Specialty Codes.

B. Compliance and Penalties for Noncompliance. All development within the floodplain (including areas of special flood hazard) is subject to the terms of this chapter and required to comply with its provisions and all other applicable regulations.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall be enforced pursuant to MCC 17.110.870 and Chapter 1.25 MCC. Nothing contained herein shall prevent Marion County from taking such other lawful action as is necessary to prevent or remedy any violation.

C. Abrogation. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

D. Severability. This chapter and the various parts thereof are hereby declared to be severable. If any section, clause, sentence, or phrase of the chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this chapter.

E. Interpretation. In the interpretation and application of this chapter, all provisions shall be:

1. Considered as minimum requirements;

2. Liberally construed in favor of the governing body; and

3. Deemed neither to limit nor repeal any other powers granted under state statutes.

F. Designation of the Floodplain Administrator. The county planning director is hereby appointed as the floodplain administrator to administer, implement, and enforce this chapter by granting or denying development permits in accordance with its provisions. The floodplain administrator may delegate authority to implement these provisions.

G. Duties of the floodplain administrator, or their designee, shall include, but not be limited to:

1. Review all development permits to determine that the permit requirements of this title have been satisfied.

2. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.

3. Review building permits where elevation data is not available either through the FIS or from another authoritative source, to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available.

4. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of MCC 17.178.060(J) are met.

5. Provide to building officials the base flood elevation (BFE) and any required freeboard applicable to any building requiring a development permit.

6. Review all development permit applications to determine if the proposed development qualifies as a substantial improvement.

7. Review all development permits to determine if the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, ensure compliance with the relevant provisions of this chapter.

8. Review all development permits to determine if the proposed development activity includes the placement of fill or excavation.

H. Information to Be Obtained and Maintained.

1. Obtain, record, and maintain the actual elevation (in relation to mean sea level) of the lowest floor (including basements) and all attendant utilities of all new or substantially improved structures where base flood elevation (BFE) data is provided through the Flood Insurance Study (FIS), Flood Insurance Rate Map (FIRM), or obtained in accordance with this section.

2. Obtain and record the elevation (in relation to mean sea level) of the natural grade of the building site for a structure prior to the start of construction and the placement of any fill and ensure that the requirements of MCC 17.178.060 are adhered to.

3. Upon placement of the lowest floor of a structure (including basement) but prior to further vertical construction, obtain documentation, prepared and sealed by a professional licensed surveyor or engineer, certifying the elevation (in relation to mean sea level) of the lowest floor (including basement).

4. Where base flood elevation data are utilized, obtain as-built certification of the elevation (in relation to mean sea level) of the lowest floor (including basement) prepared and sealed by a professional licensed surveyor or engineer, prior to the final inspection.

5. Maintain all elevation certificates (EC) submitted to Marion County.

6. Obtain, record, and maintain the elevation (in relation to mean sea level) to which the structure and all attendant utilities were floodproofed for all new or substantially improved floodproofed structures where allowed under this chapter and where base flood elevation (BFE) data is provided through the FIS, FIRM, or obtained in accordance with MCC 17.178.060.

7. Maintain all floodproofing certificates required under this chapter.

8. Record and maintain all variance actions, including justification for their issuance.

9. Obtain and maintain all hydrologic and hydraulic analyses performed as required under MCC 17.178.060(J).

10. Record and maintain all substantial improvement and substantial damage calculations and determinations as required under subsection (J) of this section.

11. Maintain for public inspection all records pertaining to the provisions of this chapter.

I. Requirement to Notify Other Entities and Submit New Technical Data.

1. The floodplain administrator shall notify the Federal Insurance Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed authority or no longer has authority to adopt and enforce floodplain management regulations for a particular area, to ensure that all Flood Hazard

Boundary Maps (FHBM) and Flood Insurance Rate Maps (FIRM) accurately represent the community's boundaries. Include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.

2. Notify adjacent communities, the Department of Land Conservation and Development, and other appropriate state and federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration. This notification shall be provided by the applicant to the Federal Insurance Administration as a letter of map revision (LOMR) along with either:

a. A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or

b. Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

The applicant shall be required to submit a conditional letter of map revision (CLOMR) when required under subsection (I) of this section.

3. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Title 44 of the Code of Federal Regulations (CFR), Section 65.3. The community may require the applicant to submit such data and review fees required for compliance with this section through the applicable FEMA letter of map change (LOMC) process.

The floodplain administrator shall require a conditional letter of map revision prior to the issuance of a floodplain development permit for:

a. Proposed floodway encroachments that increase the base flood elevation; and

b. Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.

An applicant shall notify FEMA within six months of project completion when an applicant has obtained a conditional letter of map revision (CLOMR) from FEMA. This notification to FEMA shall be provided as a letter of map revision (LOMR).

J. Substantial Improvement and Substantial Damage Assessments and Determinations. Conduct substantial improvement (SI) (as defined in MCC 17.178.020) reviews for all structural development proposal applications and maintain a record of SI calculations within permit files in accordance with subsection (G) of this section. Conduct substantial damage (SD) (as defined in MCC 17.178.020) assessments when structures are damaged due to a natural hazard event or other causes. Make SD determinations whenever structures within the special flood hazard area

are damaged to the extent that the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. [Ord. 1405 § 4 (Exh. B), 2019; Ord. 1397 § 4 (Exh. B), 2019; Ord. 1369 § 4 (Exh. B), 2016; Ord. 1271 § 5, 2008; Ord. 1167 § 4, 2002; Ord. 1121 § 4, 1999; Ord. 1094 § 5, 1998; Ord. 1061 § 4, 1997; Ord. 1030 § 4, 1995; Ord. 951 § 4, 1993; Ord. 761 § 2, 1987. RZ Ord. § 178.030.]

17.178.060 Flood protection standards.

In all areas of identified floodplain (which includes all areas of special flood hazard), the following requirements apply:

A. Residential Structures, Including Manufactured Dwellings and Related Structures. New residential construction, substantial improvement of any residential structures, location of a manufactured dwelling on a lot or in a manufactured dwelling park or park expansion shall:

1. Residential structures shall have the top of the lowest floor, including basement, elevated on a permanent foundation to two feet above base flood elevation and the bottom of the lowest floor constructed a minimum of one foot above the base flood elevation. Where the base flood elevation is not available, the top of the lowest floor including basement shall be elevated on a permanent foundation to two feet above the highest adjacent natural grade (within five feet) of the building site and the bottom of the lowest floor elevated to one foot above the highest adjacent natural grade (within five feet) of the building site;

2. Manufactured dwellings shall have the bottom of the longitudinal chassis frame beam, including basement, elevated on a permanent foundation to two feet above base flood elevation. Where the base flood elevation is not available, the finished floor, including basement, shall be elevated on a permanent foundation to two feet above highest adjacent natural grade (within five feet) of the building site;

3. Manufactured dwellings shall be anchored in accordance with subsection (D) of this section; and all electrical crossover connections shall be a minimum of one foot above the base flood elevation;

4. No new residential structures, including manufactured dwellings, shall be placed in a floodway. An exception to this prohibition may be granted if a floodplain development permit and variance consistent with MCC 17.178.080 are obtained;

5. All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) are subject to the following requirements. Enclosed areas below the base flood elevation, including crawlspaces, shall:

a. Be designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters;

b. Be used solely for parking, storage, or building access;

c. Be certified by a registered professional engineer or architect to meet or exceed all of the following minimum criteria:

i. A minimum of two openings,

ii. The total net area of non-engineered openings shall be not less than one square inch for each square foot of enclosed area, where the enclosed area is measured on the exterior of the enclosed walls,

iii. The bottom of all openings shall be no higher than one foot above grade,

iv. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they shall allow the automatic flow of floodwater into and out of the enclosed areas and shall be accounted for in the determination of the net open area;

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

a. 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;

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

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

d. Interior grade of the crawlspace shall not exceed two feet below the lowest adjacent exterior grade;

e. The height of the crawlspace when measured from the interior grade of the crawlspace (at any point on grade) to the bottom of the lowest horizontal structural member of the lowest floor shall not exceed four feet;

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

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

h. Below-grade crawlspace construction in accordance with the requirements listed above will not be considered basements for flood insurance purposes. However, below-grade crawlspace construction in the special flood hazard area is not the recommended construction method because of the increased likelihood of problems with foundation damage, water accumulation, moisture damage, and drainage. Applicants shall be

advised that buildings constructed with below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction (the interior grade of the crawlspace is at or above the adjacent exterior grade);

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 residential structure 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 and constructed with flood openings to automatically equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwaters, in full compliance with the standards in subsection (A)(5) of this section;

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 only be used for parking, storage, and building access, and for storage of items having low damage 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)(7)(a) through (e) of this section;

g. The floors are at or above grade on not less than one side;

h. The garage or enclosed space must be constructed in compliance with subsections (D), (E), and (H) of this section;

8. A detached residential accessory structure may be constructed to wet floodproofing standards; with relief from elevation or floodproofing requirements for residential and nonresidential structures in riverine (non-coastal) flood zones provided that the following requirements are met:

a. Appurtenant structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in subsection (J) of this section;

b. Appurtenant structures must only be used for parking, access, and/or storage and shall not be used for human habitation;

c. In compliance with State of Oregon Specialty Codes, appurtenant structures on properties that are zoned residential are limited to one-story structures less than 200 square feet, or 400 square feet if the property is greater than two acres in area and the proposed appurtenant structure will be located a minimum of 20 feet from all property lines. Appurtenant structures on properties that are zoned as nonresidential are limited in size to 120 square feet;

d. The portions of the appurtenant structure located below two feet above the base flood elevation, or where no BFE has been established, below two feet above the highest adjacent grade shall be built using flood resistant materials;

e. The appurtenant structure must be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood;

f. The appurtenant structure must be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood openings in subsection (A) of this section;

g. Appurtenant structures shall be located and constructed to have low damage potential;

h. Appurtenant structures shall not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed in compliance with subsection (L) of this section;

i. 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 or shall be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood;

j. A declaratory statement is recorded requiring compliance with the standards in subsections (A)(8)(b) through (i) of this section.

B. Recreational vehicles used as a hardship dwelling consistent with MCC 17.120.040 may be placed in the floodplain consistent with the following standards:

1. When placed on solid foundation walls shall be constructed with openings that comply with MCC 16.19.140(A).

2. Shall be elevated in compliance with MCC 16.19.140(A).

3. Shall be anchored in compliance with MCC 16.19.140 (D)(2).

4. Electrical crossover connections shall be a minimum of 12 inches above the base flood elevation.

C. Nonresidential Development.

1. New construction and substantial improvement of any commercial, industrial or other nonresidential structures shall either have the lowest floor, including basement, elevated to two feet above the level of the base flood elevation, and where the base flood elevation is not available, the lowest floor, including basement, shall be elevated to two feet above the highest adjacent natural grade (within five feet) of the building site, or together with attendant utility and sanitary facilities shall:

a. Be floodproofed to an elevation of two feet above base flood elevation or, where base flood elevation has not been established, two feet above the highest adjacent grade, so that the structure is watertight with walls substantially impermeable to the passage of water.

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. This certificate shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed and shall be provided to the floodplain administrator.

d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsections (A)(5) and (6) of this section.

e. Applicants floodproofing nonresidential buildings shall be notified by the zoning administrator that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).

2. New construction of any commercial, industrial or other nonresidential structures is prohibited in the floodway. An exception to this prohibition may be granted if a floodplain development permit and variance consistent with MCC 17.178.080 are obtained. This prohibition does not apply to functionally dependent uses.

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

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 subsections (C)(3)(c) through (g) of this section.

D. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

2. All manufactured dwellings must likewise be anchored to prevent flotation, collapse or lateral movements, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors. Anchoring methods shall be consistent with the standards contained in the Oregon Manufactured Dwelling Installation Specialty Code.

E. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages.

F. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system as approved by the State Health Division.

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters in the systems and discharge from the systems into floodwaters.

3. On-site waste disposal systems shall be designed and located to avoid impairment to them or contamination from them during flooding consistent with the requirements of the Oregon State Department of Environmental Quality.

4. Electrical, heating, ventilation, plumbing, duct systems, air-conditioning and other equipment and service facilities **not installed so as to prevent water from entering or accumulating within the components during conditions of the base flood,** 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. If replaced as part of a substantial improvement the utility equipment and service facilities shall meet all the requirements of this subsection.

Establishes standards so that utilities may be installed below the BFE.

G. Developments Generally. Residential developments involving more than one single-family residential structure including subdivisions, manufactured dwelling parks, multiple-family residential structures and planned developments, and other proposed developments including development regulated under subsections (A) and (C) of this section shall meet the following requirements:

1. Be designed to minimize flood damage.

2. Have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

3. Have adequate drainage provided to reduce exposure to flood hazards.

4. Base flood elevation data shall be provided by the developer. In cases where no base flood elevation data is available analysis by standard engineering methods will be required to develop base flood elevation data.

H. Storage of Materials and Equipment. Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.

I. Alteration of Watercourses. When considering a conditional use permit to allow alteration or modification of a watercourse the following shall apply:

1. Adjacent communities, the Oregon Division of State Lands and the Department of Land Conservation and Development, and other affected state and federal agencies shall be notified prior to any alteration or relocation of a watercourse and evidence of such notification shall be submitted to the Federal Insurance Administration. This notification shall be provided by the applicant to the Federal Insurance Administration as a letter of map revision (LOMR) along with either:

a. A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or

b. Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

2. Maintenance shall be provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

3. The applicant shall be required to submit a conditional letter of map revision (CLOMR) when required under MCC 17.178.030(I).

J. Floodways. Located within areas of floodplain established in MCC 17.178.030 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential the following provisions shall apply in addition to the requirement in subsection (I) of this section:

1. Prohibit encroachments, including fill, new construction, substantial improvements and other development, within the adopted regulatory floodway unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. If subsection (J)(1) of this section is satisfied, all new construction, substantial improvements, and other development shall comply with all applicable flood hazard reduction provisions of this section.

3. The area below the lowest floor shall remain open and unenclosed to allow the unrestricted flow of floodwaters beneath the structure.

K. Standards for Shallow Flooding Areas (AO Zones). Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from one to three feet where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

1. New construction and substantial improvements of residential structures and manufactured dwellings within AO zones shall have the lowest floor (including basement) elevated above the highest adjacent natural grade (within five feet) of the building site, to two feet above the depth number specified on the FIRM or three feet if no depth number is specified.

2. New construction and substantial improvements of nonresidential structures within AO zones shall either:

a. Have the lowest floor (including basement) elevated above the highest adjacent natural grade (within five feet) of the building site, to two feet above the depth number specified on the FIRM or three feet if no depth number is specified; or

b. Together with attendant utility and sanitary facilities, be completely floodproofed to or above two feet above the depth number specified on the FIRM or three feet if no depth number is specified so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in subsection (C) of this section.

3. Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

4. In AO zones, new and substantially improved accessory structures must comply with the standards in subsection (A)(7) or (8) of this section.

5. In AO zones, enclosed areas beneath elevated structures shall comply with the requirements in subsection (A)(5) of this section.

L. Tanks.

1. Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the base flood.

2. Above-ground tanks shall be installed to one foot above the base flood level or shall be anchored to prevent flotation, collapse, and lateral movement under conditions of the base flood.

3. Tanks shall be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood. [Ord. 1405 § 4 (Exh. B), 2019; Ord. 1397 § 4 (Exh. B), 2019; Ord. 1369 § 4 (Exh. B), 2016; Ord. 1330 § 4 (Exh. A), 2013; Ord. 1326 § 4 (Exh. A), 2012; Ord. 1313 § 4 (Exh. A), 2011; Ord. 1271 § 5, 2008; Ord. 1167 § 4, 2002; Ord. 1094 § 5, 1998; Ord. 951 § 4, 1993; Ord. 761 § 2, 1987. RZ Ord. § 178.060.]