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August 3, 2022

Marion County Planning Division
5155 Silverton Rd., NE
Salem, OR 97305

RECEIVED

JUL 25 2022

**Marion County
Planning**

RE: Legislative Amendment (LA) 22-003 - Request For Denial

To Marion County Planning Division:

Friends of Marion County is an independent 501(c)(3) farmland protection organization founded in 1998. Our mission is to protect farm and forestland, parks, and open space in Marion County.

We oppose and request denial of the Legislative Amendment (LA) 22-003 to amend the Marion County Rural Zone Code to permit an event business as a home occupation in the EFU, SA and FT zones.

LEGISLATIVE AMENDMENT (LA) 22-003

Marion County proposes to expand the uses allowed in the Exclusive Farm (EFU) zone, the Special Agricultural (SA) zone and the Farm Timber (FT) zone to include an event business as a home occupation.¹

The proposed changes in the amendment for each of the three zones, EFU, SA, and FT, are essentially the same. In Chap. 17.136 (EFU zone) the applicable changes take effect on pgs. 2,3,4,5,6,7. In Chap. 17.137 (SA zone) the applicable changes take effect on pgs. 11,12,13,14,15,16. In Chap. 17.139 (FT zone) the applicable changes take effect on pgs. 20,21,22,23,24,25.

A. For Chap 17.136 (EFU zone) Sec. 2

Notwithstanding MCC 17.110.270 and 17.120.075, an event business hosting weddings, family reunions, class reunions, company picnics, memorials, and similar gatherings, may be established as a home occupation subject to the following criteria:

RESPONSE

This section introduces an event business that may be established as a home occupation, i.e., hosting weddings, family reunions, class reunions, company picnics, memorials, and similar gatherings. Since the types of events listed here do not cover all types of "similar

events", the county has not precluded events that are not so peaceful such as human, dog, pig, horse, bicycle, motorcycle or automobile drag racing and other types of events that are expected to be disruptive to neighboring farm uses.

B. Sec 2, subsections D,E,F,G:

D. Number of events: A maximum of 18 events per calendar year may be held on the property.

E. Frequency: No more than three events a week shall occur from May 1 to September 30 and one event a week from October 1 to April 30.

F. Duration: No event shall exceed three consecutive days including setup and take down.

G. Hours of operation: No event shall take place before the hour of 7:00 a.m. or after the hour of 10:00 p.m. Setup and takedown shall occur as well between the hours of 7:00 a.m. and 10:00 p.m.

RESPONSE

These subsections define the number, frequency, duration and hours of operation. The number of events being a maximum of 18 events per calendar year does not preclude the events occurring during the peak of the farming planting, spraying, and harvesting periods. The timeframes for these farm practices can vary according to the crop, weather, and market conditions and cannot be predicted by the day of the week, including the weekend days of Saturday and Sunday. The proposal specifies no more than three events a week but does not specify if the week begins at Sunday and ends on the following Saturday. For example the events could be scheduled on Thursday, Friday and Saturday one week and then continue the next week on Monday, Tuesday and Wednesday which would mean that one or more events that start on Thursday of the first week could continue uninterrupted to the Wednesday of the following week.

C. Sec 2, subsection H:

H. Number of guests: A maximum of 750 guests shall be permitted on the property at any one time. All events shall be conducted in such a way as to comply with conditions of approval placed on the event business operation. The property owner shall ensure that the maximum occupancy approved by the Marion County Building Official and local fire district is not exceeded in structures on the property at any time.

RESPONSE

Subsection H presents a potential very damaging effect to neighboring farm uses. Certainly such a large number of persons entering a farm field in the morning or afternoon and all leaving simultaneously at dusk or in the dark can have a substantial negative effect on neighboring farm uses. For example, in the heat of summer a lot of hay loading and transportation occurs in the early evening which is often the cooler part

of the day. In the months of August and September a lot of farm uses occur, i.e., harvest of grass seed and field treatment in preparation of the next years planting, including some field burning. And, of course, field fires can be caused by those vehicles at or exiting the event during the very dry summer harvest period.

C. Sec 2, subsection M, N:

M. Minimum setbacks: New structures and outdoor areas associated with the event business, including generators and other ancillary uses, but not including parking, shall be setback a minimum of 50 feet from public rights-of-way and adjoining parcels with an existing residence within 50 feet of the site of the event business or approved for a residence within 50 feet of the site of the event business, or zoned Acreage Residential.

N. Fencing: Property lines adjacent to a property with an existing residence within 50 feet of the site of the event business or approved for a residence within 50 feet of the site of the event business, or zoned Acreage Residential shall be provided with a solid fence, wall, or hedge. A 15-foot-wide vegetative buffer consisting of trees, which will attain at least eight feet in height within five years, and shrubs, which will provide a complete visual sight buffer within five years may be substituted for the fence, wall, or hedge.

RESPONSE

Although the proposal requires minimum setbacks and fencing protecting neighboring residential property there is no such requirement protecting neighboring farm uses. As stated earlier protection of farm uses such as hay production and the farm practice of grass seed field burning may be impacted.

D. Sec 2, subsection S:

S. On-Site Wastewater: The property owner shall obtain all necessary permits for on-site wastewater disposal. In the event that portable restroom facilities, including hand-sanitizing or hand-washing stations, are used, these shall be screened from adjacent lots and rights-of-way by sight-obscuring fences or plantings and be located a minimum of 50 feet from the property lines of all adjoining properties.

RESPONSE

Unless the property has access to a municipal wastewater treatment system the use of a residential septic system will be inadequate to treat water discharge from a restaurant-scale food service designed to serve 750 persons.

E. Sec 2, subsection V:

V. Other uses: The event business shall not unreasonably interfere with other uses permitted in the zone in which the property is located. The property owner shall provide evidence that all

contracts include the requirement that the customer has signed and agreed to the following statement:

This event business is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners, and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. I do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of using this venue. I acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices, signatories will pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.

RESPONSE

Although the proposal requires the applicant to accept customary farm practice from neighboring farm uses it does not protect neighboring farm uses from activities taking place at the event site. As stated earlier protection of farm uses such as hay production and grass seed field burning may be impacted.

E. Sec 2, subsection Z:

Z. Transfer of property: Any approval is only for the property owner at the time of application. If the property is subsequently sold or transferred to another person or entity, the new property owner must indicate review and acceptance of the conditions of the land use approval prior to operating the business.

RESPONSE

The proposal addresses whether or not the property is sold or transferred to another person or entity but does not address events conducted by a lessee under contract to the property owner to whom the land use approval has been granted.

LEGISLATIVE HISTORY OF HOME OCCUPATIONS IN THE EFU AND FT ZONES

The 1983 Oregon Legislature passed and Governor Atiyeh signed HB 2625 permitting home occupations on EFU lands.² Letters by Scottsburg Representative Ethel Dibala (pg. 7), Charles Adams of the Roseburg Chamber of Commerce (pgs. 8,9), Leonard Tunnell of the Sutherlin Chamber of Commerce (pg. 10) and Phil Scanlon of the Douglas County Chambers of Commerce & Associates (pgs. 11-14) convinced the Joint Committee on Environment and Energy to approve and refer to the House Floor HB 2625 because the bill supported smaller businesses commonly known as "Cottage Industries" that got their start in garages and later grew and expanded beyond their home to move to larger operations located inside cities.^{2A} After several work sessions the issues of family members and outside employees was clarified to a maximum combined number of five part-time and full-time workers not including family members.

The 1995 Oregon Legislature passed and Governor Roberts signed HB 2561 which modified and clarified 1983 HB 2625 after an Oregon Court of Appeals ruling. The Land Use Board of Appeals and the Court of Appeals (LUBA 94-119, CA A86642) resolved the question of the "daily storage and movement of vehicles and equipment to and from the homesite and off-premises work sites fall outside the statutory definition of a home occupation..."

1995 HB 2561 represents the current language found in ORS 215.448.⁴ Marion County adopts ORS 215.448 in its Code, Chapter 16.32.400 Home occupations, conditional, with employees⁵ and describes its regulations for a Home Occupation in rural lands with its brochure.⁶

MASS GATHERINGS AND OTHER GATHERINGS IN MARION COUNTY

Marion County offers a permit for a Small Mass Gathering with an expected attendance of between 750 and 3,000 persons⁷ and describes its regulations for outdoor mass gatherings in rural lands with its brochure.⁸ Definitions can be found in Marion County Code, **9.25.030 Definitions and exceptions.**

"Outdoor mass gathering" means either a large gathering or a small gathering.

"Small gathering" means any assembly of persons whose actual number is, or reasonably can be anticipated to be, less than or equal to 3,000 but more than 750 persons at any time, for a period that continues or can reasonably be expected to continue for more than six hours but not more than 120 hours within any continuous three-month period, and that is held primarily in open spaces and not in any permanent structure in the unincorporated areas of Marion County. Included in the six to 120 hours is any time in excess of 48 hours necessary to set up the event or any time in excess of 48 hours necessary to clean up afterward.

"Temporary structure" means tents, trailers, chemical toilet facilities and other nonpermanent structures customarily erected or sited for temporary use.

AGRI-TOURISM EVENTS IN MARION COUNTY

Marion County offers a permit for Agri-tourism events, Marion County Code 17.120.090⁹ and describes its regulations in rural lands with its brochure.¹⁰ Travel Oregon provides guidance on land-use regulations affecting Agri-tourism.¹¹

Section G. defines Agri-tourism as:

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

SUMMARY OF ALLOWED ACTIVITIES IN EFU, SA, AND FT ZONES

Travel Oregon provides a summary of allowable activities in the EFU zones.¹² The grid is read as follows to address (LA) 22-003.

Permitted Uses

(1) Home Occupation

- (A) Types of Agritourism: Permits vary by county, please always contact and consult your local planning department for assistance.
- (B) Education: Farm skills, craft and cooking classes
- (C) Agritainment: Farm skills, craft and cooking classes
- (D) Food Service: Food Processing, breakfast for R&B guests
- (E) Accommodations: B&B, up to five rooms

(2) Commercial Activities with Farm Use

- (A) Sales: Business-to-business sales, e.g., fertilizer & seed

(3) Mass Gatherings

- (A) Food Service: Catered food
- (B) Sales: Concerts, festivals, etc.

(4) Farm Stand

- (A) Education: Farm product promotional activities
- (B) Agritainment: Corn mazes, hay rides, harvest festivals, petting zoos
- (C) Food Service: Farm-to-table dinners
- (D) Sales: Raw & processed farm products
- (E) Celebratory Events: Farm-themed birthday parties

(5) Other Commercial Events

- (A) Education: Farm skills, crafts and cooking classes
- (B) Agri-tainment: Seasonal festivals and farm related events (up to 18 days)
- (C) Food Service: Farm-to-table dinners

When the above summary is applied to this proposal the question of "Allowable Activities in Exclusive Farm Use Zones" as related to the current Home Occupation standard is not met. (LA) 22-003 seeks to use the standards in (5)(B) Agri-tainment to set the number of events up to 18 days without being related to farm operations. (3) Mass Gatherings allows (A) Food Service and (B) Sales at concerts and festivals. (LA) 22-003 uses the limiting factor of 750 persons to avoid the designation as a

"Small Mass Gathering" and uses the "Home Occupation" use as an avenue for approval of a permit.

CONCLUSION

Legislative Amendment (LA) 22-003 seeks to create a new category of Home Occupation that is not supported in the current Marion County Code. Events as a Home Occupation is not permitted under the categories of the following permitted uses Agri-tainment, Agri-tourism, Commercial Activities with Farm Use, Farm Stand, or Mass Gatherings. The 1983 Legislature passed and Governor Atiyeh signed HB 2625. After referral to the Joint Committee on Energy and Environment, letters from Chambers of Commerce and further debate about the use of a home occupation on EFU, the Legislature agreed to provisions that the uses would be supportive of "Cottage Industries" that might outgrow the home and move to cities. Part-time and full-time employees were limited to five persons (5) not including family members. Marion County has since added other provisions to protect farm uses, however the change to up to 750 persons at an event and permitted as a home occupation far exceeds the intent of the 1983 Legislature in crafting the law. 750 persons at an event as a home occupation does not comply with the Legislative intent. For the reasons given above, Friends of Marion County opposes Legislative Amendment (LA) 22-003 and urges the county to reject it.

Roger Kaye, President
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503-743-4567

Exhibits:

1. Proposed changes to Marion County Code, Chapter 17, 17.136 (EFU zone pgs. 2,3,4,5,6,7), 17.137 (SA zone pgs. 11,12,13,14,15,16), and 17.139 (FT zone pgs. 20,21,22,23,24,25)
2. 1983 HB 2625 Tracing
 - 2A. Merriam-Webster Definition, use of the term, and a 1983 HB 2625 example of a "Cottage Industry"
3. 1995 HB 2561 Tracing
4. ORS 215.448
5. Marion County Code, Chapter 16.32.400, Home occupations, conditional, with employees
6. Operating A Business Out Of Your Home - Regulations for home occupations in rural Marion County

7. Marion County Code, Chapter 9.25, Mass Gatherings

8. Outdoor Mass Gatherings - Regulations for obtaining a permit for an outdoor mass gathering in rural Marion County

9. Marion County Code, Chapter 17.120.090.25, Agri-tourism

10. Agri-tourism - Regulations for obtaining a permit for to hold events and activities in rural Marion County

11. Guidance on Specific State Land-Use Regulations Affecting Agritourism, Travel Oregon, pgs. 37-41

12. Allowable Activities in Exclusive Farm Use Zones, as Included in ORS 215.213 & ORS 215.283, Travel Oregon 2019, pgs. 35,36

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. 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:

~~1A.~~ **1A.** 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).

~~2B.~~ **2B.** 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.

Event Business as Home Occupation: LA 2022-003

~~DELETIONS IN STRIKEOUT~~ **ADDITIONS IN BOLD UNDERLINE** ~~STAFF COMMENTS IN GRAY~~

~~3C.~~ It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

~~4D.~~ A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.

~~5E.~~ A sign shall meet the standards in Chapter 17.191 MCC.

~~6F.~~ The property, dwelling, or other buildings shall not be used for assembly or dispatch of employees to other locations.

~~7G.~~ 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.

2. Notwithstanding MCC 17.110.270 and 17.120.075, an event business hosting weddings, family reunions, class reunions, company picnics, memorials, and similar gatherings, may be established as a home occupation subject to the following criteria:

A. Farm Assessment: All or a portion of the subject property where the event business will operate shall be subject to special assessment for farm use.

B. Owner: The property owner of the property upon which the event business is located shall be the operator of the event business and shall reside full-time in the dwelling on the property.

C. Employees: The property owner shall employ no more than five full-time or part-time persons that work at the event business at any one time.

D. Number of events: A maximum of 18 events per calendar year may be held on the property.

E. Frequency: No more than three events a week shall occur from May 1 to September 30 and one event a week from October 1 to April 30.

F. Duration: No event shall exceed three consecutive days including setup and take down.

G. Hours of operation: No event shall take place before the hour of 7:00 a.m. or after the hour of 10:00 p.m. Setup and takedown shall occur as well between the hours of 7:00 a.m. and 10:00 p.m.

H. Number of guests: A maximum of 750 guests shall be permitted on the property at any one time. All events shall be conducted in such a way as to comply with conditions of approval placed on the event business operation. The property owner shall ensure that the maximum occupancy approved by the Marion County Building

Official and local fire district is not exceeded in structures on the property at any time.

I. Structures: The event business shall be operated substantially in the dwelling, or other buildings normally associated with uses permitted in the zone in which the property is located. New structures shall obtain a building permit for the use. Existing structures shall obtain a change of use from Building Inspection. In either case, System Development Charges applied for the additional traffic impacts anticipated shall be paid prior to building permit issuance. Any changes to a structure shall not render the structure a building not normally associated with uses permitted in the zone

J. Tents: Tents may be used in conjunction with the event business. Tents shall be considered outdoor areas for the purposes of this code.

K. Outdoor area: For events which take place both indoors and outdoors, at least 80 percent of the area of the property dedicated to the event business shall be indoors and at most 20 percent of the area of the property dedicated to the event business may be outdoors, exclusive of parking.

L. Parking: A parking and traffic circulation plan shall be provided demonstrating adequate parking being provided on-site to accommodate all traffic associated with the event business subject to the following:

1. No parking in rights-of-way or roadway easements shall be permitted.
2. Parking may be provided on a different parcel subject to evidence of an agreement with that property for the use.
3. Adequate internal circulation shall be provided to ensure that traffic does not cause a significant adverse impact to local roadways.
4. The parking and traffic circulation plan shall also provide for fire and emergency ingress and egress.
5. Events that take place between October 1 and April 30 shall have parking provided with an all-weather surface consisting of gravel, asphalt, or concrete.
6. Events that take place between May 1 and September 30 shall either have parking provided with an all-weather surface consisting of gravel, asphalt, or concrete or provided by an earthen or organic surface maintained to minimize fire hazards.
7. The property owner shall obtain all necessary permits for access and egress, as well as provide a traffic control plan if required by Marion County Public Works.

8. The use will not require new driveway access to the street unless approved by Public Works Director. The property owner shall obtain all necessary driveway access permits from the roadway authority to bring the new or existing access into conformance with county standards.

M. Minimum setbacks: New structures and outdoor areas associated with the event business, including generators and other ancillary uses, but not including parking, shall be setback a minimum of 50 feet from public rights-of-way and adjoining parcels with an existing residence within 50 feet of the site of the event business or approved for a residence within 50 feet of the site of the event business, or zoned Acreage Residential.

N. Fencing: Property lines adjacent to a property with an existing residence within 50 feet of the site of the event business or approved for a residence within 50 feet of the site of the event business, or zoned Acreage Residential shall be provided with a solid fence, wall, or hedge. A 15-foot-wide vegetative buffer consisting of trees, which will attain at least eight feet in height within five years, and shrubs, which will provide a complete visual sight buffer within five years may be substituted for the fence, wall, or hedge.

O. Lighting: Parking lots shall have lighting capable of providing adequate illumination for security and safety. All light sources shall be constructed, down shielded and used so as not to illuminate directly on or create glare visible from adjacent properties or public rights of way.

P. Noise: The event business shall comply with Marion County Code Chapter 8.45 related to noise except that no amplified sound or use of a generator shall occur outside of a building before the hour of 7:00 a.m. or after the hour of 10:00 p.m.

Q. Signs: In addition to the signs permitted in Chapter 17.191 of this code:

1. One unlighted sign not exceeding 32 square feet related to the event business may be placed on a fence or structure subject to the height, setback, and illumination standards in Chapter 17.191.
2. Three unlighted temporary signs not exceeding 32 square feet each may be placed on the property or nearby properties subject to the height, setback, and illumination standards in Chapter 17.191.
3. Any temporary sign shall be removed no more than 24 hours after an event.

R. Water source: If a well is used in conjunction with the business, the property owner shall consult with Marion County Health and Human Services to determine if compliance with a state public water system is required. Any identified public water systems must comply with drinking water quality standards as administered by the Oregon Health Authority Drinking Water Services. The property owner also shall obtain any necessary permits from the Oregon Department of Water Resources.

Evidence that required permits were obtained shall be provided to Marion County Planning.

S. On-Site Wastewater: The property owner shall obtain all necessary permits for on-site wastewater disposal. In the event that portable restroom facilities, including hand-sanitizing or hand-washing stations, are used, these shall be screened from adjacent lots and rights-of-way by sight-obscuring fences or plantings and be located a minimum of 50 feet from the property lines of all adjoining properties.

T. Kitchen: Any kitchen shall obtain necessary permits from Marion County Building Inspection and from Marion County Health and Human Services. Evidence that required permits were obtained shall be provided to Marion County Planning.

U. Alcohol: If alcohol is served, the property owner shall obtain all necessary permits, or ensure that all necessary permits have been obtained from the Oregon Liquor and Cannabis Commission.

V. Other uses: The event business shall not unreasonably interfere with other uses permitted in the zone in which the property is located. The property owner shall provide evidence that all contracts include the requirement that the customer has signed and agreed to the following statement:

This event business is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners, and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. I do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of using this venue. I acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices, signatories will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937.

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

X. Sales: 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.

Y. Alteration of property: No other alteration of land shall occur other than that approved in conjunction with an approval for an event business subject to the following:

1. On days when events are not occurring, the property shall not take on characteristics of an event business, aside from structures and parking areas approved as part of this permit.
2. When events are not taking place, any equipment, furniture, or other items related to the event business shall be stored indoors.

Z. Transfer of property: Any approval is only for the property owner at the time of application. If the property is subsequently sold or transferred to another person or entity, the new property owner must indicate review and acceptance of the conditions of the land use approval prior to operating the business.

AA. Annual submittal: Event business approvals must be renewed every year subject to the property owner providing the following information:

1. Evidence of the annual renewal of permits required by other agencies and departments.
2. A log of events held the prior calendar year.
3. Any revisions to the site plan or parking and traffic circulation plan or both. Such revisions may be subject to review and approval by the Planning Director and Public Works Director for consistency with the home occupation event business approval.
4. Evidence that the property continues to be subject to special assessment for farm use.

Creates standards for operating an events business as a kind of 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).

HOUSE ENVIRONMENT AND ENERGY COMMITTEE MINUTES:

Apr. 27: p. 2, 3 & 4

(Also on Cassette 174, side A, 017-end
Cassette 175, side A, 000-end
Cassette 174; side B, 000-440)

May 20: p. 5 & 6

(Also on Cassette 212, side B, 347-end
Cassette 213, side B, 000-170)

Separate exhibit file contains:

1. EXH A of 4/27: testimony of Ethel Dibala. 1 page.
2. EXH B of 4/27: testimony of Charles Adamas. 2 pages.
3. EXH C of 4/27: testimony of Leonard Tunell. 1 page.
4. EXH D of 4/27: testimony of Phil Scallon. 5 pages.
5. EXH D of 5/20: copy of Engrossed bill. 3 pages.

SENATE ENERGY AND ENVIRONMENT COMMITTEE MINUTES:

June 27: p. 2, 3 & 4

(Also on Cassette 186, side A, 017-049 &
103-end

Cassette 187, side A, 000-end
Cassette 186, side B, 000-046)

June 30: p. 10

(Also on Cassette 197, side B, 473-end
Cassette 198, side A, 000-273)

(Note: this hearing not cited in
clerk's index to minutes)

July 8: p. 3

(Also on Cassette 206, side A, 158-187)

Separate exhibit file contains:

1. EXH A of 6/27: testimony of Charles R. Adams, Roseburg Chamber of
Commerce. 2 pages.
2. EXH B of 6/27: testimony of Phil Scallon, Douglas Co. Chambers of
Commerce. 2 pages.
3. EXH C of 6/27: testimony of Ethel Dibala, Scottsburg. 1 page.

NOTE: EXH A of 7/8 not in file.

JOINT CONFERENCE COMMITTEE ON HB. 2625 MINUTES:

Jul 13: p. 1

(Also on Cassette 1, Side A, 005-066)

Separate exhibit file contains:

NONE!

Compiled by: M. Keillor, Reference Archivist

Minutes 8511

Exhibits: 17

Total Pages: 28

M. McQuade, Reference Archivist - Conference Committee only

Compiled by: M. Keillor, Reference Archivist

2/15/85

M. McQuade, Reference Archivist - Conference Committee only

8/06/92

11
10

- 017 **MOTION** by **REP. THROOP** to untable HB 2625 and
 HB 2741. No committee objection; so moved.
- 026 **CHAIR HOOLEY** opened the public hearing to HB
 2625.
- 031 **REP. ANDERSON**, one of the bill's sponsors,
 testified in his county, Douglas County, there are
 several occupations being operated in private
 residences. He further commented, as soon as these
 people hired someone from outside the family to come
 in and help, they were in violation of the zoning and
 had to abandon the project.
- 053 **REP. PEG JOLIN** stated in her District, portions
 of Lane and Douglas Counties, most zoning ordinances
 allow a person to operate a business from their home,
 but only persons living in that home or are closely
 related to the owner, are allowed to work in that
 business. She further stated this creates many
 difficulties for the business person who needs
 additional assistance, but cannot afford the
 storefront type office location.
- 078 **REP. BILL MARKHAM** concurred with what was
 previously stated.
- 150 **FRANK HART** testified in favor of the bill stating
 the Douglas County Chamber of Commerce encourages the
 citizens to use their skills to create businesses in
 their homes and on their farms if they do not use
 excessive amounts of energy. He feels it is a good
 way to encourage economic development in the State.
- 206 **ETHEL DIBALA** testified her family started a
 business in their home some years ago. If the
 company is to continue to grow, they need to have
 this law passed so they can hire the necessary
 employees. (Exhibit A)
- 247 Committee discussion with **MRS. DIBALA** regarding
 when they feel a home business becomes a regular
 business and should not be run out of a home.
- 384 **THOMAS HEDGEPATH** testified in favor of the bill
 and answered clarifying questions for committee
 members.

- 032 **MR. HEDGEPATH** continued answering questions regarding the types of business that would be acceptable to run in a home.
- 106 **TONY KUHN** testified in favor of the bill and continued telling about companies in his area that are being run out of homes but are unable to employ additional employees because they are limited by current law. He feels five employees should be the minimum number for home business but went on to say it probably should depend on a case by case basis decided by LCDC in the urban areas; but the bill also applies to the agricultural areas.
- 218 Committee discussion took place with **MR. KUHN** regarding these small businesses helping economic development of the State and also the number of employees a cottage industry should be allowed to employ.
- 340 **CHARLES ADAMS** testified regarding helping a cottage industry get established and feels the support helped the economic development of their area. (Exhibit B)
- 450 Committee discussion took place with **MR. ADAMS** regarding at what point a home business is considered to be a large employer.
- 472 **PAUL HOWARD** testified they are more than glad to help small home businesses with proper ordinances and licensing but stated many don't ask because they are afraid to let government officials know they are operating a business.

TAPE H-83-EE-174, SIDE B

- 079 **JOE WILSON** testified he concurred with the previous testimony and that the Douglas County Chamber of Commerce supported the bill.
- 110 **LEONARD TUNNELL** testified he concurred with the previous testimony and feels this law is a legitimate request and that it will help the economy of his area and the State. He agreed with **CHAIR HOOLEY** that the State should give the counties enabling legislation so that the counties could make their own rules. **MRS. TUNNELL** concurred with her husband's testimony.

- 123 HAYWARD LEED testified in favor of the bill
stating current legislation is very restrictive and
prevents any substantial growth.
- 174 PHIL SCANLON testified in favor of the bill.
(Exhibit D)
- 240 REP. PARKINSON asked what is in the State Rules
and Regulations that restrict cottage industries.
- 245 ELIZABETH NORMAN stated there is nothing
currently in state law that would prohibit or
regulate the number of people that can work in a home
occupation; that is determined by local ordinances.
Most of them limit who you can hire to relatives or
people who are dwelling in the home the occupation is
being done in. She stated further there is nothing
in state law that requires local ordinances to
restrict it that way.
- 331 CHAIR HOOLEY asked if this bill is a mandate that
counties must allow home occupations, but allows them
to stipulate the conditions under which they allow
it.
- 337 ELIZABETH NORMAN stated the intent was to say
that it may be allowed in any zone. The way it is
written it could be construed to mandate it; however,
this can be clarified.
- 360 REP. TRAHERN asked why Line 28 and 29 on Page 2
are being deleted.
- 361 MS. NORMAN stated because it is a very narrow
provision that allowed home occupations under certain
conditions. Since Section 2 is much broader, the
previous one is being deleted as rundundant. 437
CHAIR HOOLEY closed the hearing on HB 2625.
- 440 CHAIR HOOLEY opened the hearing on HB 2741.
- 468 REP. MAX SIMPSON, testified in favor of the bill
stating it was needed to strike a blow for freedom.

TAPE H-83-EE-175, SIDE B

- 000 Tape begins at 150 (was accidentally left on during
break)
- 198 CHAIR HOOLEY asked if there has been a problem
that makes this bill necessary.

left town or went bankrupt, their next attention is to the property owner. This idea is already in the bill although their intent is to go the permit holder rather than the property owner. He said it is an inherent responsibility of a landfill owner to be planning today for closure costs regardless of when they plan on closing; and he feels most of them are doing that.

272 **JEANETTE HOLMAN** stated she does not believe the authority given to DEQ in the drafted bill would be sufficient to allow them to dispose of the excess money. If you want them to do that, you need to give them specific authority to do so and perhaps some guidelines as to what they can use it for.

282 **CHAIR HOOLEY** asked DEQ and Legislative Counsel to discuss the concerns raised by the committee in today's hearing and be prepared with the answers for the next work session on this bill.

322 **REP. ANDERSON** stated he would like to have some language including only those landfills that are served by a population figure, say 25,000. Also, he is considering an option of opting out the wood products industry only for wood products.

347 **CHAIR HOOLEY** opened the work session on HB 2625 dealing with cottage industry.

392 **BETH SAMSON** explained the amended change in this bill as illustrated in the endgrossed version of the bill. The first amendment being in Line 5 altering the language so it is enabling legislation so that a governing body may allow home occupations on its own. Line 8 creates language to avoid a large number of employees. Lines 12-14 were deleted to keep buildings in line with the character of the neighborhood. (Exhibit D)

430 **REP. PARKINSON** asked if Line 11 would allow a cottage industry to build a small auxillary building that looks like the house or barn.

448 **CHAIR HOOLEY** stated that she and **REP. ANDERSON** discussed this and wanted this to be enabling legislation and to allow the county to determine the rules.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

May 20, 1983

page 6

- 032 **REP. THROOP** asked why five is the number of persons who can be hired that are not related to the resident.
- 046 **DICK MATHEWS** stated there is no economic reasoning for the number, it was just picked as a means of eliminating the amount of traffic to and from the site.
- 054 Committee discussion ensued regarding the number of 5 unrelated employees.
- 146 **MOTION** by **REP. PARKINSON** to adopt the amendments on hand engrossed bill (Exhibit D)
- 155 Motion passed 9 to 0 with Rep. Anderson, Bradbury, Hill, Parkinson, Priestley, Trahern, Throop, VanLeeuwen, and Hooley voting Aye.
- 159 **MOTION** by **REP. PARKINSON** to moved HB 2625 to the floor as amended with a Do Pass recommendation.
- 164 Motion passed 8 to 1 with Rep. Anderson, Bradbury, Hill, Parkinson, Priestley, Trahern, VanLeeuwen, and Hooley voting Aye and Rep. Throop voting Nay. **REP. ANDERSON** will carry the bill on the floor.
- 168 **REP. THROOP** served notice of a possible minority report.
- 170 Hearing adjourned at 3:45 P.M.

Respectfully Submitted,

Carol Moyle
Committee Assistant

TAPE LOG:

Tape H-83-EE-212

Tape H-83-EE-213

EXHIBIT LOG:

Exhibit A - HB 2241 Written Testimony, METRO

Exhibit B - HB 2241 Engrossed Bill

Exhibit C - HB 2241 DEQ Fact Sheet

Exhibit D - HB 2625 Hand Engrossed Bill

In rural areas there are no "Commercial properties" unless you get a zone change. These small family, or Mom & Pop industries, couldn't afford to move their businesses to the cities. Having legislation approve their businesses makes it possible to grow. They can hire part-time employees that don't have far to travel. This provides a lot of families with extra income. As the business grows it means longer hours and more jobs. After awhile they will begin looking for, and can afford commercial property. These small businesses can be a help to any community with the taxes they will be paying and the jobs they will provide. In Scottsburg there are five such businesses that we know of.

These small businesses use Man Power not machines. We would like to see this bill approved and passed.

Most of the big businesses of today were originally started in someone's basement, kitchen or backyard.

Ethel Dibala
Scottsburg, Representative

Roseburg Area Chamber of (

HOUSE COMMITTEE ON
ENVIRONMENT & ENERGY
APRIL 27, 1983
EXHIBIT B, 2 PAGES
HB 2625 TESTIMONY CHARLES ADAMS

RIVERSIDE PARK NORTH
PHONE (503) 672-2648

POST OFFICE BOX 1026
ROSEBURG, OREGON 97470

Chairperson and Members
House Committee on Energy and Environment
State Capitol Building
Salem, Oregon

Reference: H B 2625

Dear Committee Members,

The Roseburg Area Chamber of Commerce joined with twelve Douglas County Chambers to form the Douglas County Chambers of Commerce and Associates in 1981. The organization began a program of meetings in individual cities within the county for the purpose of touring rural areas of the county to identify the diversity of our county economic base. Since the inception of the program, over 100 cottage industries have been indentified which produce a manufactured product and employ people.

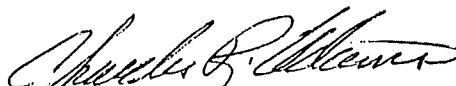
Cottage industries are started by retired and semi-retired people looking for a way to supplement retirement income. The beginnings of the business normally start in a rural area garage or barn and expand as markets develop for the product. Most of those producing products cannot be identified because of violations in land use laws.

It is our feeling that if cottage industries are to be encouraged to develop, expand and produce jobs from within the local economic base that adequate provisions should be made in land use planning in the rural areas for their protection. It is the feeling that H.B. 2625 is the answer to the development of cottage industries.

We have a number of success stories about the beginning and development of cottage industries. As an example, a manufacturer of glass started in a barn in Camas Valley. Working with the owners, the company was relocated to an abandoned lumber yard in Winston. Today, the company employs 28 people and ships their product to 35 states. Such beginnings and expansions in development of products and jobs is continually occuring in rural Douglas County. We are sure that such cottage industries are developing through out the State of Oregon.

Therefore, the Roseburg Area Chamber of Commerce asks your support and passage of A.B. 2625. Your consideration and support of our request will play an important part in the future diversification of the economic base of Douglas County.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles R. Adams".

Charles R. Adams
Manager

DATE: April 26, 1983

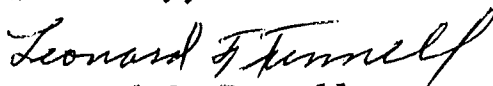
TO: House Energy and Environment Committee

My name is Leonard F. Tunnell and I am currently the President of the Sutherlin Chamber of Commerce, on the Sutherlin City Council, Secretary of the Sutherlin Lions Club and a very concerned citizen of the State of Oregon.

In order to assist in the employment of many who are now unemployed but who could be legally put to work in small industries in homes of local citizens if the Cottage Industry Law passed, I would like to express my support of this Law and would like to see it passed. There are so many who could be helped that it would be a shame not to pass it.

Speaking for the Sutherlin Chamber of Commerce, the City of Sutherlin and myself, I would urge the passage of this bill.

Sincerely,



Leonard F. Tunnell
P. O. Box 367
Sutherlin, Oregon 97479

April 27, 1983

HOUSE COMMITTEE ON
ENVIRONMENT & ENERGY
APRIL 27, 1983
EXHIBIT D, 5 PAGES
HB 2625 TESTIMONY, PHIL SCALLON

TO: The House Energy & Environment Committee

RE: Hearing on HB 2625

My name is Phil Scallon, and I was the 1981-1982 President of the Douglas County Chambers of Commerce & Associates.

The Douglas County Chamber of Commerce & Associates is made up of the Chambers of Commerce and similar local interested groups from various areas in Douglas County. This organization includes the Lower Umpqua Chamber at Reedsport to the West; Glide to the East; Drain to the North; and Glendale to the South.

Our organization from its inception has held meetings in various sections of our County for the explicit purpose of looking over the local industries and businesses that create the employment of our County. These included many small industries that were not necessarily within the bounds of a city limit, but may be anywhere from a $\frac{1}{2}$ mile to 8 or 9 miles outside of the City's that our representation came from. Many of the smaller businesses would be known as "Cottage Industries" as I interpret House Bill #2625.

It had been called to our attention by some of the members that certain people they knew had what we could consider Cottage Industries employing themselves and family members for the most part did not particularly want us to be aware they were operating with the type of businesses they had as it would probably be contrary to the planning laws as they felt were in effect at the County level. It seems that most of the Forest & Recreational land and Farm Land use designation said that you could have your house, period. But, only operations that were directly connected to the forest or farm land are allowable.

Several of the businesses we had looked at had been, and still are, producing products that are nationally marketed or products that are being produced for some of the largest manufacturing industries in the Nation. Many industries are better off farming out to a small manufacturer, as the demand is not in the thousands so they can functionally produce at a profit in their own operation. We also found several businesses that were within the incorporated cities. In talking to the owners and managers we found that they had started in Cottage Industries in their garage or from one room of their home. In several cases, these turned out to be the people that were employing 10 to 30 people at the current time. All had moved within the City, but would not have existed if they had to be located in the city at the time they started there research &

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Hearing on HB 2625

development of the product that they later found success and employment in.

On 04/20/83 in the Oregonian, I read an article entitled "Toy Stamp Makers win Honor". The honor was Gov. Victor Atiyah presenting Susan & Chris Stangland, owners of Pepperwood International, a Eugene based Toy Stamp Manufacturing Company an award for being Oregon's Small Business Persons of the Year. In reading through the article it came to my attention that they started as a Cottage Industry. They had moved here from San Francisco in 1977 and their original shop was in their home garage. This is what Cottage Industries have done & will continue to do in the State of Oregon, if they are allowed. With other laws that are apparently on the books, and seem to be a threat to the small operators within Oregon, we will find that many of these Cottage Industries will have moved away from the State of Oregon or will never get to a large size because they are unable to take advantage of having a place ~~where~~ they can afford to operate and get started.

The idealistic way to have things functioning, would be to have everyone that has a good idea be also well endowed with capital to go forward with that idea. Realistically, this does not exist and the people with great ideas are normally without capital until after they are perfected which takes several years down the line. This is the reason they need to be able to operate from their garage or from their homes where they can get their original business training and ideas perfected in a way ~~where~~ they can afford before they move to the places with considerable higher overhead.

It has been estimated by some of the people here that are in to the area of planning and zoning, we would probably have a loss of 5,000 jobs in our County alone, if the rules and regulations as are set up now, without Cottage Industry law, were enforced. The estimates seem realistic to me as I am able to substantiate in my own area, driving from my residence located on the main Umpqua River, just south of Umpqua to my office in Sutherlin.

The first place I drive by in leaving my own property had a man that was exceptionally talented as a welder and did considerable repair of the farmers equipment in the area, including welding of aluminum irrigation pipe, which takes a talent that very few seem to have. The next 2 places that I drive by are strictly

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Hearing on HB 2625

residential. The next place has a real good sized shop and he does considerable work that would probably be considered farm related, but also could be considered in the commercial area. The next place I pass by is now considered entirely farm, but at one time a man who owned the property tried to put in a small machine shop, as he had been an owner of a large machine shop in California and had kept some of the equipment, which he had moved here to Oregon. He ran into the regulation that said he could not put his equipment at that location so he sold the property and moved on. The next place would be considered strictly farm property. The next piece of property has a building the man was manufacturing some material that was shipped throughout the European Continent and several places here in the United States, having something to do with Sanitation-Sewer Plant cleaning. About a mile further on is a farm shop and dryer that at one time did considerable drying and thrashing of conifer cones, which were shipped in from Washington, California, and Oregon. The use of the building to start with was a prune dryer, but I would assume that not being used as a farm drying product, the owners would probably be out of line to dry cones.

The next two places that I go past has a real talented machine shop and the other a small mill, which I am sure is zoned agricultural. The same pattern continues for about the next 5 miles, including such things as a fairly good sized logger having his equipment parked all winter and whenever it is not in use at his residence and farm property. These and other arts & crafts type business that are located throughout the County should be protected so they can continue to employ their 1-2 & 3 people that have been working in them in the past but still keep them within the scope of being legal to each Counties requirements.

I might also say that I have kept my eyes open when I have been travelling in other areas of the State, including the South area around Medford, Central Point & Ashland. It appears that they have exactly the same type of conditions just outside of the city limits in those areas. I am sure that they will welcome the feeling of security that they are not going to be threatened at a future date by regulations that may come along prohibiting them from doing the work that is creating a large boost to our overall economy.

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Hearing on HB 2625

In driving up the Willamette Valley and looking just outside the city limits, I observe things that I am sure fit into the same categories that we have been talking about. It appears to me that the best thing we could do as a State would be to give people the secure feeling that they are doing what we want them to do when they are producing and contributing to our overall economy, such as we have observed with the number of businesses that would be considered a Cottage Industry. I think you will find that there are many people in Oregon who feel that our possibility of having employment is far greater with expansion of the 1-2-3 person operations than bringing in a large manufacturing organization, that receive so much attention when they do create a job. It may also be well noted that we do not have any small portion of land set aside to take care of the rural Oregon businesses that have been functioning outside of the developed area if all at once they were told to go within the developments and continue their business from there. I trust that the County Commissioners will all be able to come up with regulations that will take care of making their county a very acceptable place to live and will encourage business and employment for the population.

I would highly recommend that the Cottage Industry Law be enacted as proposed by the 1983 Oregon Legislature in the manner that it came about through discussion, in the Douglas County Chambers of Commerce & Associates meetings during the year of 1982. It has been the desire of the members and myself to further the employment base within our County and the State of Oregon and try to see that we are going to be in the position to keep the youth of our areas employed at home rather than have to send them out of the State for employment.

I think this legislation will be a big stride in the direction of expanding and employing more people in Oregon.





RUBBER STAMP SUCCESS — Gov. Vic Atiyeh, left, poses with Susan and Chris Stangland, owners of Pepperwood International, a Eugene-based toy stamp man-

ufacturing company. The Stanglands were named Oregon Small Business Persons of the Year by Atiyeh and will compete next month for a similar national award.

Staff photo by DANA OLSEN

Toy stamp makers win honor

Starting out on a paltry \$1,500 investment seven years ago, Chris and Susan Stangland have promoted a Eugene-based toy stamp business into a projected \$4 million in sales this year.

"My job was the dog and pony show; her's was getting the orders out of the door," said Chris Stangland, the male half of the husband and wife team which owns and operates Pepperwood International, maker of self-inking rubber stamps that have carved out a new niche in the \$4 billion per year toy industry.

The firm's success, jumping from underdog status to that of a recognizable Eugene-area employer, won the Stanglands the state's highest honor for small businesses Tuesday. They were named Oregon Small Business Persons of the Year by Gov. Vic Atiyeh at a press conference in the governor's Portland office.

Atiyeh lauded the Stanglands for their entrepreneurial spirit, as well as for their stamina in withstanding the multitude of near-fatal events inherent in starting a new business. "More than 90 percent of our (business) entities in the state fit the small business definition," Atiyeh said, adding that he will declare the week of May 8-14 Oregon

Small Business Week. "I'm convinced that small business will lead Oregon into our own recovery."

Chris Stangland said he sees evidence that that recovery already may be occurring, noting that with increased orders his firm has hired 15 people within the last six days, bringing the Pepperwood workforce to 65.

Major retail clients include Fred

'We've been successful because we put fun into it'

Meyer Stores, Sears, F.W. Woolworth, Payless and K-Mart. The Stanglands will sell their 10 millionth stamp this year.

"Consumers aren't hanging on to their dollars as tightly as they did last year," Stangland added.

But it wasn't always so for Pepperwood, which makes small, inexpensive "learning" toys, stamps in the shape of Flintstones characters and carrying impressions of numbers or letters.

Incorporating in San Francisco in 1977, the Stanglands moved their fledg-

ling enterprise to Eugene a year later with the help of a small loan. They set up shop in their home's garage, and sales from 1978 to 1981 jumped from \$12,000 to \$660,000 a year.

Unfortunately, with sales success came problems of over-expansion. The Stanglands said that the company was bailed out in 1981 with the help of another loan, this one guaranteed by the federal Small Business Administration.

Returning to an even keel, their company's products are seeing even more success, although the Stanglands now must worry about encroachments from big toy manufacturers — Mattel, Parker Bros. and Kenner — who have gotten into the toy stamp field.

"I think that we've been successful because we put fun into it," Susan Stangland said. "It is a means of self-expression."

Commenting on their chances in Washington, D.C., next month to win the national small business person of the year award, Susan Stangland says she is feeling "very optimistic — we have a very clever product."

Her husband gave her a large measure of credit.

"Without the tenacity, single-mindedness and courage on Sue's part, this company would have failed," he said.

House Bill 2625

Sponsored by Representatives ANDERSON, JOLIN, MARKHAM, TRAHERN, ZAJONG, JOHNSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Allows home occupations in any zone which allows residential uses. Defines home occupation as small-scale business carried on by resident of property as accessory use in dwelling or other buildings normally associated with zone where located. Allows counties to establish additional reasonable approval criteria.

A BILL FOR AN ACT

Relating to home occupations; creating new provisions; and amending ORS 215.213 and 215.214.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this Act is added to and made a part of ORS chapter 215.

he governing body of a county or its designate may allow a home occupation to

SECTION 2. (1) Home occupations may be established in any zone, including exclusive farm use and forest zones, that allow residential uses. A home occupation is a small-scale business that:

Employ (a) Is operated by a resident of the property on which the business is located;
no more than five

(b) May employ persons who are not related to the resident; and

(c) Is operated in:

(A) The dwelling; ~~OR~~(B) Other buildings normally associated with uses permitted in the zone in which the property is located; ~~or~~

(C) Buildings constructed for the purpose of operating the home occupation if the buildings are similar in appearance and size to buildings normally associated with uses permitted in the zone in which the property is located.

(2) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of home occupations under subsection (1) of this section.

SECTION 3. ORS 215.213 is amended to read:

215.213. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools.

(b) Churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale.

(e) A dwelling on real property used for farm use if the dwelling is:

(A) Located on the same lot or parcel, as those terms are defined in ORS 92.010, as the dwelling of the farm operator; and

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.

(B) Occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator.

(f) The dwellings and other buildings customarily provided in conjunction with farm use.

(g) Operations for the exploration of geothermal resources as defined by ORS 522.005.

(h) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designate in any area zoned for exclusive farm use:

(a) Commercial activities that are in conjunction with farm use.

(b) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate and other mineral resources or other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds.

(d) Parks, playgrounds or community centers owned and operated by a governmental agency or a nonprofit community organization.

(e) Golf courses.

(f) Commercial utility facilities for the purpose of generating power for public use by sale.

(g) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.

[(h) Home occupations carried on by the resident as an accessory use within dwellings or other buildings referred to in ORS 215.203 (2)(b)(F) or (G).]

[(i)] (h) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203

(2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of 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 parcel of land or contiguous land where the primary processing facility is located.

[(j)] (i) The boarding of horses for profit.

[(k)] (j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(3) Single-family residential dwellings, not provided in conjunction with farm use, may be established, subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon a finding that each such proposed dwelling:

(a) Is compatible with farm uses described in ORS 215.203 (2) and is consistent with the intent and purposes set forth in ORS 215.243;

(b) Does not interfere seriously with accepted farming practices, as defined in ORS 215.203 (2)(c), on adjacent lands devoted to farm use;

(c) Does not materially alter the stability of the overall land use pattern of the area;

(d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract; and

(e) Complies with such other conditions as the governing body or its designate considers necessary.

SECTION 4. ORS 215.214 is amended to read:

215.214. The Land Conservation and Development Commission shall not consider the provisions of ORS 215.213 (2)(k) (j) as being consistent with any state-wide planning goal relating to the preservation of agricultural lands for the purpose of exempting a unit of local government from applying that goal to agricultural lands.

TAPE 186 A

- 017 SENATOR KITZHABER called the meeting to order at 3:40 pm.
First hearing on HB 2625 is the first item on the agenda for today.
- 022 TODD SADLO, ADMINISTRATOR: This bill would allow counties to permit the establishment of cottage industries in any zone so long as the business does not employ more than 5 persons related to the owner, and is operated within the dwellings normally allowed in that particular zone. House amendments limited the number of employees to 5 and enabled the counties to allow home occupations rather than requiring it.
- 049 SEN. KITZHABER: We'll temporarily close the close the hearing on HB 2625 and take action on HB 2977 which is the evacuation procedures.
- 052 SENATOR DAY: Mr. Chair. let the record show that I've asked the amendments to HB2977-2 dated 6/27/83 are formally adopted. Those are Legislative Council's amendments.
- 056 SEN. KITZHABER: Is there objection. SO Ordered.
- 057 SENATOR DAY: I MOVE HB 2977 AS AMENDED TO THE FLOOR AS AMENDED.
- 059 SEN. KITZHABER: I accept the motion.
- 060 TODD SADLO: There was one amendment made by the people who came in with the bill. That was that the intent statement was modified. That is not going into the statute.
- 070 SENATOR KITZHABER: Is there discussion. Clerk will call the roll.
- | | | | |
|----------------|--------------------------|-----|----------------|
| SEN DAY | | AYE | |
| SEN HAMBY | SEN. FRED HEARD TO CARRY | AYE | MOTION CARRIES |
| SEN STARKOVICH | THE BILL ON THE FLOOR. | AYE | SO ORDERED. |
| SEN KITZHABER | | AYE | |
- 074 SENATOR DAY: I MOVE THE APPOINTMENT OF LORNA J. STICKEL TO THE WATER POLICY REVIEW BOARD WITH A DO PASS RECOMMENDATION.
- 079 SENATOR KITZHABER: Sen. Day MOVES the confirmation of Lorna J. Stickel to the floor with a Do Pass Recommendation. Discussion. Clerk will call the Roll.
- | | | | |
|-----------------|----------------------|-----|--|
| 083 SEN. DAY | | AYE | |
| SEN. HAMBY | MOTION CARRIES | AYE | |
| SEN. STARKOVICH | SEN. DAY TO CARRY ON | AYE | |
| SEN. KITZHABER | FLOOR. | AYE | |
- 103 SENATOR KITZHABER: I re-open the Hearing on HB 2625.
- 120 CHARLES ADAMS, DOUGLAS COUNTY CHAMBER OF COMMERCE. Spoke in favor of HB 2625 (See EXHIBIT "A" FOR TESTIMONY.)
- 215 PAUL HOWARD, CHAMBER OF COMMERCE: Spoke in favor of the Bill. The County Chamber and I worked together for the last year or so putting together information on the County. We sought ways to bring local businesses in the

together. With many small business operating in our area they are very protective of what they have established and they do not want to open themselves to land use violation. The businesses would like the feeling that they have some protection and recognition, that is why HB 2625 was originally drafted. 2-5 people are usually involved in the operations of the business and the work in existing buildings on the land. We've just completed a tour of over 40 cottage industries in Douglas to try to find out who they are, what they do and what kind of income they bring into the county. They are using existing buildings with the exception of a couple of new rabbitry -- a hare raising enterprise.

I think we have a good proposal and I support the passage of this bill.

260 PHIL SCALLON, DOUGLAS COUNTY CHAMBER OF COMMERCE: Spoke in support of the bill (see EXHIBIT "B" for testimony.)

372 REP VERNER ANDERSON: In an attempt to publish a directory of small business involved in cottage industries we immediately found out they were fearful of being identified because of existing land use laws. The counties are fearful that they would not have their plans acknowledged with out this kind of legislation. We need to develop ordinances to allow cottage industries. We could not find any other state that has laws on the books in this regard. This bill passed the House with very little opposition. We urge your support.

430 SEN DAY: Do you think they should continue to receive farm tax deferral under this.

431 REP VERNER ANDERSON: If they are not farm related they should not have the farm deferral.

TAPE 187 A

184 ETHEL DIBALA, DOUGLAS COUNTY CHAMBER OF COMMERCE: Testified in support of HB 2625, (See EXHIBIT "C" for testimony.)

297 JOE WILSON, DOUGLAS COUNTY CHAMBER OF COMMERCE: The cottage industries make lots of revenue for the state. If we do have a bill like this we are going to get some revenue support for the county and that in turn makes revenue for the state. The way we are now, we visited hundreds of people and there is lots of talent. We have nothing, no handle on them, we have income taxes from them but no permits or licenses for these companies. They would like it if they could come out in the front. We would like a catalogue of these people. They can then be regulated.

325 HEYWOOD REED, REAL ESTATE BROKER IN ROSEBURG: In my work I come into contact with many people with much talent in various ways. They want to do something in the form of small business. It is impossible to offer them the kind of property that they might be interested in where they can do this because of the land use restriction. Many of these folks are under financed. They are not able to rent space in an industrial park because they don't have the capital. This cottage industry bill seems to be the answer for many of these people. The type of business they are wanting to be involved in would not detract from the area they want to live in.

TAPE 186 B

Individually, they do not make much of an economic impact but many of them together produce very fine products and collectively they do make a substantial impact.

010 SENATOR KITZHABER: Is there anyone else who would like to testify on the bill. I'll close the hearing on the bill.

We'll have amendments drafted and then look at it again next week. We'll open the Hearing on HB 2556.

046 REP BILL BRADBURY: (See EXHIBIT "D" for Amendments from Legislative Counsel HB 2556-6 date 6/24/83). The amendments eliminate the scallop and shrimp industry from the provision of the bill regarding the lottery. There are amendments to make sure that the transfer provision applies only to the salmon troll fisheries that is the second point of the amendments, to make that perfectly clear.

The other amendments are HB 2556 - 7. (See EXHIBIT "D") They do not amend the bill as it is but adds to the bill. The amendments relate to private aquaculture and the desire to see private aquaculture treated equally with other producers of salmon and other harvestors of salmon in the public resources. A video-tape explanation of private aqua-culture was shown to the committee. Private aquaculture are presently allowed to develop Coho, Chinook and Chum. There has been a rather rapid development of aqua-culture in this state. The amendments were not accepted on the House side. My amendments to do speak to adult salmon swimming the right direction. They speak to the fish returning to the estuary regarding the time of return and the size of the fish when they return. Some of the private operators are returning fish at a time and size comparable to the time and size of the fish developed by public hatcheries.

143 SENATOR KITZHABER: The primary opposition to these amendments are primarily from Weyhauser and they have been informed of the hearings on these amendments. My concern is that I recognize the legitimacy of aqua-culture contribution to Oregon's fisheries but I do believe that given the difficulties that we are having with fish runs in general that it is not unreasonable to require the same kinds of standards and factors for both operations. I guess that is the policy question. I MOVE the amendments 2556-7. Is there discussion?

258 SENATOR DAY: I don't think it is the private hatcheries vs. the public. I think that what you are doing by adopting these amendments are threatening what private hatcheries we do have. A great deal of money has been invested in that effort and I think this controversy has been well aired in the House; it is too late to try to interject it at this late date. I am going to vote NO and probably serve notice of a Minority Report on top of it.

268 SENATOR KITZHABER: I would say that the same argument could probably be applied to some amendments that are going to be suggested to a bill and I hope that we can be consistant.

276 SENATOR DAY: I didn't say it wasn't germane. I just don't think we need another fish law. Particularly when private corporations have put a good deal of investment in it. I just don't think you have made your case.

286 SENATOR KITZHABER: Most of those operations currently bring their fish back to the estuaries at the same time and at the same size. Weyerhouse has been advised of the hearings and they are not here. They are very well aware of the amendments. Is there further discussion? Clerk will call the roll.

295	SEN DAY		NO	
	SEN COHEN	AMENDMENTS 2556-7	AYE	
	SEN HAMBY	Carries.	NO	MOTION CARRIES
	SEN MONROE		AYE	
	SEN STARKOVICH		AYE	
	SEN KITZHABER		AYE	

439 MOTION: SEN. DAY moved to send the appointment of Clyde A. Hamstreet to the LCDC Commission to the Senate floor with a Do-Confirm recommendation.

447 VOTE: In a roll call vote the motion passed 4-3 with Senator's Day, Hamby, Heard and Kitzhaber voting AYE; Senator's Cohen, Starkovich and Monroe voting NAY.

HB 2625, relating to home occupations

473 SEN. KITZHABER, explained the new amendments replacing section 2.

TAPE 198A

030 SEN. DAY, gave notice that he would be voting against the amendment.

049 MOTION: SEN. DAY moved to table HB 2625.

050 VOTE: In a roll call vote the motion passed 4-3, with Senator's Day, Cohen, Heard, Starkovich voting AYE; Senator's Hamby, Monroe and Kitzhaber voting NAY.

055 MOTION: SEN. HEARD moved to reconsider the previous vote to table HB 2625.

057 VOTE: With no objection the motion passed.

062 MOTION: SEN. KITZHABER moved to adopt the amendments to HB 2625-5.

088 DISCUSSION: SEN. DAY and SEN. KITZHABER discussed their concerns with the bill. SEN. DAY did not feel this was the proper vehicle.

135 SEN. KITZHABER asked Jim Ross to comment on the bill. JIM ROSS, LCDC, felt they were comfortable with the changes to the bill. SEN. DAY, was concerned with giving unconditional use in EFU-Forest land.

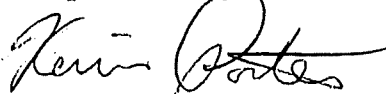
222 MOTION: SEN. KITZHABER moved to send HB 2625 with the previously discussed amendments to the Senate floor with a Do-Pass recommendation.

225 VOTE: In a roll call vote the motion passed 4-3 with Senator's Hamby, Heard, Starkovich and Kitzhaber voting AYE; Senator's Day, Cohen and Monroe voting NAY.

SB 224, specifies qualifications for members of the Water Policy Review Board

- 094 SENATOR COHEN speculated about dissolving it from the statutes at some point in time.
- 095 SENATOR KITZHABER: Well, you'll have to make a window.
- 100 SENATOR KITZHABER (cont'd): Do you want us to check with Legislative Counsel on that?
- 106 SENATOR DAY: Well, what's going to change in the next few years (regarding the controversy surrounding state water policy)? There's no question they are overappropriated for water there, and I do not see it changing. My motion is without the sunset.
- 111 SENATOR KITZHABER: I still think it's bad policy, but I will help move it out of committee and vote against it on the floor. The proposed amendment is to limit it to three acres and to limit it geographically.
- 117 On the motion, the amendments to SB 779 passes 6-0.
- 120 The committee discussed SB 779 further, exploring the possibility of requiring the installation of flow meters but dropped it.
- 142 SENATOR DAY moved the bill with a do-pass-as-amended recommendation.
- 150 On the vote, the bill passes 4-2 with SENATORS DAY, HEARD, HAMBY, AND KITZHABER voting aye and SENATORS COHEN AND STARKOVICH voting nay.
- 158 SENATOR KITZHABER opened the work session on HB 2625.
- 161 SENATOR DAY discussed his amendments (EXHIBIT "A"). The intent is to restrict the employees to the home and to require the local government to review its permit every 12 months. He moves the amendments.
- 174 NO OBJECTIONS, AMENDMENTS SO ORDERED.
- 177 Senator Day moves HB 2625 to the floor as amended. The bill passes 5-0.
- 187 SENATOR KITZHABER adjourned the meeting.

Respectfully submitted,



Kevin Porter
Research Assistant

Roseburg Area Chamber of Commerce

RIVERSIDE PARK NORTH
PHONE (503) 672-2648

June 22, 1983

POST OFFICE BOX 1026
ROSEBURG, OREGON 97470

Chairperson and Members
House Committee on Energy and Environemnt
Senate Capitol Building
Salem, Oregon

Reference: H.B. 2625

Dear Committee Members,

The Roseburg Area Chamber of Commerce joined with twelve Douglas County Chambers to form the Douglas County Chambers of Commerce and Associates in 1981. The organization began a program of meetings in individual cities within the county for the purpose of touring rural areas of the county to identify the diversity of our county economic base. Since the inception of the program, over 100 cottage industries have been identified which produce a manufactured product and employ people.

Cottage industries are started by retired and semi-retired people looking for a way to supplement retirement income. The beginnings of the business normally start in a rural area garage or barn and expand as markets develop for the product. Most of those producing products cannot be identified because of violations in land use laws.

It is our feeling that if cottage industries are to be encouraged to develop, expand and produce jobs from within the local economic base that adequate provisions should be made in land use planning in the rural areas for their protection. It is the feeling that H.B. 2625 is the answer to the development of cottage industries.


We have a number of success stories about the beginning and the development of cottage industries. As an example, a manufacturer of

EXHIBIT: "A"
Sen. Com Energy & Environ.
Date: 6-27-83
Witness: Chas Adams
Bill Number: HB 2625
No. of Pages: 2pgs.

glass started in a barn in Camas Valley. Working with the owners, the company relocated to an abandoned lumber yard in Winston. Today, the company employs 28 people and ships their product to 35 states. Such beginnings and expansions in development of products and jobs is continually occurring in rural Douglas County. We are sure that such cottage industries are developing through-out the State of Oregon.

Therefore, the Roseburg Area Chamber of Commerce asks your support and passage of H.B. 2625. Your consideration and support of our request will play an important part in the future diversification of the economic base of Douglas County.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles R. Adams".

Charles R. Adams
Manager

June 27, 1983

EXHIBIT: B
Sen. Com Energy & Environ.
Date: 6-29-83
Witness: Phil Scallon
Bill Number: HB 2625
No. of Pages: 2 pgs.

RE: HB 2625

My name is Phil Scallon and I was the 1981-1982 President of the Douglas County Chambers of Commerce and Associates.

It was during this term that the Douglas County Chambers of Commerce and Associates found that a law was needed to permit what is known as "Cottage Industries" on the farm and forest and recreational land.

The Douglas County Chambers of Commerce and Associates is made up of Chambers of Commerce and local similarly interested groups throughout Douglas County. We have representation from the Coast and Lower Umpqua Chamber through Glide to the East and North from Drain to South at Glendale. The basis of all the organizations is interest in the economic development of the area.

We have toured most of the areas of Douglas County and in taking these tours we would visit at various industries located within the cities and some that were located outside of the city. In fact the majority were located outside in the rural areas. We found that they contributed a major amount to the economy of our County. We also found in talking to many that had good sized employment of people in the area that is not associated with the lumber industry, most had started in their garage or in a similar building from their residence. In discussing this at the meetings and some of the fears that the members had heard stated by various friends & acquaintances, it was determined that some type of legislation should be available that would allow the people to operate their business in a legal and legitimate manner. This is the thing that brought about our original proposals of a "Cottage Industry Law". It was our feeling that this legislation would do exactly what is needed in the area that we have seen so much of in the past year and a half.

We have come up with some estimates of employment that are related to Cottage Industries within our County

HB 2625

and at one point it was estimated that over 5,000 jobs would be lost overnight if the Cottage type Industries were to immediately shut down. Many of the people that own and operate these businesses are doing so without an assurance that they can continue their business from month to month. It appears that a Cottage Industry Law would pretty well assure the stability of these businesses that contribute so much to our economy.

I do not think it is necessary to point out the problems to this committee as I am sure all of you can recall friends, relatives and probably some of your own operations that would have fit into the Cottage Industry Area. Our intentions from a Cottage Industry Law is to make it a legal operation and something that could be advertised and promoted and increase our income basis rather than have to cease with operations of this type. I am sure that our County Government can come up with some rules that will allow existing Cottage Industries and encourage other Cottage Industries that have failed to show on the surface to now shine forward and add to the overall state of the economy.

Respectfully,

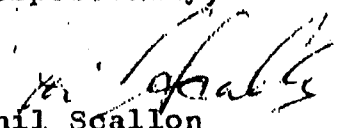

Phil Scallon

EXHIBIT: "C"

Sen. Com Energy & Environ.

Date: 6-27-83

Witness: Ethel Dibala

Bill Number: HB 2625

No. of Pages: 1 P8

We would like the Senate to pass the Cottage Industries bill. We would like for the State to set the amount of employees hired at 5. If a small business needs to hire more than 5 employees they are ready to move into an industrially zoned area, and by then they would be financially able to handle the move.

In our business alone the product goes through 5 different hands before reaching the public. By being able to hire even just 5 people, it will increase the amount of Social Security taxes, Unemployment taxes, ect. being paid. It will also put money back into the local economy.

When something that seems as simple as this is left up to the local government it seems to take eons for a decision to be made. We feel having Cottage Industries able to hire 5 people, even part-time, will greatly increase the economy of our out lying communities. Most of these industries are on property that isn't large enough for any other type of business, including forestry or farming.

Ethel Dibala
Scottsburg

CONFERENCE COMMITTEE ON HOUSE BILL 2625

July 13, 1983

9:30 a.m.

Hearing Room 454

MEMBERS PRESENT: Rep. Darlene Hooley, Chairperson
Rep. Verner Anderson
Sen. Fred Heard
Sen. John Kitzhaber

STAFF PRESENT: Elizabeth Samson, Committee Administrator
Carol Moyle, Committee Assistant

TAPE H-83-EE-CC HB 2625-1, SIDE A

CHAIRPERSON HOOLEY called the Conference Committee on HB 2625 to order at 9:40 a.m.

REP. ANDERSON, the chief sponsor of the bill, stated he would accede to the Senate amendments which read, "subject to the approval of the governing body", and explained that that means each and every individual case has to be reviewed. REP. ANDERSON further stated that he would accede to the governing body reviewing the permit system every 12 months although it was his opinion that 24 months is more reasonable to the process.

REP. ANDERSON went on to explain that current law allows the limitation to relatives only. The governing body could say 10 or less, but this actually limits it to five. REP. ANDERSON expressed his concern that if the Senate language actually held, over 100 cottage industries in Douglas County would be put out of business.

SEN. KITZHABER asked REP. ANDERSON if the problem was with "five" or the limiting it to families and wondered what his feelings were to the A-engrossed bill without the last set of amendments.

In response, REP. ANDERSON said that he had problems with the limiting to families. REP. ANDERSON also stated that he would yield to line 5 and anything after the reporting procedure.

SEN. KITZHABER agreed that limiting it to family members only basically ruins the bill and suggested deleting that portion on line 9 and insert language that would permit the employing of no more than five full or part-time who are not family members.

CHAIR HOOLEY commented that the "five full or part-time persons" is the maximum that the county can allow and that would include them.

MOTION: SEN. KITZHABER moved that lines 3 and 4 of the Senate amendments to HB 2625 dated July 11, 1983 be deleted, which would remove the language that limits only to in-laws, parents and children.

Hearing no objections, CHAIR HOOLEY declared the motion passed.

CHAIR HOOLEY adjourned the Conference Committee at _____ a.m.

Respectfully submitted,

Carol Moyle, Committee Assistant

TAPE LOG: #1, 005-066

TRANSCRIBED BY:

[Signature]
Vernon Y. Handley, Jr. Comm. Adm.

2A

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Definition of *cottage industry*

- 1 : an industry whose labor force consists of family units or individuals working at home with their own equipment
- 2 : a small and often informally organized industry
- 3 : a limited but enthusiastically pursued activity or subject this debate about sex and law became a *cottage industry* for feminist academics— Wendy Kaminer

Examples of *cottage industry* in a Sentence

weaving, pottery, and other *cottage industries*

Recent Examples on the Web People who worked as political signature gatherers created a *cottage industry* during the pandemic: pop-up coronavirus test sites. — Dominic Fracassa, *San Francisco Chronicle*, 24 May 2022 That butt augmentation and liposuction surgery are more accessible and less costly than ever makes recovery homes a thriving *cottage industry* among these women. — *New York Times*, 11 May 2022 With just more than a week to go before the 2022 NFL draft, the mock draft *cottage industry* has already been hard at work projecting which top college prospects will get taken in the first round. — Jr Radcliffe, *Milwaukee Journal Sentinel*, 20 Apr. 2022 [See More](#)

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First Known Use of *cottage industry*

1849, in the meaning defined at [sense 1](#)

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Seen & Heard

People are talking about

Cottage Industry

By
Will Kenton

Updated September 23, 2020

Reviewed by
Thomas Brock

Fact checked by
Amanda Bellucco-Chatham

What Is a Cottage Industry?

A cottage industry is a small-scale, decentralized manufacturing business often operated out of a home rather than a purpose-built facility. Cottage industries are defined by the amount of investment required to start, as well as the number of people employed. They often focus on the production of labor-intensive goods but face a significant disadvantage when competing with factory-based manufacturers that mass-produce goods.

Key Takeaways

- A cottage industry is a small manufacturing operation, often run out of a person's home.
- Cottage industries play a significant role in the economies of developing countries.
- Small-scale cottage industries also are an important source of employment, especially in rural areas.

How Cottage Industries Work

The first cottage industries were light manufacturing operations in England and the United States engaged in subcontracted garment-making, textiles or sewing, as well as shoemaking and small metal machine parts. They may have been made up of family members engaged in producing finished goods by utilizing raw materials supplied by a business manager. Many contemporary industries that currently operate in factories were once cottage industries before the Industrial Revolution.

Many modern cottage industries serve a market that seeks out original, handcrafted products as opposed to mass-produced, name brand products. These can include anything from clothing items to crafts to decorative home furnishings.

Special Considerations

Cottage industries play a significant role in the economies of developing countries. These economies may lack the capital and financial systems to support larger industries. It may be difficult for smaller firms to grow due to a lack of available capital or because of uncertainty relating to private property and legal rights.

Developing countries also are more likely to have a comparative advantage in the use of labor compared to the use of capital, allowing them to produce labor-intensive goods more cheaply than developed countries. Because cottage industries may employ labor methods that are heavily reliant on traditional tools and machinery or which require the use of hands, they are more likely to see lower productivity. Thus, even though they may employ a large portion of the population, they may not produce a proportional amount of output.

Small-scale cottage industries also are an important source of employment, especially in rural areas. For farmers, operating a cottage industry out of the home can supplement the income raised from selling crops. In winter, when farming activities tend to abate, a cottage industry can create extra income. For small villages, a cottage industry can allow local residents to come together to produce crafts for sale in local markets or even for export to larger cities and other countries.

While companies operating in cottage industries may remain small, they still have to compete with other firms, whether other cottage industries or larger-scale companies. This requires them to employ new technologies that will improve efficiency and productivity. They also will have to compete for sources of labor, which can be especially difficult as a country becomes more developed and wages rise.

Many flea markets or farmers markets often have people selling crafts or other goods that are the products of cottage industries.

Example of a Cottage Industry

Competitive dancers, figure skaters, and other similar performers often wear original, handmade costumes. At the lowest levels of youth competition, parents might make costumes for their children. As performers rise to higher levels of competition, however, the demand for costumes of higher quality grows, creating opportunities for the most highly skilled costume designers to fill those demands. If skilled enough, designers who began by creating costumes for their own children and maybe a few others can end up creating a cottage industry for themselves.

Designers who have costumes worn by top competitors in the sport can see increased demand for their original creations. Even at regional levels in these sports, there are designers who create names for themselves with their costumes and can be very successful within such a niche market.



RUBBER STAMP SUCCESS — Gov. Vic Atiyeh, left, poses with Susan and Chris Stangland, owners of Pepperwood International, a Eugene-based toy stamp man-

ufacturing company. The Stanglands were named Oregon Small Business Persons of the Year by Atiyeh and will compete next month for a similar national award.

Staff photo by DANA OLSEN

Toy stamp makers win honor

Starting out on a paltry \$1,500 investment seven years ago, Chris and Susan Stangland have promoted a Eugene-based toy stamp business into a projected \$4 million in sales this year.

"My job was the dog and pony show, her's was getting the orders out of the door," said Chris Stangland, the male half of the husband and wife team which owns and operates Pepperwood International, maker of self-inking rubber stamps that have carved out a new niche in the \$4 billion per year toy industry.

The firm's success, jumping from underdog status to that of a recognizable Eugene-area employer, won the Stanglands the state's highest honor for small businesses Tuesday. They were named Oregon Small Business Persons of the Year by Gov. Vic Atiyeh at a press conference in the governor's Portland office.

Atiyeh lauded the Stanglands for their entrepreneurial spirit, as well as for their stamina in withstanding the multitude of near-fatal events inherent in starting a new business. "More than 90 percent of our (business) entities in the state fit the small business definition," Atiyeh said, adding that he will declare the week of May 8-14 Oregon

Small Business Week. "I'm convinced that small business will lead Oregon into our own recovery."

Chris Stangland said he sees evidence that that recovery already may be occurring, noting that with increased orders his firm has hired 15 people within the last six days, bringing the Pepperwood workforce to 65.

Major retail clients include Fred

'We've been successful because we put fun into it'

Meyer Stores, Sears, F.W. Woolworth, Payless and K-Mart. The Stanglands will sell their 10 millionth stamp this year.

"Consumers aren't hanging on to their dollars as tightly as they did last year," Stangland added.

But it wasn't always so for Pepperwood, which makes small, inexpensive "learning" toys, stamps in the shape of Flintstones characters and carrying impressions of numbers or letters.

Incorporating in San Francisco in 1977, the Stanglands moved their fledg-

ling enterprise to Eugene a year later with the help of a small loan. They set up shop in their home's garage, and sales from 1978 to 1981 jumped from \$12,000 to \$660,000 a year.

Unfortunately, with sales success came problems of over-expansion. The Stanglands said that the company was bailed out in 1981 with the help of another loan, this one guaranteed by the federal Small Business Administration.

Returning to an even keel, their company's products are seeing even more success, although the Stanglands now must worry about encroachments from big toy manufacturers — Mattel, Parker Bros. and Kenner — who have gotten into the toy stamp field.

"I think that we've been successful because we put fun into it," Susan Stangland said. "It is a means of self-expression."

Commenting on their chances in Washington, D.C., next month to win the national small business person of the year award, Susan Stangland says she is feeling "very optimistic — we have a very clever product."

Her husband gave her a large measure of credit.

"Without the tenacity, single-mindedness and courage on Sue's part, this company would have failed," he said.

Listing of Legislative records in the Oregon State Archives pertaining to:

1995 HB 2561, relating to: conduct of secondary occupational activities on rural lands.

**HOUSE NATURAL RESOURCES SUBCOMMITTEE ON ENVIRONMENT & ENERGY
MINUTES:**

Mar 10: p. 4-5	Also on audio cassettes:	29, side B 30, side B
Apr 19: p. 2-6	Also on audio cassettes:	67, sides A&B 68, sides A&B

HOUSE NATURAL RESOURCES FULL COMMITTEE MINUTES:

Apr 26: p. 6-7	Also on audio cassette:	49, side B
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Separate exhibit file contains 23 pages.

SENATE WATER & LAND USE COMMITTEE MINUTES:

May 18: p. 2	Also on audio cassette:	146, side A
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Separate exhibit file contains 6 pages.

<i>Total pages minutes:</i>	10
<i>Total pages exhibits:</i>	29
<i>Total pages:</i>	39

Compiled by Todd Shaffer, Reference Archivist, September 18, 2017.

077 ORINGDULPH: Responds there is a law suit now pending.

083 KELLY ROSS, Oregon Association of Realtors: Testifies in support of HB 2500.

133 REP. LUKE: Supports the moratorium law.

Closes PUBLIC HEARING on HB 2500

Opens WORK SESSION on HB 2500

163 JON CHANDLER, General Counsel, Homebuilders Association of Metropolitan: Introduces proposed amendments to HB 2500 for the committee's consideration.

183 REP. LUKE: Asks for a timeline to bring the amendments to HB 2500 back to committee after a workgroup has met.

203 CHAIR LEWIS: Schedules HB 2500 for work session on March 22, 1995.

Closes WORK SESSION on HB 2500

Opens PUBLIC HEARING on HB 2561.

Witnesses:

FRED VAN NATTA

ROBERT VAN NATTA, Attorney

213 MARK BAUER, Committee Administrator: Summarizes HB 2561.

220 FRED VAN NATTA: Speaks in support of HB 2561.

295 ROBERT VAN NATTA, Attorney: Testifies in support of HB 2561. (EXHIBIT E)

390 REP. LUKE: Asks for clarification on size of lot where vehicle was parked.

ROBERT VAN NATTA: 2.3 acres.

-Responds to REP. LUKE regarding who was responsible for the parking approval information.

437 -Responds to REP. THOMPSON regarding what kinds of vehicles and where the homes are they're discussing.

TAPE 30, SIDE B

029 ROBERT VAN NATTA: Responds to REP. UHERBELAU regarding who initiated the complaint.

031 -Responds to REP. UHERBELAU as to what Mr. VanNatta would think of vehicle quantity limitations.

045 -Responds to REP. LUKE regarding commercial activity outside the urban growth boundary.

071 REP. LUKE: As author, testifies on HB 2561. Presents **(EXHIBIT F)**.

Closes PUBLIC HEARING on HB 2561.

Opens WORK SESSION on HB 2561.

086 REP. NORRIS: Discusses HB 2561.

101 CHAIR LEWIS: Asks for cooperation from AOC and to make the appropriate amendments for home occupations.

Closes WORK SESSION ON HB 2561.

Opens PUBLIC HEARING on HB 3065.

108 Mark Bauer, Committee Administrator: Summaries HB 3065.

Witnesses:

**JON CHANDLER, General Counsel, Homebuilders Association of Metropolitan
Portland**

ED SULLIVAN

STEVE SCHELL, Black Helterline Law Offices

JEFF BACHRACH, Attorney

145 **JON CHANDLER, General Counsel, Homebuilders Association of Metropolitan Portland:**
Testifies in support of HB 3065. **(EXHIBIT G)**

188 -Responds to REP. NAITO regarding compliance with changes.

205 -Outlines additional significant changes.

234 -Responds to REP. LUKE regarding lay persons accessibility to process.

245 REP. NAITO: Has some concerns that the current language is beyond the purview of most ordinary people.

256 CHAIR LEWIS: Asks if State law would include goals.

274 CHANDLER: "Yes."

261 CHANDLER: Continues discussing changes to land use laws.

074 **MOTION: REP. NAITO:** Moves to adopt **HB 2785 -1** dated 3/6/95 and **HB 2785 -2** amendments dated 4/17/95.

VOTE: Hearing no objections, the motion **CARRIES**.

078 **MOTION: REP. NAITO:** Moves **HB 2785** as amended to the full committee with a **DO PASS** recommendation.

VOTE: In a roll call vote all members are present and vote **AYE**.

Closes the WORK SESSION on HB 2785.

HB 3356 WORK SESSION

095 **MARK BAUER, COMMITTEE ADMINISTRATOR:** Summarizes **HB 3356**.

107 **ROY BURNS, INTERGOVERNMENTAL RELATIONS COORDINATOR, LANE COUNTY:** There are two counties this would effect, Washington County and Lane County.

119 **RICHARD BENNER, DIRECTOR, OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT:** Speaks in opposition to **HB 3356** from written testimony. **(EXHIBIT B)**

161 **REP. LUKE:** Explains conditions in Deschutes County.

190 **REP. UHERBELAU:** Questions the language in Section 2. We are ust talking about Washington and Lane counties.

MOTION: REP. NORRIS: Moves **HB 3356** to the full committee with a **DO PASS** recommendation.

223 **REP. NAITO:** Speaks in opposition to **HB 3356**. Will not vote in favor.

232 **REP. UHERBELAU:** Comments on the testimony received on the gross income test. Can't vote for this because we are exempting out some high value farm land.

253 **CHAIR LEWIS:** Speaks in favor of the bill. Believes the \$80,000 income test is too high. Feels we should be encouraging people to get into farming.

VOTE: In a roll call vote **REP. FISHER, LUKE, NORRIS, LEWIS** vote **AYE**. **REP. NAITO, THOMPSON, UHERBELAU** vote **NAY**.

CHAIR: The motion **CARRIES**.

Closes the WORK SESSION on HB 3356.

HB 2561 WORK SESSION

310 **MARK BAUER, COMMITTEE ADMINISTRATOR:** Summarizes **HB 2561**.

330 **REP. LUKE:** Comments on the amendments and is satisfied with them.

Closes WORK SESSION on HB 2561 until later in the meeting.

HB 3065 WORK SESSION

354 **JON CHANDLER, CHIEF COUNSEL, METROPOLITAN PORTLAND HOME BUILDERS ASSOCIATION:** Submits amendments to HB 3065. **(EXHIBIT C)**

404 -Continues to explain the provisions of the proposed amendments.

450 -Continues to explain and review the proposed amendments.

TAPE 68, SIDE A

054 **REP. UHERBELAU:** Questions language in Section 6.

058 **CHANDLER:** The intention is to provide two courses of action at the first hearing.

076 **REP. FISHER:** Questions B under Section 6.

084 **REP. NAITO:** Has some concerns with the 120 day rule and dumping issue. Questions subsection E.

093 **CHANDLER:** It's a valid concern.

131 **REP. UHERBELAU:** Nothing wrong with one person having the last word, but has some problems with language in the bill. Feels there should be written arguments for both sides.

150 **CHANDLER:** Attempting to deal with the language so it's suitable for both attorney's and lay people. Continuing dialog with other interested parties.

198 - Would like the bill moved to the full committee while they continue to work on the language.

242 -There are problems we're trying to fix.

257 **REP. FISHER:** Discusses language on line 32, page 3. Discussed changing the "shall" to "may".

277 **CHANDLER:** Still need to take a look at that.

289 **REP. UHERBELAU:** Understands he has been discussing this with different parties, this is still an on going process.

294 **CHANDLER:** Hopes when this reaches hearing in full committee they will be able to present their case.

308 **REP. UHERBELAU:** Knows they have been working very hard on this and would send it to the full committee in hopes they will have it worked out by then.

330 **REP. NAITO:** Questions advisability of moving the bill to full committee without having the LC amendments.

343 **MOTION: REP. LUKE:** Moves **HB 3065** to the full committee with no recommendation.

345 **CHAIR LEWIS:** Shouldn't that include the conceptual amendments.

350 **REP. NORRIS:** Questions language on page 3, line 22 and the problems in Pendleton.

367 **CHANDLER:** Responds he was not aware Pendleton had a problem.

410 **REP. NAITO:** Would favor voting it out without the conceptual amendments.

415 **REP. LUKE:** My motion did not include the conceptual amendments.

425 **VOTE:** In a roll call vote all members are present and vote **AYE**.

438 Closes the **WORK SESSION** on **HB 3065**.

HB 2561 WORK SESSION RE-OPENED

455 **FRED VAN NATTA, LOBBYIST:** Addresses the **HB 2561-2 amendments**. States that Legislative Counsel re-wrote the bill so it would be easier to read. (**EXHIBIT E**)

TAPE 67, SIDE B

040 -The standards for home occupation are simply the same as the ones that exist today, but have been clarified.

071 **REP. NAITO:** Questions word "unreasonably" on line 7. Asks if they would have a problem deleting the word unreasonably.

079 **VAN NATTA:** It was the lawyers feeling that an absolute standard would make the bill more difficult.

094 **REP. NAITO:** Feels it would lead to more litigation if the word is left in.

100 **REP. NORRIS:** Are we talking strictly a rural setting.

104 **VAN NATTA:** Believes the home occupation applies to rural residential settings.

117 **REP. NORRIS:** This applies to unincorporated areas only.

142 **VAN NATTA:** Says he still thinks that determination has been turned over to the counties.

150 **REP. NORRIS:** Expresses concern over language.

- 175 **REP. UHERBELAU:** What problem are we trying to address with this change.
- 180 **REP. LUKE:** States LUBA said the counties did not have that power.
- 191 **MARK BAUER, COMMITTEE ADMINISTRATOR:** Some people thought that in the original bill the parking of log trucks was not covered.
- 210 **REP. NORRIS:** Says this is an old problem.
- 237 **ART SCHLACK, MANAGEMENT SPECIALIST, THE OREGON ASSOCIATION OF COUNTIES:** Explains why changes were made to the original proposed bill. Explains they we're trying to clarify that when they have a home occupation they did not have to park that vehicle in a structure.
- 280 -Also did not want a truck terminal allowed on personal property. Thinks the parking of a single log truck should be covered in another bill.
- 295 **REP. UHERBELAU:** But it was that situation you were trying to deal with in the original bill.
- 298 **VAN NATTA:** No.
- 311 **REP. UHEBELAU:** Would the asphalt truck be dealt with here.
- 315 **VAN NATTA:** Yes
- 337 **REP. LUKE:** Thought a literal reading by the court could outlaw parking of police cars at home.
- 350 **SCHALCK:** States they have crafted the bill so that local government could make those determinations.
- 360 **REP. LUKE:** Did you believe the counties already had this authority.
- 365 **REP. UHERBELAU:** Wants to be sure we're addressing all of the problems.
- 380 **REP. FISHER:** How do you separate a business run away from home and a home business.
- 405 **REP. THOMPSON:** Wants to be sure that the bill is clear that the county has the authority to regulate this.
- 435 **VAN NATTA:** Speaks to the committee about specific language in the bill.

TAPE 68, SIDE B

- 021 **REP. UHERBELAU:** Suggests language that would clarify the bill.
- 025 **VAN NATTA:** Needs the authorizing statute.

- 032 **REP. NAITO:** The counties would still have the authority to regulate a business that started parking all of the vehicles on the farm. Include language that it is operated by the resident.
- 059 **VAN NATTA:** They will get assistance in working over the language.
- 067 **MOTION: REP. NAITO:** Moves to **conceptually amend HB 2561-2 amendments** with deleting the words "directly associated with the authorized home occupation." and further delete the word "including" and substitute the word "and" on line 18.
- 099 **REP. LEWIS:** Likes the word unreasonable.
- 108 **REP. NORRIS:** Suggests they allow the author's more time
- 112 **REP. LEWIS:** Under time constraints.
- 116 **REP. LUKE:** Wants LC to understand that the resident only need to own the property not the vehicle.

MOTION: REP. NAITO: Moves **HB 2561-2** as conceptually amended.

VOTE: Hearing no objections, the motion **CARRIES..**

MOTION: REP. NAITO: Moves the **HB 2561-2** as conceptually amended to the full committee with a **DO PASS** recommendation.

VOTE: In a roll call vote, all members are present and vote **AYE.**

CHAIR: The motion **CARRIES.**

Closes the WORK SESSION on HB 2561

HB 2709 WORK SESSION

- 164 **JON CHANDLER, CHIEF COUNSEL, METROPOLITAN PORTLAND HOME BUILDERS ASSOCIATION:** Reviews HB 2707-2 and -3 amendments. **(EXHIBIT D)**
- 210 -Lines 18-24, page 2 language is in response to concerns raised at the hearings coming from school districts regarding school placements.
- 233 **REP. FISHER:** Received a letter from Milton Freewater. In their urban growth boundary there is a large tract of land in which they're not interested in breaking up. 90% of their urban growth boundary tied in land they can't expand in. They are looking for a way to bring buildable land into their urban growth boundary. Does this bill address their needs.
- 265 **CHANDLER:** Would like to talk to Mr. Fisher and get more information.
- 270 **REP. LUKE:** Talks about a land situation in Sisters.

CHAIR TARNO: Hearing no objections, the conceptual amendments to the HB 3427-2 amendments are **ADOPTED**.

177 **REP. CORCORAN:** Moves the HB3427-2 amendments, as conceptually amended, **BE ADOPTED**.

CHAIR TARNO: Hearing no objections, the amendments are **ADOPTED**.

182 **CHAIR TARNO:** Asks Rep. Corcoran to withdraw his motion because they cannot move a conceptually amended amendment to the floor. Must have LC version of amendments.

190 **MOTION: REP. JOSI:** Moves the rules **BE SUSPENDED** for the purpose of voting **HB 3427** as conceptually amended.

204 **CHAIR TARNO:** Hearing no objection, the rules are **SUSPENDED**.

207 **REP. NAITO:** Feels the industry has made a more than adequate attempt, but will be voting no because any possibility of degradation of the drinking water supply.

220 **REP. THOMPSON:** Will also be voting no, doesn't see why that resource has to be taken from the ground at this time.

231 **REP. UHERBELAU:** Difficult issue, but bottom line is the water quality. Some of the testimony today was offensive. Doesn't feel she has enough information to make an informed decision so will be voting no.

250 **REP. CORCORAN:** Had two bottom lines in this discussion. Timberworkers, and degradation of the water. Does believe that there are adequate protections both federally and the monitoring systems oversight that DEQ will be doing. Will support the bill.

264 **REP. LUKE:** Asks about the meeting in Mill City: was unable to attend. Doesn't believe there has been sufficient testimony for him to vote yes.

275 **MOTION: REP. CORCORAN:** Moves **HB 3427, AS AMENDED**, be sent to the Floor with a **DO PASS** recommendation.

CHAIR TARNO: Calls for a roll call vote:

280 **VOTE:** 6-6
AYE: 6 - Corcoran, Fisher, Lewis, Norris, Tarno, Welsh
NAY: 6 - Josi, Luke, Naito, Thompson, Uherbelau, Wells

CHAIR: The motion **FAILS**. **REP. LUKE** serves notice of possible reconsideration.

CHAIR TARNO: Closes the Work Session on HB 3427.
Opens the Work Session on HB 2561

353 **MARK BAUER, COMMITTEE ADMINISTRATOR:** Summarizes **HB 2561-3**, which was amended in subcommittee.

374 **REP. NAITO:** Notes that she thinks LC did not get the amendments quite right, but suggests passage anyway.

379 **MOTION: REP. LUKE :** Moves the (-3) amendments to **HB 2561, BE ADOPTED.**

CHAIR TARNO: Hearing no objections, the amendments are **ADOPTED.**

MOTION: REP. LUKE : Moves **HB 2561, AS AMENDED**, be sent to the Floor with a **DO PASS** recommendation.

390 **VOTE:** In a roll call vote, all members are present and vote **AYE.**

CHAIR TARNO: The motion **CARRIES.**

REP. LUKE will lead discussion on the Floor.

415 **CHAIR TARNO:** Closes the WORK SESSION on HB 2561.

Opens the WORK SESSION on HB 2658

427 **BAUER:** Summarizes **HB 2658-3**, passed out of subcommittee with amendments.

440 **MOTION: REP. LUKE:** Moves **HB 2658, AS AMENDED**, be sent to the Floor with a **DO PASS** recommendation.

450 **VOTE:** In a roll call vote, all members are present and vote **AYE.**

CHAIR TARNO: The motion **CARRIES.**

REP. REPINE or **REP. LEWIS** will lead the discussion on the Floor.

CHAIR TARNO: Closes the WORK SESSION on HB 2658

Opens WORK SESSION on HB 3124

457 **MARK BAUER, COMMITTEE ADMINISTRATOR:** Summarizes **HB 3124.**

469 **REP. LUKE:** Was this bill amended?

BAUER: The **HB 3124-2** amendments were approved in subcommittee.

TAPE 50, SIDE A

028 **MOTION: REP. LUKE:** Moves **HB 3124, AS AMENDED**, be sent to the Floor with a **DO PASS** recommendation.

Robert P. VanNatta
Attorney at Law
P. O. Box 748
St. Helens, Oregon 97051

HB 2561

Ms. Chair, members of the subcommittee, I come before you to express support for the proposed amendments to ORS 215.448 relating to home occupations. Of late, I have had a most unsatisfactory experience in dealing with the home occupation provisions of ORS 214.448, and I believe that a legislative repair is appropriate. With humility, I have attached a copy of my unsatisfactory experience to this memorandum.

If the problem here were only that I lost a case in court, it would hardly be an occasion to rewrite the law. The problem is broader than that however.

The issue has to do with the extent to which a county is allowed to permit low level commercial activity to occur in and around rural homes. You can read the statutory scheme from one end to the other and you can find nothing anywhere that purports to authorize 'any' commercial activity incidental to the right to live there. I think most of us have assumed that it was legal for someone to conduct a 'Tupperware party' outside an Urban Growth Boundary without any special permit or zoning hearing.

I am not sure why we have all assumed this, but perhaps it is based on a traditional belief that one could do with his property pretty much as he wished unless there was some law that said he couldn't. I believe that most planning and zoning laws were

(
drafted pretty much on that premise, and since there is no ORS that says "NO TUPPERWARE PARTIES", then they are 'OK'.

Within this context ORS 215.448 came into being. Its purpose was to setup a process for conditional use for 'home occupations' more intense than those which we have all assumed were permitted outright. Bear in mind that there is absolutely no statute anywhere that says that even a single business phone call can be made at home without violating the zoning law. We have just assumed that common sense is implied in zoning rules--a faulty assumption, I suspect.

In this spirit ORS 215.448 authorized the counties to allow 'more intense' commercial uses if:

- (
- a) operated by a resident,
 - b) not over 5 employees.
 - c) was inside a building
 - d) didn't interfere with the neighbors.

This reads well enough, and within its original context made perfect sense.

Now, along come the courts and stand the traditional assumptions about zoning on their head. The current judicial trend is that "you can't do it unless the law says you can".

Now go back and re-read ORS 215.448 from the frame of mind that you 'can't do it unless it says you can', and reconsider the Tupperware party.

CAN A TUPPERWARE PARTY QUALIFY FOR A HOME OCCUPATION PERMIT?

(
Actually, it appears to violate several sections of the home occupation statute. First off, the sales party is not "operated

by a resident" but rather is being run by an roving salesman. that disqualifies it under section a). There may be a problem with b) also, because LUBA, at least sort of implies that you should count all company employees regardless of whether they work on the premises or not. The third requirement is that the activity operated "inside" a building. No problem, eh? Wrong again. You are not OK just because the selling all takes place around kitchen table. Nope! Their cars are all parked 'out front'. Opps! I've got a big barn! I'll tell the ladies to all park in the barn. Sorry "such transport activities are inherently more intensive than the purported storage activity on the home-site itself." (to use the words of the Court of Appeals).¹

Last but not least, the 'home occupation' must not interfere with the neighbors, and if you are applying for such a permit you have to prove that there will NEVER BE ANY INTERFERENCE. Now how are you going to PROVE that some visitor will never block a near by owners driveway, or that traffic on the road will not be increased, or that the neighbor might simply lose a night's sleep worrying that you are going to make a few bucks hosting this Tupperware party. In the NIMBY world of zoning, there appears to be no rule that the 'interference' has to be tangible or even rational.

THE PROBLEM

Getting to the point, there are two fundamental flaws in the home occupation law as it now exists as construed by the courts.

¹Holsheimer v. Columbia County (February 22, 1995)

- a) There is no 'rule of reason' on the requirements.
- b) The statute does not address occupations which are primarily pursued 'off premises', but some portion of which 'comes home'.

Specifically:

AMENDMENT NO 1

1) The "indoors" requirement makes no allowance for the fact that to get "indoors" you have to come and go. Other than my own case several examples of 'outside' problems have turned up in my research:

a) A Clackamas County fellow who wanted to repair cars in his garage ran afoul of the 'indoors rule' because of the cars that would be coming and going.¹

b) In another LUBA reported case a Columbia County lady lost out on a day care center home occupation application because she intended to let the children play outside her home.²

c) Elsewhere, I read of a LUBA case in which a 'bounty hunter' car reposessor lost out because when she snagged a car, she would park it in her driveway until the bank could arrange to pick it up.³

d) In apparent reliance on the Holsheimer opinion, the Columbia County Board of Commissioners lately rejected a home occupation for a bed and breakfast because the guests would be allowed to walk around the owners rural premises and thus not be 'indoors'.

¹See *Wuester v. Clackamas County*, 25 LUBA 425 (1993) where in LUBA said "While the quantum of business [parking vehicles waiting to be repaired] conducted outside . . . may be less in this case than in *Slavich* and *Stevenson*, we nevertheless conclude the statute is violated by the county's decision. The statutory language simply provides no basis for reading in a *de minimis* exception to the requirement that home occupations be limited to the dwelling and other buildings associated with the permitted uses." ; but see also *Wuester v. Clackamas County* 27 LUBA ____ (August 94) where the permit apparently was ultimately allowed.

²*Slavich v. Columbia County*, 16 LUBA 704, 707 (1988).

³*Stevenson v. Douglas County* 23 LUBA 227 (1992)

SUGGESTION: change subsection 1(c) to read:
(c) Will be substantially, except for going and coming, operated in:

AMENDMENT NUMBER 2

2) A 'rule of reason' should be added to interference.

SUGGESTION: change subsection 1(d) to read:

"(d) Will not unreasonably interfere (with existing uses on nearby land or)¹ with other uses permitted in the zone in which the property is located."

AMENDMENT NUMBER 3

3) While we are at it we might as well knock out an 'unfunded mandate' as well.

SUGGESTION: Repeal Subsection 5 entirely. It seems to me that some home occupations need to be reviewed and some don't. A statutory requirement that the planning commission conduct a public hearing over every home fax machine every 12 months seems unnecessary. The effect of repealing subsection 5 would be to leave review to the discretion of the counties.

AMENDMENT NUMBER 4

4) Subsection 6 is the amendment which is printed. It is directly intended to reverse the holding of the Court of Appeals that business that works off premises and takes equipment and vehicles home at night can not qualify as a home occupation.

The import of the Holsheimer decision it to hold that it is against the law for any county in the State of Oregon to allow a

¹We would delete this provision which appears to require compatibility with neary 'illegal' uses as well as 'permitted uses'. We don't see the policy purpose of demanding on a lack of interference with uses which are not permitted in the zone in which the home occupation would be located.

dump truck to be parked anywhere except in an industrial zone where they presumably would be permitted. Given that industrial zones don't exist outside of Urban Growth boundaries for the most part, the literal impact of this decision is that every dump truck in Oregon is suppose to flock to town every night to park, no matter how far from town it works (or its owner lives).

The stupidity of law suggesting that every dump truck should flock to the nearest town for parking each night is indisputable.

The challenge is to 'fix' the statute without making things worse.

The direct holding of Holsheimer is that the coming and going of business vehicles is flat out illegal and cannot be permitted by the County in a rural zone. As a believer in common sense, I would like to believe that the court, notwithstanding this decision would hold that the daily coming and going of a "business bicycle" of a newspaper delivery person was either an outright allowed use incidental to living on the premises or at least something which could be permitted, but the plain language of this court opinion is to the contrary.

The problem with the amendment as drafted from my viewpoint is that it implicitly concedes that every business vehicle that goes home with its owner at night needs a home occupation permit, which would imply, that unless you accept my suggestion to delete the mandatory 12 month review, would imply that a planning commission hearing would be required once a year on every business pickup that went home at night in the state. I think there are more business vehicles going home at night than

planning commission hearing slots.

Given that there is some glimmer of hope that the courts will recognize that some business vehicles can go home under some conditions without going through the permit process, I would propose that subsection 6 be revised slightly to recognize that possibility.

SUGGESTION: change the proposed subsection (6) to read as follows:

(6) Under subsection (1) of this section, a governing body of a county or its designate may also allow occupational activities to be conducted as a home occupation if the primary occupational activities are conducted off the real property and the secondary activities, **to the extent that they are not permitted outright as incidental to an authorized use of the premises**, such as record keeping, telephone contacts or vehicle and equipment parking are conducted on the real property.

The idea of this amendment is to allow the counties to consider permits for such activities when required, but at the same time assuming that every telephone contact, kept record or vehicle parking activity requires a permit. Stated another way, to the extent that 'secondary uses' are deemed to be 'permitted uses' under current law, they would continue to be such, but under circumstances where it was determined that a conditional use was required, then the county would have the necessary authority to consider the application.

FILED: February 22, 1995

IN THE COURT OF APPEALS OF THE STATE OF OREGON

PHIL HOLSHEIMER, JR., and
GEORGIE HOLSHEIMER,

Respondents,

v.

COLUMBIA COUNTY,

Respondent,

and

RONALD W. HUGHES and MAREN K.
HUGHES,

Petitioners.

(LUBA No. 94-119; CA A86642)

Judicial Review from Land Use Board of Appeals.

Argued and submitted January 20, 1995.

Robert P. Van Natta argued the cause for petitioners. With him on the brief was Van Natta & Petersen.

Peggy Hennessy argued the cause for respondents. With her on the brief was Reeves, Kahn & Eder.

No appearance for respondent Columbia County.

Before Deits, Presiding Judge, and Richardson, Chief Judge, and Haselton, Judge.

DEITS, P.J.

Affirmed.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondents

[xx] No costs allowed respondent Columbia County
[xx] Costs allowed Respondents Holsheimers, payable by:
Petitioners

In a case in which a party could be represented by appointed counsel entitled to compensation under ORS 138.500, but the prevailing party is represented by retained counsel or appeared pro se, the prevailing party is allowed costs.

MONEY JUDGMENT

Judgment #1

Judgment #2*

Creditor: _____

State of Oregon,
Judicial Department

Debtor: _____

Costs: _____

Unpaid filing fee: _____

Attorney fees: _____

TOTAL AMOUNT: \$ _____

\$ _____

Interest: Simple, 9% per annum, from the date of this appellate judgment.

*Judgment for unpaid filing fees. ORS 21.605(1)(c).

This section to be completed when the appellate judgment issues. See ORAP 14.05(3).

NOTICE OF EXPENSES AND COMPENSATION UNDER ORS 138.500(4)

The appellate court has affirmed the conviction in this criminal case and has certified expenses and compensation of appointed counsel. This is notice to the trial court so that it may exercise its discretion under ORS 161.665(2) to include the expenses and compensation of appointed counsel in the final judgment, in addition to transcript preparation expenses allowed by the trial court. The court has certified expenses and compensation in the amount of \$ _____.

This section to be completed when the appellate judgment issues. See ORAP 14.05(3).

Appellate Judgment
Effective Date:

COURT OF APPEALS
(seal)

1 DEITS, P.J.

2 Petitioners seek review of LUBA's reversal of Columbia
3 County's approval of their application to conduct a putative
4 "home occupation" in a rural residential zone. We affirm.

5 We take the facts from LUBA's majority opinion:

6 "[Petitioners] are the owners of Ponderosa Paving
7 Company. Following complaints about [petitioners'] use
8 of the subject property to store materials, equipment
9 and vehicles and to carry out other activities
10 associated with Ponderosa Paving, [petitioners]
11 submitted a request for [a] conditional use permit to
12 allow 'parking of vehicles belonging to Ponderosa
13 Paving Inc.'

14 "The subject 2.3 acre parcel is located in the RR-
15 5 Rural Residential district. 'Home occupations
16 consistent with ORS 215.448' are listed among the 'Uses
17 Allowed Under Prescribed Conditions' in the RR-5
18 district. * * * Home occupations are subject to CCZO
19 1507 which, as relevant, simply incorporates the
20 statutory requirements set out at ORS 215.448.

21 "The challenged decision explains the county views
22 Ponderosa Paving Company's business as composed of two
23 parts. One part includes the actual paving operations.
24 That part of the business occurs at various locations
25 away from the subject property and involves an
26 undetermined number of employees. The second part,
27 which is the subject of the challenged decision, is
28 composed of the routine administration and bookkeeping
29 functions of the business and storage of the equipment
30 and vehicles and some of the materials used in the
31 paving business. The challenged decision allows
32 operation of this second part of the business on the
33 subject property, to be carried out inside the existing
34 single family dwelling, an existing metal building or
35 in a new 'suitable structure (pole building)' to be
36 constructed on the property. The vehicles and
37 equipment stored on-site each evening will be moved as
38 needed each morning to sites away from the subject
39 property where Ponderosa Paving is conducting actual
40 paving operations." (Citations to record and footnotes
41 omitted.)

1 ORS 215.448(1) provides:

2 "The governing body of a county or its designate
3 may allow, subject to the approval of the governing
4 body or its designate, the establishment of a home
5 occupation in any zone, including an exclusive farm use
6 or forest zone, that allows residential uses, if the
7 home occupation:

8 "(a) Will be operated by a resident of the
9 property on which the business is located;

10 "(b) Will employ no more than five full or part-
11 time persons;

12 "(c) Will be operated in:

13 "(A) The dwelling; or

14 "(B) Other buildings normally associated with
15 uses permitted in the zone in which the property is
16 located; and

17 "(d) Will not interfere with existing uses on
18 nearby land or with other uses permitted in the zone in
19 which the property is located."

20 Although the LUBA majority and concurring opinions
21 follow different analytical approaches, both conclude that the
22 daily storage and movement of vehicles and equipment to and from
23 the home site and off-premise work sites fall outside the
24 statutory definition of a home occupation generally and, in
25 particular, the requirement of ORS 215.448(1)(c) that operations
26 take place in specified buildings. The majority rejected "the
27 county's view of the paving materials, vehicles and equipment as
28 having a separate identity and situs depending on whether they
29 are actually being used [off-site] for paving or being stored
30 [on-site]." In her concurring opinion, Referee Kellington

1 explained:

2 "What is relevant to determining whether
3 particular business activities constitute a lawful home
4 occupation, are the external and internal indicia of
5 the business activities occurring at the home. As
6 applied here, the external and internal indicia
7 establish that the business activities occurring at the
8 site of the subject dwelling exceed the statutory scope
9 of a permissible home occupation." (Emphasis
10 supplied.)

11 In their first assignment, petitioners contend that
12 LUBA erred by considering off-premise activities generally and,
13 specifically, in the context of ORS 215.448(1)(c). They maintain
14 "that 'off-premise' activity is irrelevant in
15 determining whether a home occupation is containable
16 within a structure in the premises."

17 However, LUBA's conclusion was not dependent on a
18 consideration of petitioners' off-premise activities. Under the
19 rationale used by the LUBA majority, as well as that of the
20 concurring referee, the on-premise activities here do not qualify
21 as a home occupation. Although petitioners contend that the
22 pertinent on-site activities are limited to mere storage of
23 equipment and paving materials, that "storage" necessarily
24 entails the constant movement of vehicles and equipment to and
25 from petitioners' premises and off-site job locations. Indeed,
26 such transport activities are inherently more intensive than the
27 purported storage activity on the home-site itself. Moreover,
28 the activities will not be limited to the structure where the
29 storage itself is to take place. We agree with LUBA that the
30 proposed use is contrary to ORS 215.448(1)(c) as a matter of law

1 and that LUBA's reversal of the county's decision on that basis
2 was proper.

3 The requirements of the statute are conjunctive.
4 Accordingly, the inconsistency of the proposal with any provision
5 of the statute is conclusive, and it is unnecessary for us to
6 reach the other issues presented by the parties or addressed by
7 LUBA.

8 Affirmed.

HNR SUB. ON ENV. & ENERGY
DATE: 3/10/95 PAGES: 8
SUBMITTED BY: REP. LUKE/G. REP

DESCHUTES COUNTY

Community Development Department
1130 NW Harriman, Bend, Oregon 97701
FAX No.: (503)385-1764 Telephone No.: (503)388-6575

FACSIMILE TRANSMITTAL

DATE:

3-10-95

TO:

Dennis Luke

FAX NO.:

503-986-1971

FROM:

Gary Reith

SUBJECT:

HB 2561

MESSAGE:

All attached

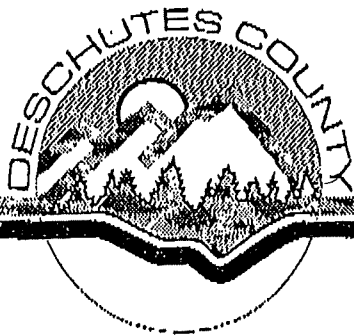
NO. OF PAGES:

8

including this page.

SENT BY:

Mary No 385-1710



Rep Luke / G. Reed

Community Development Department

Administration Bldg., 1130 N.W. Harriman, Bend, Oregon 97701

(503) 388-8575

Planning Division

Building Safety Division

Environmental Health Division

March 10, 1995

Dennis R. Luke
State Representative
State Capital
Salem, Oregon 97310

RE: HB 2561

Dear Representative Luke:

Thank you for your request for comments on HB 2561 regarding Home Occupations. It is clear that the Home Occupation Provisions of state law need to be revised. However, I believe HB 2561, as drafted, makes it more difficult, not less difficult, for counties to deal with people who conduct businesses at their home. The following is a summary of our concerns and the proposed changes with existing law. They are followed by a more detailed explanation of why we have these concerns.

- * The Home Occupation Provision of ORS 215.448 are discretionary and therefore require public notice and a written findings and decision for approval. As drafted the new subsection 6 would require land use approval for practically all business conducted from a home.
- * There is no state interest in regulating Home Occupations in residential areas of counties. Home Occupations are not regulated in cities why regulate them in residential areas of counties?
- * The present statute requires Home Occupations to be conducted in the dwelling or other buildings normally associated with the zone. Some occupations or accessory uses to Home Occupations can be conducted outside of a structure and there is no reason to have all Home Occupations, including incidental activity, conducted in a structure.

Dennis R. Luke - Home Occupations
March 10, 1995
Page 1

Quality Services Performed with Pride

Generally, counties have very little latitude to interpret state law. Several court cases over the last few years have limited counties abilities to interpret the Home Occupation standards. Uses we previously determined not to be Home Occupations are now required to go through a land use process or not be allowed at all. A more detailed analysis and solutions are listed below:

1. Home occupations are not defined in the statute except by limitations on uses. Of concern are types of uses that have phones, copiers, fax machines, computers or other equipment within the dwelling and some storage of materials and equipment at the site including vehicles used by resident(s) of the dwelling.

The proposed listing of specifics in the statute (HB 2561(6)) will require us to review virtually every person who conducts any type of business from their home, including Avon sales people, realtors, contractors, etc., yearly! The state statutory requirements are discretionary (includes language without clear and objective standards such as "normally associated", "will not interfere", "nearby land", and "reasonable conditions"). Discretionary permits are considered land use actions and require public notice, written findings and decisions and opportunity for appeal by all parties. Adding this level of review, as proposed in subsection 6, of bill creates an unnecessary burden on the public and local governments.

SOLUTION:

Delete the proposed subsection 6 and replace it with a definition of Home Occupation that specifically excludes occupational activities when they are primarily conducted off the property and are secondary activities such as recording keeping, telephone contacts or vehicle parking and incidental storage conducted by the resident(s) of the property.

2. There is no state interest in regulating home occupations in the residential zones of the counties. In deed counties are required to, as closely as possible, reflect the restrictions in cities, when zoning land within urban growth boundaries. This cannot occur with the statute as it currently exists. The local regulation of Home Occupations allows flexibility based upon neighborhood standards.

SOLUTION:

Amend ORS 215.448(1) by removing reference to "any zone", and leaving only farm and forest zone restrictions.

3. ORS 215.448(1)(c)(A)(B) requires that home occupations be conducted in the dwelling or other buildings normally associated with the zone. This has been interpreted (LUBA 91-213 attached) to indicate that all necessary and incidental activity of the home occupation including vehicles, equipment and supplies must be stored and conducted in a building. This could mean that a contractor taking home his personal vehicle would have to park it in a garage or be in violation of state law.

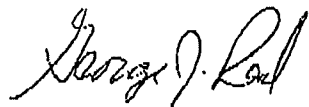
SOLUTION:

This section should be revised to say "the buildings used for home occupations shall be the dwelling on the subject lot or other buildings normally associated with uses permitted in the zone ..."

Deschutes County is much stricter than the state statute in that we do not allow employees that do not live on the site to be involved in the home occupation. Additionally, we have added restrictions on impacts to neighbors. Community standards will dictate the level of regulation counties must enforce. There is no need for the state to micro-manage Home Occupations.

We are at your service to work with any group to fix the problems identified above. Thank you for your consideration.

Sincerely,
DESCHUTES COUNTY COMMUNITY DEVELOPMENT



George J. Read, Director

GJR/mjz

cc: Board of County Commissioners
Central Oregon Builders Association
Deschutes County Planning Commission
Art Schlack AOC

determination is made entirely by DLCD, where the plan land use regulation amendment is adopted to comply with or more periodic review factors and submitted to DLCD for periodic review. We conclude ORS 197.640 to 197.650 (1997) envision that in periodic review DLCD will resolve all compliance issues associated with new or amended plan land use regulation provisions adopted to comply with one or more periodic review factors, regardless of whether those compliance issues are directly related to the periodic review factor that necessitated the new or amended plan or land use regulation in the first place.

We emphasize that periodic review does not require or allow DLCD to reconsider the plan and land use regulation in their entirety for goal compliance. However, we see nothing in the statutes to suggest that DLCD need not conduct a complete goal compliance review of the new or amended provisions that are adopted to respond to a periodic review factor. DLCD's goal compliance review must be limited to compliance issues raised directly or indirectly by the new or amended provisions themselves, but it must be a *complete* goal compliance review of such new or amended provisions.

D. Conclusion

In conducting its periodic review of the disputed ordinances, DLCD is required to determine whether the plan and zoning designations applied to the County Park property violate Goal 12. Under Goal 2 (Land Use Planning), DLCD is required in periodic review to assure that the challenged amendments do not conflict with provisions of its comprehensive plan or applicable provisions of the LUBA. Because all of these matters are subject to review by DLCD, they are beyond LUBA's review jurisdiction. ORS 197.825(2)(c) (1989).

This appeal is dismissed.

EDWARD STEVENSON and MARIA STEVENSON,
Petitioners,

vs.

DOUGLAS COUNTY,
Respondent,

and

BANDY K. BRATTON and WAYNE BRATTON,
d/b/a OMEGA RECOVERY,
Intervenor-Respondent.

LUBA No. 91-213

Appeal from Douglas County.

Wallace D. Cegavsky, Roseburg, filed the petition for review and argued on behalf of petitioners. With him on the case were Cegavsky, Johnston & Associates.

No appearance by respondent.

Randolph Lee Garrison, Roseburg, filed the response and argued on behalf of intervenor-respondent.

KEELINGTON, Referee; HOLSTUN, Chief Referee; and REVERSED 05/06/92

REVERSED 05/06/92

Local Government Procedures - Compliance with Statutes - Raise Petition (ORS 197.763).

Where petitioners argued below that in view of the outside storage of automobiles, a major portion of a home occupation is conducted outside of the dwelling, petitioners may argue at LUBA that the violation of local code requirements, petitioners may argue at LUBA that the storage of automobiles violates the local code, regardless of whether the storage of automobiles constitutes a major portion of the home occupation.

Particular - Approval Standards - Generally.

Particular - Particular Uses - Home Occupations.

A local code requirement that a home occupation be "operated in a dwelling building normally associated with the dwelling is not satisfied by the storage of vehicles outside of the dwelling until such vehicles are loaded on trucks for disposal or driven away.

Opinion by Kellington.

NATURE OF THE DECISION

Petitioners appeal an order of the board of county commissioners approving a conditional use permit for a home occupation.

MOTION TO INTERVENE

Sandy K. Bratton and Wayne Bratton, dba Omega Recovery, move to intervene on the side of respondent in this appeal proceeding. There is no objection to the motion, and it is allowed.

FACTS

The subject property is .93 acres in size, located within a residential subdivision and zoned Rural Residential (RR). Petitioners' residence is immediately adjacent to the subject property.

Intervenors-respondent (intervenors) submitted an application for permission to conduct an automobile repossession business from their residence as a home occupation.¹ The automobile repossession business includes the following activities:

"Recovered vehicles are, from time to time, temporarily placed on the subject premises. The Applicant recovers vehicles, parking them in her driveway until the vehicles are taken away for disposition at an auction yard. * * * The average length of time that a recovered vehicle remains on the premises is two - four days. Most vehicles are temporarily held over at the subject premises while on their way to be auctioned in Eugene. Some vehicles are auctioned in Portland. The Eugene auction occurs every Thursday. The Portland auction occurs every Thursday. * * * Some vehicles are transported to and from the subject premises on their own power. Other vehicles are transported to and from the premises by tow/hauling truck. The tow/hauling trucks carry a minimum of one vehicle. There was testimony that one truck could carry as many as four vehicles at a time. * * * Record 5-6.

¹ The automobile repossession business was established and conducted on the subject property before the disputed application was submitted.

STANDING

Intervenors' response brief includes an objection to this petitioner's standing to appeal the challenged decision to this Board. However, this Board determined petitioners have standing to appeal to this Board, in the context of denying petitioners' request for an evidentiary hearing, *Stevenson v. Douglas County*, Or LUBA No. 91-213, Order, March 17, 1992. We adhere to that determination. Petitioners have standing to appeal to this Board.

FIRST ASSIGNMENT OF ERROR

"The county decision permits a use that would violate the Douglas County LUDO Section 3.9.100.9(c), in that a portion of said business is not carried on within the buildings located on the premises."

A. Waiver

Intervenors argue petitioners waived certain issues raised in this appeal concerning the proposed compliance with various sections of the Douglas County Land Use and Development Ordinance (LUDO), including LUDO 3.9.100.9(c).² Intervenors argue these issues were not raised below in the same way they are raised in the petition for review.³

ORS 197.768(1) provides:

² LUDO 3.9.100.9 provides, in relevant part:

"HOME OCCUPATION: Any occupation or profession carried on by a member of the family residing on the premises, if the occupation or profession:

"(c) Will be operated in:

"1. The dwellings or

"4. Other buildings normally associated with uses permitted in the zone in which the property is located. * * * ["]"

³ Because of our disposition of this appeal, we need only consider intervenor arguments concerning waiver of the issue of compliance with LUDO 3.9.100.9(c).

"An issue which may be the basis for an appeal to LUBA shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised with sufficient specificity so as to afford the governing body * * * and the parties an adequate opportunity to respond to each issue."

LUBA's scope of review is limited by ORS 197.835(2), which provides in part as follows:

"Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.768. * * *

Intervenors contend petitioners' issues below concerning the parking of repossessed cars outside intervenors' dwelling were limited to arguments that the parking of those cars means that a *major portion* of the business is carried on outside of the dwelling, in violation of LUDO 3.9.100.9(c). Intervenors complain petitioners are precluded from arguing before this Board that the proposal violates LUDO 3.9.100.9(c) simply because parking repossessed cars outside the residence constitutes *some part* of the business.

1 In *Boldt v. Clackamas County*, 107 Or App 619, 623, 813 P2d 1078 (1991), the Court of Appeals determined the purpose of ORS 197.835(2) and ORS 197.768(1) is to afford the local decision maker and the parties "an adequate opportunity to respond to each issue." Specifically, the Court of Appeals stated:

"ORS 197.768(1) requires no more than fair notice to adjudicators and opponents, rather than the particularity that inheres in judicial preservation concepts. Indeed, there would have been no need for the second sentence in the statute if the strict preservation principles petitioner urges had been intended.

* * * * *

"Moreover, the dynamics of local land use proceedings are not susceptible to the kind of specificity that is required to preserve issues in the courts. One of the objectives of the proceedings is to facilitate citizen input. Presentations are often brief and cursory, and there is no expectation that participants need to or will be represented by counsel in every proceeding. * * * *Id.* at 623-24.

Petitioners raised below the issue of whether the outside storage of repossessed vehicles violates the LUDO 3.9.100.9(c) requirement that a home occupation be

"operated" within a dwelling or within "buildings normally associated with" that dwelling. Whether petitioners may have articulated their concern by arguing that in view of the outside parking of repossessed vehicles, a *majority* of the proposed business is conducted outside of the dwelling, does not change the fact that petitioners were complaining about the outside storage of repossessed vehicles. We believe petitioners' argument below afforded the county and intervenors adequate notice to respond below to whether the outside storage of repossessed vehicles violates LUDO 3.9.100.9(c). In this appeal proceeding, petitioners may raise the issue of whether intervenors' outside storage of repossessed vehicles violates LUDO 3.9.100.9(c), regardless of whether such outside storage constitutes a major portion of the business.

B. LUDO 3.9.100.9(c)

The challenged decision states, in part:

"The Applicant's business will be operated in the Applicant's dwelling. The subject residence has an office area in which the primary business activity is conducted. The primary business activity is conducted via phone, typewriter, files and fax. Under conditions described herein, the parking of vehicles [outside] the residence is merely an incidental and necessary activity of the business, which does not otherwise detract from the business otherwise being operated in the dwelling. A major portion of Applicant's business is not carried on outside of the residence located on the property. The Applicant's request for a Conditional Use Permit does not violate LUDO 3.9.100.9(c)." Record 6.

The issue under this assignment of error is whether the county correctly interpreted LUDO 3.9.100.9(c) to allow the outside storage of repossessed vehicles as a "necessary and incidental" part of the proposed home occupation. The interpretation of local ordinances is a question of law which must be decided by this Board. While some deference is due a local government's interpretation of its own ordinances, it is ultimately this Board's responsibility to determine the correct interpretation of disputed code provisions. *McCoy v. Linn County*, 90 Or App 271, 275-76, 752 P2d 828 (1988). Further, this Board may not disregard explicit requirements of mandatory standards, absent an explicit expression in the code to the contrary. See *Von Lubken v. Hood River County*, 104 Or

App 683, 803 P2d 750 (1990), *adhered to* 106 Or App 226, 806 P2d 727, *rev den* 311 Or 349 (1991).

2 LUDO 3.9.100.9(c) requires that a home occupation be "operated in" a dwelling or "buildings normally associated with" that dwelling. The operative language of LUDO 3.9.100.9(c) is identical to local code provisions we interpreted in *Slawich v. Columbia County*, 16 Or LUBA 704 (1988). In *Slawich* the issue was whether a day care center in which an unlimited amount of activity by children and staff was to occur outside the residence, was properly interpreted as constituting a home occupation "operated in" a dwelling. We determined it was not.

Similarly, here, LUDO 3.9.100.9(c) requires a home occupation to be "operated in" a dwelling or other building normally associated with the dwelling. That a comparison of the amount of business activity occurring in the home, with the amount of business activity occurring outside the home establishes that more business is conducted inside than out, does not establish compliance with LUDO 3.9.100.9(c). The challenged decision determines the parking of repossessed vehicles outside of intervenor's residence, until such vehicles are either loaded on trucks for disposal or driven away, is a "necessary and incidental" activity of the proposed business. Unquestionably, the proposed home occupation will not, therefore, be "operated in" intervenor's residence or other buildings normally associated with intervenor's residence. Accordingly, the proposal falls to comply with LUDO 3.9.100.9(c) as a matter of law. Because the proposed use is prohibited as a matter of law, the county's decision must be reversed. OAR 661-10-071(1)(c).

The first assignment of error is sustained.⁴

The county's decision is reversed.

⁴ Because the challenged decision must be reversed in any event, no purpose is served in deciding petitioner's other assignments of error.

GENE COPE, HARRIET COPE, COLLEEN DONNELLY,
ROBERT DONNELLY, CAROLYN R. DRANEAS,
JOHN H. DRANEAS, MARY GARTSHORE,
PETER GARTSHORE, JACK G. KADY, MARSHA
LAARGE, JACK STUTZMAN, SHARON STUTZMAN,
BETTY WILSON, LLOYD WILSON, WILLIAM G. HAY,
GEORGHANA F. HAY, WILLIAM J. ALRED, and
HALLMARK INNS & RESORTS, INC.,
Petitioners,

vs.

CITY OF CANNON BEACH,
Respondent.

LUBA Nos. 92-019 and 92-020

Appeal from City of Cannon Beach.

John H. Draneas and Dean N. Alterman, Portland, filed the petition for review and argued on behalf of petitioners. With them on the brief was Draneas, Gregores & Beran, and Kell, Alterman & Runstein.

William Canessa, Seaside, and Mark J. Greenfield and Edward J. Sullivan, Portland, filed the response brief. With them on the brief was Campbell, Moberg & Canessa; and Preston, Thorgrimson, Shidler, Gates & Ellis. Mark J. Greenfield argued on behalf of respondent.

KELLINGTON, Referee; HOLSTUN, Chief Referee; SHERTON, Referee, participated in the decision.

AFFIRMED 05/06/82

1. Statewide Planning Goals -- Compliance With.

Goal 8 -- Recreational Needs.

Goal 9 -- Economy of the State.

Goal 10 -- Housing.

A determination that there are adequate tourist accommodations within a city to comply with Statewide Planning Goals 8 and 9 without using dwellings in residential zones for short term rental purposes, but that there is an inadequate amount of affordable long term housing available in the city to comply with Goal 10, is sufficient to establish that an ordinance prohibiting short term rental use of dwellings in residential zones complies with those goals.

**PROPOSED AMENDMENTS TO
HOUSE BILL 2561**

1 Delete lines 4 through 30 of the printed bill and insert:

2 **"SECTION 1.** ORS 215.448 is amended to read:

3 "215.448. [(1) *The governing body of a county or its designate may allow,*
4 *subject to the approval of the governing body or its designate, the establish-*
5 *ment of a home occupation in any zone, including an exclusive farm use or*
6 *forest zone, that allows residential uses, if the home occupation:]*

7 "[a] *Will be operated by a resident of the property on which the business*
8 *is located;*]

9 "[b] *Will employ no more than five full or part-time persons;*]

10 "[c] *Will be operated in:*]

11 "[[A] *The dwelling; or*]

12 "[[B] *Other buildings normally associated with uses permitted in the zone*
13 *in which the property is located; and*]

14 "[d] *Will not interfere with existing uses on nearby land or with other uses*
15 *permitted in the zone in which the property is located.*]

16 **"(1) The governing body of a county or its designate may allow,**
17 **subject to the approval of the governing body or its designate, the es-**
18 **tablishment of a home occupation, including the parking of vehicles**
19 **directly associated with the authorized home occupation, in any zone.**
20 **However, in an exclusive farm use zone, forest zone or a mixed farm**
21 **and forest zone that allows residential uses, the following standards**
22 **apply to the home occupation:**

23 **"(a) It shall be operated by a resident of the property on which the**
24 **business is located;**

1 “(b) It shall employ on the site no more than five full-time or
2 part-time persons;

3 “(c) It shall be operated substantially in:

4 “(A) The dwelling; or

5 “(B) Other buildings normally associated with uses permitted in the
6 zone in which the property is located; and

7 “(d) It shall not unreasonably interfere with other uses permitted
8 in the zone in which the property is located.

9 “(2) The governing body of the county or its designate may establish ad-
10 ditional reasonable conditions of approval for the establishment of a home
11 occupation under subsection (1) of this section.

12 “(3) Nothing in this section authorizes the governing body or its designate
13 to permit construction of any structure that would not otherwise be allowed
14 in the zone in which the home occupation is to be established.

15 “(4) The existence of home occupations shall not be used as justification
16 for a zone change.

17 “[(5) A governing body of a county or its designate shall review a permit
18 allowing a home occupation under subsection (1) of this section every 12
19 months following the date the permit was issued and may continue the permit
20 if the home occupation continues to comply with the requirements of this sec-
21 tion.]”.

22

- 002 **CHAIR JOHNSON:** Convenes the meeting at 1:25 PM.
-Senator Bryant is no longer with us because he has been placed with another committee and we are honored to have Sen. Shannon with us.

Opens the Public Hearing on HB 2561A

Witness:

FRED VANNATTA, Oregon Home Builders Association

- 034 **FRED VANNATTA, ORE. HOME. BUILD. ASSOC:** Testifies in support of HB 2561A [EXHIBIT A].
-Explains the bill and the key court case that was the reason for the introduction of the bill.
- 055 **CHAIR JOHNSON:** Jerry Justice and Art Schlack, do you have anything critical to add to that?
-Mr. Schlack states for the record, that the Association of Oregon Counties supports the bill and that Mr. VanNatta has worked with them on the bill.

Closes the Public Hearing on HB 2561A

Opens the Work Session on HB 2561A

- 067 **MOTION: SEN. DWYER:** Moves HB 2561A be sent to the floor with a DO PASS recommendation.

VOTE: 5-0

AYE: In a roll call vote, all members present vote Aye.

CHAIR: The motion CARRIES.

SEN. DWYER will lead discussion on the Floor.

Opens the Work Session on HB 2963A

Witnesses:

**PHIL DEWEY, Columbia County Surveyor
STEVEN KAFOURY,**

- 080 **CHAIR JOHNSON:** I understand Sen. Dwyer that you had something to do with the (-A2) amendments proposed that we will need explained to us [EXHIBIT B].
- 081 **PHIL DEWEY, COLUMBIA COUNTY SURVEYOR:** Urges the do pass of the amendment.
- 085 **CHAIR JOHNSON:** Mr. Dewey you are testifying in support with consideration of the amendments also?
- 089 **DEWEY:** No, I only have the A-Engrossed bill. I would object to the amendments.
- 093 **STEVEN KAFOURY:** Explains the -A2 amendments to the committee.

VAN NATTA & PETERSEN

Attorneys at Law
222 South First Street
P. O. BOX 748
St. Helens, Oregon 97051
Telephone: (503) 397-4091
Fax: (503) 397-6582

BILL # HB 2561
EXHIBIT: A
SENATE WATER & LAND USE
DATE: 5-18 PAGES: 6
SUBMITTED BY: VanNatta

FAX COVER SHEET

CONFIDENTIALITY NOTICE

This facsimile transmission (and/or documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents.

February 23, 1995 8:43 a.m.

TO: The Rep. Dennis Luke

FAX # (503) 986-1971

FROM: Robert P. VanNatta at

VAN NATTA & PETERSEN
Attorneys at Law
222 South First Street
P. O. Box 748
St. Helens, Oregon 97051
Telephone: (503) 397-4091
FAX No. : (503) 397-6582

see p2 opinion

SUBJECT:

RE: home occupation bill

COMMENTS:

I believe my worst fears have been confirmed by the Court of Appeals.
See enclosed opinion.

Clearly by this opinion, businesses which involve taking equipment or vehicles home at night cannot qualify as 'home occupations'

The court of appeals when one step further than LUBA did. Instead of considering the off premise activity as LUBA did they nailed us for moving the vehicles from the storage bldg to the edge of the lot.

I see no 'matter of degree' in this opinion, and it appears that all business vehicles that 'go home at night' are against the law.

1 FAX
D:\RJ\FAK\LUKE.FAX

VAN NATTA & PETERSEN
ATTORNEYS AT LAW
P.O. BOX 748
ST. HELENS OREGON
PHONE 397-4091

FILED: February 22, 1995

IN THE COURT OF APPEALS OF THE STATE OF OREGON

PHIL HOLSHEIMER, JR., and
GEORGIE HOLSHEIMER,

Respondents,

v.

COLUMBIA COUNTY,

Respondent,

and

RONALD W. HUGHES and MAREN K.
HUGHES,

Petitioners.

(LUBA No. 94-119; CA A86642)

Judicial Review from Land Use Board of Appeals.

Argued and submitted January 20, 1995.

Robert P. Van Natta argued the cause for petitioners. With
him on the brief was Van Natta & Petersen.

Peggy Hennessy argued the cause for respondents. With her
on the brief was Reeves, Kahn & Eder.

No appearance for respondent Columbia County.

Before Deits, Presiding Judge, and Richardson, Chief Judge,
and Haselton, Judge.

DEITS, P.J.

Affirmed.

1 DEITS, P.J.

2 Petitioners seek review of LUBA's reversal of Columbia
3 County's approval of their application to conduct a putative
4 "home occupation" in a rural residential zone. We affirm.

5 We take the facts from LUBA's majority opinion:

6 "[Petitioners] are the owners of Ponderosa Paving
7 Company. Following complaints about [petitioners'] use
8 of the subject property to store materials, equipment
9 and vehicles and to carry out other activities
10 associated with Ponderosa Paving, [petitioners]
11 submitted a request for [a] conditional use permit to
12 allow 'parking of vehicles belonging to Ponderosa
13 Paving Inc.'

14 "The subject 2.3 acre parcel is located in the RR-
15 5 Rural Residential district. 'Home occupations
16 consistent with ORS 215.448' are listed among the 'Uses
17 Allowed Under Prescribed Conditions' in the RR-5
18 district. * * * Home occupations are subject to CCZO
19 1507 which, as relevant, simply incorporates the
20 statutory requirements set out at ORS 215.448.

21 "The challenged decision explains the county views
22 Ponderosa Paving Company's business as composed of two
23 parts. One part includes the actual paving operations.
24 That part of the business occurs at various locations
25 away from the subject property and involves an
26 undetermined number of employees. The second part,
27 which is the subject of the challenged decision, is
28 composed of the routine administration and bookkeeping
29 functions of the business and storage of the equipment
30 and vehicles and some of the materials used in the
31 paving business. The challenged decision allows
32 operation of this second part of the business on the
33 subject property, to be carried out inside the existing
34 single family dwelling, an existing metal building or
35 in a new 'suitable structure (pole building)' to be
36 constructed on the property. The vehicles and
37 equipment stored on-site each evening will be moved as
38 needed each morning to sites away from the subject
39 property where Ponderosa Paving is conducting actual
40 paving operations." (Citations to record and footnotes
41 omitted.)

1 ORS 215.448(1) provides:

2 "The governing body of a county or its designate
3 may allow, subject to the approval of the governing
4 body or its designate, the establishment of a home
5 occupation in any zone, including an exclusive farm use
6 or forest zone, that allows residential uses, if the
7 home occupation:

8 "(a) Will be operated by a resident of the
9 property on which the business is located;

10 "(b) Will employ no more than five full or part-
11 time persons;

12 "(c) Will be operated in:

13 "(A) The dwelling; or

14 "(B) Other buildings normally associated with
15 uses permitted in the zone in which the property is
16 located; and

17 "(d) Will not interfere with existing uses on
18 nearby land or with other uses permitted in the zone in
19 which the property is located."

20 Although the LUBA majority and concurring opinions
21 follow different analytical approaches, both conclude that the
22 daily storage and movement of vehicles and equipment to and from
23 the home site and off-premise work sites fall outside the
24 statutory definition of a home occupation generally and, in
25 particular, the requirement of ORS 215.448(1)(c) that operations
26 take place in specified buildings. The majority rejected "the
27 county's view of the paving materials, vehicles and equipment as
28 having a separate identity and situs depending on whether they
29 are actually being used [off-site] for paving or being stored
30 [on-site]." In her concurring opinion, Referee Kellington

1 explained:

2 "What is relevant to determining whether
3 particular business activities constitute a lawful home
4 occupation, are the external and internal indicia of
5 the business activities occurring at the home. As
6 applied here, the external and internal indicia
7 establish that the business activities occurring at the
8 site of the subject dwelling exceed the statutory scope
9 of a permissible home occupation." (Emphasis
10 supplied.)

11 In their first assignment, petitioners contend that
12 LUBA erred by considering off-premise activities generally and,
13 specifically, in the context of ORS 215.448(1)(c). They maintain

14 "that 'off-premise' activity is irrelevant in
15 determining whether a home occupation is containable
16 within a structure in the premises."

17 However, LUBA's conclusion was not dependent on a
18 consideration of petitioners' off-premise activities. Under the
19 rationale used by the LUBA majority, as well as that of the
20 concurring referee, the on-premise activities here do not qualify
21 as a home occupation. Although petitioners contend that the
22 pertinent on-site activities are limited to mere storage of
23 equipment and paving materials, that "storage" necessarily
24 entails the constant movement of vehicles and equipment to and
25 from petitioners' premises and off-site job locations. Indeed,
26 such transport activities are inherently more intensive than the
27 purported storage activity on the home-site itself. Moreover,
28 the activities will not be limited to the structure where the
29 storage itself is to take place. We agree with LUBA that the
30 proposed use is contrary to ORS 215.448(1)(c) as a matter of law

1 and that LUBA's reversal of the county's decision on that basis
2 was proper.

3 The requirements of the statute are conjunctive.
4 Accordingly, the inconsistency of the proposal with any provision
5 of the statute is conclusive, and it is unnecessary for us to
6 reach the other issues presented by the parties or addressed by
7 LUBA.

8 Affirmed.

County Planning

ORS 215.448

Home occupations

- **parking**
- **where allowed**
- **conditions**

-

Text

-

Annotations 6

(1)

The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation and the parking of vehicles in any zone. However, in an exclusive farm use zone, forest zone or a mixed farm and forest zone that allows residential uses, the following standards apply to the home occupation:

(a)

It shall be operated by a resident or employee of a resident of the property on which the business is located;

(b)

It shall employ on the site no more than five full-time or part-time persons;

(c)

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; and

(d)

It shall not unreasonably interfere with other uses permitted in the zone in which the property is located.

(2)

The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section.

(3)

Nothing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.

(4)

The existence of home occupations shall not be used as justification for a zone change. [1983 c.743 §2; 1995 c.465 §1]

Chapter 16.32

SPECIFIC CONDITIONAL USES

Sections:

- 16.32.010 Specific conditional use requirements.
- 16.32.100 Solid waste disposal sites.
- 16.32.200 Surface mining.
- 16.32.300 Temporary home for care of the infirm.
- 16.32.400 Home occupations, conditional, with employees.
- 16.32.500 Medical marijuana businesses.

16.32.010 Specific conditional use requirements.

The uses set forth in this section shall meet the applicable criteria and conditions in this section whenever such uses are listed as conditional uses in a particular zone. The minimum standards and conditions set forth in this section are in addition to general criteria and conditions for conditional uses, provided in Chapter 16.40 MCC. [Ord. 1204 § 4, 2004; Ord. 863 § 5, 1990. UZ Ord. § 32.01.]

16.32.100 Solid waste disposal sites.

Solid waste disposal sites as defined in subsection (A)(3) of this section are specific conditional uses, and shall be developed and operated in compliance with this section, and any conditions imposed in the conditional use approval.

A. Definitions. As used herein:

1. "Dispose" or "disposal" means the accumulation, storage, collection or transportation of solid waste to a transfer facility, disposal site, sanitary landfill, or resource recovery facility. The term does not include recycling depots and drop stations for source-separated reusable materials.
2. "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances; manure, vegetable or animal solid or semi-solid wastes, dead animals and other wastes.

The term does not include hazardous wastes as defined by ORS Chapter 459 or regulations adopted by the Department of Environmental

Quality or Environmental Quality Commission, and liquids or solids that the Department of Environmental Quality does not consider solid waste under its rules and regulations and which are salvageable or are disposed of by irrigation or placement on land in a public zone or on lands outside of an urban growth boundary.

3. "Solid waste disposal site" means land used for the disposal or handling of waste or solid wastes, including, but not limited to, dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, composting plants, salvage sites, incinerators for solid waste delivered by the public or by a franchised collector or franchised transporter of solid waste. The term does not include a hazardous waste facility subject to the permit requirements of ORS Chapter 459; or a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable materials, unless the site is used by the public, either directly or indirectly, or a solid waste transfer station as defined in MCC 16.49.242, or a recycling depot as defined in MCC 16.49.222, or a drop station as defined in MCC 16.49.084.

B. Criteria. In addition to the criteria in Chapter 16.40 MCC, the following criteria shall be satisfied as part of a conditional use permit approval for a solid waste disposal site:

1. Screening. Sites shall be screened from view from adjoining developed properties and public streets.

2. Vehicular Access and Unloading. The primary access to the disposal area and unloading areas shall have an all-weather surface adequate for delivery vehicles.

3. Drainage. Surface water drainage shall be adequate to prevent flooding, health hazards or pollution of surface or ground waters.

4. Impacts. Operations that may create noise, litter, lighting, or odors adversely affecting nearby property shall be managed to minimize these impacts.

5. Trespassing. If unauthorized access poses a hazard, the site shall be fenced or other control provided.

6. Redevelopment Plan. A plan for the reclamation or redevelopment of the site shall be required if the life expectancy of the site is less than 10 years. The conditional use permit shall provide for implementation of the plan within three years of discontinuance. As a condition of approval a bond or security deposit may be required in a form approved by county legal counsel, conditioned upon the faithful performance of the approved plan, and in an amount at least equal to the estimated cost of implementation. [Ord. 1204 § 4, 2004; Ord. 863 § 5, 1990. UZ Ord. § 32.10.]

16.32.200 Surface mining.

Surface mining sites shall be developed and operated in compliance with this section. The purpose of this section is to implement the legislative policy expressed in ORS 517.760 and the

goals and policies relating to mineral resource extraction expressed in the Comprehensive Plan; and to provide for regulations on the operation and reclamation of mined lands.

A. Definitions.

1. As used herein, the words and phrases defined in ORS 517.750 and OAR 632-30-010 shall have the meanings set forth therein.

2. "Surface mining" means mining of 50 cubic yards or more of sand, gravel and rock, stockpiling, rock crushing, washing, sizing, processing as defined in ORS 517.750, and all structures, apparatus and appurtenances necessary for these uses. Surface mining may also include a residence for a caretaker.

3. "Mining" includes all or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits. "Mining" does not include excavations of sand, gravel, clay, rock or other similar materials conducted by a landowner or tenant on the landowner or tenant's property for the primary purpose of reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, on-site road construction or other on-site construction, or nonsurface impacts of underground mines.

B. Reclamation Plan Required – Other Conditions. As a plan for reclamation of the surface mining site which, at a minimum, satisfies the requirements of OAR 632-30-025 (except that the word "hearings officer" shall replace the word "department" as used therein) shall be submitted with an application for conditional use approval for a surface mining operation. In addition to conditions relating to the reclamation of the site, conditions as to conduct of the surface mining operation otherwise permitted under Chapter 16.40 MCC may be imposed. Compliance with an approved reclamation plan shall be a condition of approval.

C. Bond or Security Deposit Required. As a condition of approval, the applicant shall file with the county a bond or security deposit in a form approved by county legal counsel conditioned upon fulfilling any conditions of approval and requirements of this section. The bond may be in addition to or the same bond as required by the Oregon Department of Geology and Mineral Resources.

D. Failure to Maintain Compliance.

1. The operator of a surface mining operation under conditional use approval shall continuously operate and maintain the site within the terms and conditions set forth in this section and the conditional use approval.

2. In the event any of the conditions prescribed pursuant to this section or described in ORS 517.860(2)(a) through (d) (the period of time mentioned in paragraph (a) of such subsection being the compliance period specified in a written notice from the zoning administrator to correct

deficiencies), the county may cause the required work to be done and the cost thereof, if not paid by the owner, operator, or surety, to be assessed as a lien against the property. [Ord. 1204 § 4, 2004; Ord. 863 § 5, 1990. UZ Ord. § 32.20.]

16.32.300 Temporary home for care of the infirm.

A temporary home for the care of the infirm may be approved as a conditional use subject to meeting the following criteria:

A. A doctor of medicine or licensed psychologist shall sign a statement indicating the physical or mental condition that prevents the person(s) with the infirmity from providing the basic self care needed to live on a separate lot. The statement shall also attest that the physician or licensed psychologist is convinced the person(s) with the infirmity must be provided the care so frequently or in such a manner that the caretaker must reside on the same premises.

B. The residence occupied by those having the infirmity shall not be occupied by others capable of providing the needed assistance.

C. Those providing the needed assistance shall be related by blood, marriage or legal guardianship and reside in another residence on the lot. If evidence is presented that there is no family member able to provide the needed care, the caretaker may be someone else.

D. Those providing the care must show that they will be available and have the skills to provide the primary care required by the doctor or psychologist.

E. The existing residences on the property either cannot be modified or expanded to accommodate those needing care, or there is some reason the caretaker and those with the infirmity need to live in separate residences.

F. Either the residence occupied by the person(s) with the infirmity or those providing the care shall be a mobile home or a dwelling that will be removed at such time as the person(s) with the infirmity no longer reside on the lot. An agreement to remove one of the residences within 60 days of the date the person(s) with the infirmity no longer resides on the lot shall be signed by the property owner and those providing the care.

G. The temporary residence 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. Not require development of a new driveway access to the street;
3. Be connected to the existing wastewater disposal system if feasible.

H. The use shall be subject to review every year and shall meet the above criteria in order to qualify for renewal. [Ord. 1204 § 4, 2004; Ord. 863 § 5, 1990. UZ Ord. § 32.30.]

16.32.400 Home occupations, conditional, with employees.

A home occupation that employs no more than one person ("person" includes volunteer, nonresident employee, partner, or other person) in the conduct of the home occupation may be approved as a conditional use subject to meeting the following criteria:

- A. The premises upon which the home occupation is conducted shall be the residence of the person conducting the home occupation.
- B. The home occupation shall be continuously conducted in such a manner as not to create any nuisance, public or private, known law or equity, including but not limited to: noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference.
- C. No sign shall be displayed on the premises except those as permitted in MCC 16.31.060(A).
- D. No structural alterations shall be made to the dwelling that would be inconsistent with future use of the building as a dwelling.
- E. No alteration to or use of the premises shall be made that would reduce the number of on-site parking spaces required for dwellings as outlined in MCC 16.30.170.
- F. Parking of customers' or clients' vehicles shall create no hazard or unusual congestion. If the home occupation requires any parking for an employee or customer, a site plan meeting the requirements for off-street parking in Chapter 16.30 MCC shall be submitted and approved by the planning manager.
- G. Delivery and pick-up of materials or commodities in conjunction with the home occupation to and from the premises shall be made by private vehicles or by commercial vehicles not exceeding two axles in size.
- H. There shall be no outside storage or display of materials, equipment, or merchandise used in or produced in connection with the home occupation.
- I. 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.
- J. The dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations. [Ord. 1204 § 4, 2004; Ord. 863 § 5, 1990. UZ Ord. § 32.40.]

16.32.500 Medical marijuana businesses.

Medical marijuana businesses shall be operated in compliance with this section.

- A. Medical Marijuana Producer *and/or Medical Marijuana Processor*.

1. Shall be conducted entirely indoors.
2. Emit no light visible to adjacent neighboring property owners or the public.
3. Ensure odors are not detectable on adjacent neighboring properties.
4. Comply with the alarm system control ordinance, Chapter 8.25 MCC.
5. Owners, employees and volunteers shall submit to a criminal background check by the sheriff pursuant to ORS 181.533 and OAR 257-010-0025(1)(a). It shall be a violation of this section if an owner, employee or volunteer has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years of the date of the criminal background check; has been convicted more than once of the manufacture or delivery of a controlled substance in Schedule I or Schedule II at any time; or has been convicted of any of the following crimes at any time: criminal mistreatment based upon the unlawful manufacture of a controlled substance, child neglect I, racketeering, use of minor in controlled substance offense, manufacture or delivery of hydrocodone within 1,000 feet of a school, manufacture or delivery of a controlled substance within 1,000 feet of a school, causing another to ingest a controlled substance, application of a controlled substance to the body of another person, or felony driving under the influence of intoxicants.
6. The person or entity shall keep all real and personal property tax accounts current for the business for which it is the taxpayer.
7. No minors are allowed on the business premises.
8. No consumption of medical marijuana is allowed on the business premises unless otherwise as allowed for employees in OAR 333-008-1200. The business must comply with the Oregon Indoor Clean Air Act that prohibits indoor tobacco smoking. The business may not be co-located with a tobacco smoking lounge, or any kind of marijuana social club where marijuana is consumed.

B. Medical Marijuana Dispensary*.

1. The property on which the facility is located may not be located within 1,000 feet of a property containing a pre-kindergarten, Head Start program, community learning center, certified child care facility regulated pursuant to ORS Chapters 329, 329A, and 657A, a relief nursery regulated pursuant to ORS Chapter 417, a public park, public or private elementary, secondary, or career school primarily attended by minors.
2. Comply with the alarm system control ordinance, Chapter 8.25 MCC.
3. May not be open any day before 7:00 a.m. or after 10:00 p.m.
4. Owners, employees and volunteers shall submit to a criminal background check by the sheriff pursuant to ORS 181.533 and OAR 257-010-0025(1)(a). It shall be a violation of this section if

an owner, employee or volunteer has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years of the date of the criminal background check; has been convicted more than once of the manufacture or delivery of a controlled substance in Schedule I or Schedule II at any time; or has been convicted of any of the following crimes at any time: criminal mistreatment based upon the unlawful manufacture of a controlled substance, child neglect I, racketeering, use of minor in controlled substance offense, manufacture or delivery of hydrocodone within 1,000 feet of a school, manufacture or delivery of a controlled substance within 1,000 feet of a school, causing another to ingest a controlled substance, application of a controlled substance to the body of another person, or felony driving under the influence of intoxicants.

5. The person or entity shall keep all real and personal property tax accounts current for the business for which it is the taxpayer.

6. No minors are allowed on the business premises unless the minor is an Oregon Medical Marijuana Program (OMMP) cardholder and is accompanied by a parent or guardian and not in areas prohibited by OAR 333-008-1200.

7. No consumption of medical marijuana is allowed on the business premises unless otherwise as allowed for employees in OAR 333-008-1200. The business must comply with the Oregon Indoor Clean Air Act that prohibits indoor tobacco smoking. The business may not be co-located with a tobacco smoking lounge, or any kind of marijuana social club where marijuana is consumed. [Ord. 1372 § 4 (Exh. A), 2016.]

- It shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in that zone.
- It shall not unreasonably interfere with other uses permitted in that zone.
- A home occupation shall not be authorized in structures accessory to resource use on high-value farmland.
- A sign shall meet the standards in Chapter 17.191.
- The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.
- Retail and wholesale sales that do not involve customers coming to the property (Internet, telephone, mail order off-site sales, and incidental sales related to the home occupation services) are allowed. No other sales are permitted.

Home Offices

In EFU, SA, FT and TC zones, a home office is allowed, provided:

- The home office is used solely by the resident(s) of a dwelling on the property as an accessory use. No employee for the business is allowed.
- The home office shall not to create any public or private nuisance including offensive noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference.
- No sign or display regarding the home office is allowed.
- The home office shall be conducted entirely within the dwelling or attached garage. No outside storage or

- display of materials, equipment, or merchandise used in, or produced in connection with, the home office.
- 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.
- No visits by suppliers.
- No customers or clients shall visit the property in the course of doing business.

Do I need a business license? Marion County does not issue business licenses. However, you should contact other agencies that may have requirements for starting and/or conducting business out of your home such as the Marion County Health Department (food handling), Building Inspection, etc. The State of Oregon has a business regulation section that provides information on starting a home business: (503) 986-2200.

For more information, visit our web site at <http://publicworks.co.marion.or.us/planning>



Marion County
OREGON

Operating a Business Out of Your Rural Home



Regulations for home occupations in rural Marion County

Marion County Planning Division
5155 Silvertown Rd. NE, Salem OR 97305
(503) 588-5038 Fax (503) 589-3284
email: planning@co.marion.or.us

What is a "home occupation"?

According to the Marion County Rural Zone Code Chapter 17.110.270 a home occupation is, "...any business or professional activity engaged in the production of income by a resident of a dwelling or dwelling unit as a subordinate use of the building and its premises..."

What are the regulations for operating a Home Occupation in rural Marion County?

Regulations are based on the zone your property is located in. It also depends on whether it is a limited home occupation, conditional home occupation, home occupation in a resource zone, or a home office in a resource zone.

"Limited Home Occupation" – is permitted subject to meeting certain standards that are quite restrictive but does not require additional land use approval. The standards include:

- The home occupation is for the resident(s) of a dwelling on the property as a secondary use with no more than one person (includes volunteer, nonresident employee, partner or any other person).
- The home occupation shall not create any offensive noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference.
- No sign displayed on the premises except as allowed in Chapter 17.191.
- Must be conducted entirely within the dwelling or any attached garage.
- Total floor area for a home occupation shall not exceed 800 sq. ft.
- No structural alterations shall be made to the dwelling or attached garage that would

be inconsistent with future use as a dwelling.

- No alteration to or use of the premises that would reduce the number of required on-site parking spaces.
- No visits by suppliers shall occur.
- Customers shall be limited to 8:00 a.m. through 8:00 p.m.
- Retail and wholesale sales that do not involve customers coming to the property, (Internet, telephone, mail order off-site sales, and incidental sales related to the home occupation) are allowed. No other sales are permitted.
- No outside storage or display of materials, equipment, or merchandise used in, or produced in connection with, the limited home occupation.
- The property, dwelling or other buildings shall not be used for assembly or dispatch of employees to other locations.
- No more than one commercial vehicle in conjunction with the home occupation.

"Conditional Home Occupation" – is permitted upon approval of a Conditional Use permit. These are generally less restrictive than the Limited Home Occupation, but do require approval of the Conditional Use permit, first. Conditions imposed generally include those for a Limited Home Occupation and:

- The home occupation may employ no more than two persons (includes volunteer, nonresident employee, partner or any other person).
- Will not significantly interfere with other uses permitted in the zone where the property is located.

- A sign shall meet the standards in Chapter 17.191.
- Total floor area devoted to a home occupation shall not exceed 500 sq. ft. in a residential zone, except in the AR zone where 1,500sq. ft. is the maximum.
- Customers and suppliers are limited to 8:00 a.m. to 8:00 p.m. These limitations do not apply to a bed and breakfast as defined in MCC 17.110.108.
- Deliveries to or from the dwelling shall not involve a vehicle rated at more than one ton.
- 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, off-street loading and parking spaces shall be reserved exclusively for that use.

Home Occupations in the County's resource zones (Exclusive Farm Use, Farm/Timber, Special Agriculture and Timber Conservation) are also Conditional Use Home Occupations and allow up to five employees, subject to the following criteria:

- A home occupation or bed and breakfast inn shall be operated by a resident of the dwelling on the property. Including residents, no more than five full-time or part-time persons shall work in the home occupation (includes volunteer, nonresident employee, partner or any other person).

Chapter 9.25

MASS GATHERINGS

Sections:

- 9.25.010 Authority.
- 9.25.020 Regulation of mass gatherings.
- 9.25.030 Definitions and exceptions.
- 9.25.040 Permit required.
- 9.25.050 Hearing required.
- 9.25.060 Notice of public hearing.
- 9.25.070 General approval criteria.
- 9.25.080 Insurance.
- 9.25.090 Fire protection plan.
- 9.25.100 State health rule compliance and medical service.
- 9.25.110 Public safety.
- 9.25.120 Parking and traffic control.
- 9.25.130 Permit posting.
- 9.25.140 Inspection of premises.
- 9.25.150 Restricted hours of operation.
- 9.25.160 Organizer responsible for preserving order.
- 9.25.170 Enforcement.
- 9.25.180 Intoxicating liquor prohibited.
- 9.25.190 Use or possession of illegal drugs prohibited.
- 9.25.200 Compliance required.

9.25.210 Review of board's action.

9.25.220 Public nuisance and violations.

9.25.010 Authority.

This chapter is adopted in accordance with ORS 433.735 through 433.770. [Ord. 1380 § 2(A), 2017; Ord. 1230 § 1, 2006.]

9.25.020 Regulation of mass gatherings.

An outdoor mass gathering of people in the unincorporated areas of Marion County shall only be allowed by permit issued by the board of commissioners ("the board") following a public hearing; or, in the case of an annual small gathering permit issued by the board, by a yearly renewal permit issued by the planning director based upon the original permit applicant's application for renewal. The board may impose reasonable conditions on the outdoor mass gathering in the permit. Except in cases for which this chapter provides a different standard, procedure or definition, the board shall issue permits for outdoor mass gatherings in accordance with the procedures and regulations established by ORS 433.735 through 433.770. [Ord. 1380 § 2(B), 2017; Ord. 1230 § 2, 2006.]

9.25.030 Definitions and exceptions.

A. As used in this chapter:

"Illegal drugs" means any drug, the possession or distribution of which is unlawful under state law or under the Controlled Substances Act, 21 USCA 812, as amended, but does not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized under the Controlled Substances Act or under other provisions of state or federal law.

"Large gathering" means an assembly of persons whose actual number is, or reasonably can be anticipated to be:

1. More than 3,000 persons at any time; or
2. More than 750 persons at any time on each of three calendar days during an assembly that continues or can reasonably be expected to continue for more than 120 hours;

and is held primarily in open spaces and not in any permanent structure within Marion County. Included within the calculation of hours is any time in excess of 48 hours necessary to set up the event or any time in excess of 48 hours necessary to clean up afterward.

"Organizer" means any person who holds, conducts, stages or sponsors an outdoor mass gathering and includes the owner, lessee and possessor of the real property upon which the outdoor mass gathering is taking place.

“Outdoor mass gathering” means either a large gathering or a small gathering.

“Small gathering” means any assembly of persons whose actual number is, or reasonably can be anticipated to be, less than or equal to 3,000 but more than 750 persons at any time, for a period that continues or can reasonably be expected to continue for more than six hours but not more than 120 hours within any continuous three-month period, and that is held primarily in open spaces and not in any permanent structure in the unincorporated areas of Marion County. Included in the six to 120 hours is any time in excess of 48 hours necessary to set up the event or any time in excess of 48 hours necessary to clean up afterward.

“Temporary structure” means tents, trailers, chemical toilet facilities and other nonpermanent structures customarily erected or sited for temporary use.

B. The following events are not outdoor mass gatherings subject to this chapter:

1. Events of less than or equal to 3,000 but more than 750 persons conducted at wineries that have valid land use permits issued by Marion County;
2. Events of less than or equal to 3,000 but more than 750 persons conducted at state parks;
3. Events conducted on property where a valid land use permit has been issued by Marion County that specifically allows the event to be held on the property and imposes conditions on the conduct of the event;
4. Events conducted on property where the holding of the event constitutes a preexisting, nonconforming use allowed pursuant to Marion County zoning ordinances. [Ord. 1264 § 2(19), 2008; Ord. 1230 § 3, 2006.]

9.25.040 Permit required.

A. No organizer shall hold, conduct, stage, sponsor, advertise or otherwise promote an outdoor mass gathering or allow an outdoor mass gathering to be held on real property the organizer owns, leases or possesses within the unincorporated areas of Marion County unless the organizer first obtains a permit to hold the outdoor mass gathering.

B. No permit shall be issued unless the landowner of the property that is the site of the outdoor mass gathering also signs the application.

C. One permit shall be required for each outdoor mass gathering.

D. A permit issued under this section does not entitle the organizer to construct any permanent physical alterations on the real property that is the site of the outdoor mass gathering.

E. The organizer of a proposed outdoor mass gathering shall file an application with the planning division of the public works department.

F. For any outdoor mass gathering, the application shall be filed at least 45 days prior to the event and shall include the following:

1. Name and address of the organizer.
2. Legal description of the location of the proposed outdoor mass gathering.
3. The date or dates of the proposed outdoor mass gathering, including the beginning time and termination time of the event.
4. Estimated attendance at the outdoor mass gathering.
5. If the outdoor mass gathering is a small gathering, whether the small gathering is for a one-time event or an annual event.
6. Nature of the proposed outdoor mass gathering and whether or not sound amplification will be used.
7. A site plan, drawn to scale, and other detailed information showing the type, number and location of all toilets, washing facilities, water supply, food preparation, food service facilities and solid waste collection sites.
8. A contact person who shall be easily identified and who shall remain at the outdoor mass gathering site at all times.
9. A fire protection plan demonstrating compliance with MCC 9.25.090.
10. Information indicating that the organizer will comply with all health and safety rules governing outdoor mass gatherings as adopted by the Oregon Department of Human Services and demonstrating compliance with MCC 9.25.100.
11. A public safety plan in accordance with MCC 9.25.110.
12. A parking and traffic control plan and, if appropriate, a dust control plan, demonstrating compliance with MCC 9.25.120.
13. A statement of whether alcohol will be made available and, if so, by whom and at what location, along with a copy of the Oregon Liquor Control Commission permit.
14. Such other appropriate information as the public works director may require in order to ensure compliance with the provisions of this chapter, as well as rules of the Oregon Department of Human Services. If such additional information is not supplied within two weeks of the public works director's request, the application shall be deemed incomplete.

G. Marion County may charge applicants a fee reasonably calculated to reimburse the county for its reasonable and necessary costs in receiving, processing and reviewing applications to hold

outdoor mass gatherings. The fee imposed shall not exceed \$5,000. This fee does not exempt an applicant from the responsibility to obtain any other permit or pay any other fee that may otherwise be required including, but not limited to, temporary restaurant license fees, Oregon Liquor Control Commission fees or land use permit application fees.

H. The applicant shall pay the appropriate application fee as provided in the county's fee schedule.

I. Incomplete applications shall be denied and the application fee, less county costs, shall be returned to the permit applicant.

J. The board may waive all or part of the permit fee upon a showing by the organizer of good cause to reduce or waive the fee. [Ord. 1380 § 2(C), 2017; Ord. 1264 § 2(19), 2008; Ord. 1230 § 4, 2006.]

9.25.050 Hearing required.

No application for an outdoor mass gathering permit shall be approved without review by the board following a public hearing, except for a renewal of an annual small gathering permit as set forth in this chapter. [Ord. 1380 § 2(D), 2017; Ord. 1230 § 5, 2006.]

9.25.060 Notice of public hearing.

A. The public works director shall send notice of the board's public hearing on an application for an outdoor mass gathering to the following officers at least 10 calendar days prior to the hearing: county risk manager, county sheriff, county environmental health officer, and the chief of the fire district and ambulance service district (if different) in which the outdoor mass gathering is proposed.

B. The public works director shall develop a policy for notifying neighboring property owners that an application for an outdoor mass gathering has been received and that a hearing has been scheduled. [Ord. 1230 § 6, 2006.]

9.25.070 General approval criteria.

A. The organizer shall demonstrate that it can comply with the provisions of this chapter.

B. An outdoor mass gathering permit shall be approved upon demonstration by the organizer of compliance with or the ability to comply with the provisions of this chapter, as well as all health and safety rules governing all outdoor mass gatherings, adopted by the Oregon Department of Human Services.

C. If the application is for a large gathering, the applicant must obtain a conditional use permit for a temporary use in accordance with Chapters 17.119 and 17.126 MCC before the large gathering permit application will be approved. The procedure to obtain a conditional use permit will be independent of the procedure to obtain an outdoor mass gathering permit under this

chapter, except that the board may, at its discretion, elect to consider applications for both permits at one public hearing. If the board does not elect to consider applications for both permits at one hearing, the application for the outdoor mass gathering for a large gathering shall not be processed until the conditional use permit has been obtained.

D. If the application is for a one-time small gathering, the application must be considered by the board following a public hearing. If the application is for an annual small gathering, the application in the first year must be considered by the board following a public hearing. For either a one-time or annual permit, the board may impose reasonable conditions in the permit. If an annual small gathering permit is issued, it is renewable for up to four additional consecutive years, as established by board order. In order to renew an annual small gathering permit, the applicant shall submit an application annually consistent with the requirements of this chapter. The planning director is vested with authority to grant a renewal of an annual small gathering permit or refer the proposed renewal to the board for consideration following a public hearing. A renewal permit is subject to all permit requirements set forth in this chapter as well as any conditions imposed by the board in the permit for the first year. In the event that there are complaints about the annual small gathering in the prior year, or the applicant failed to satisfy the conditions in the annual small gathering permit in the prior year, the planning director may refer the renewal to the board for a public hearing consistent with the requirements of this chapter. In the event that the planning director renews an annual small gathering permit, the planning director shall send notice to neighboring property owners consistent with the policy developed pursuant to MCC 9.25.060(B) notifying neighbors of the date or dates of the event, any permit conditions originally imposed by the board, and inviting the neighbors to contact the planning director with any complaints or concerns.

E. The board, in its discretion, may approve a subsequent small gathering that is within three months of a prior small gathering on the same property. If a second small gathering is approved, no third small gathering shall be allowed to occur within six months of the first small gathering.

F. Each public official receiving notice of the application who wishes to comment on the application shall submit such comment in writing to the board no later than the date and time for the hearing. The comment may include recommendations related to the official functions of the officer as to granting the permit and any recommended conditions that should be imposed. The board may consider and impose any reasonable condition the board deems necessary, including any suggested condition submitted by a public official who received notice of the outdoor mass gathering application or any suggested condition submitted by a member of the public.

G. The board may deny an application or impose reasonable conditions if evidence is provided to the board indicating that an organizer has previously violated any provision of this chapter.

H. The board may impose a permit condition requiring compliance with all or portions of Chapter 8.45 MCC, Noise, as set forth in MCC 9.25.150(C). [Ord. 1380 § 2(E), 2017; Ord. 1230 § 7, 2006.]

9.25.080 Insurance.

A. After consultation with the Marion County risk manager, the board may require an organizer to obtain a commercial general liability policy in an amount commensurate with the risk and in compliance with standards established by the Marion County risk manager.

B. The Marion County risk manager shall establish standards for commercial general liability policies required for outdoor mass gatherings that include: minimum coverage amounts, policy type, minimum financial ratings for carriers, required additional coverage, requirements for naming additional insured parties, policy duration and any other requirement that the Marion County risk manager deems necessary.

C. The organizer shall furnish the public works director with an insurance certificate and a copy of the insurance policy complying with the insurance requirements imposed by the board pursuant to subsection (A) of this section at least seven days before the first day of the outdoor mass gathering.

D. Any permits for an outdoor mass gathering may be voided by the public works director if the organizer fails to comply with subsection (C) of this section.

E. Any insurance premiums that must be paid to meet the requirements of this section are the responsibility of the organizer. [Ord. 1230 § 8, 2006.]

9.25.090 Fire protection plan.

A. No permit shall be granted under this chapter unless the organizer has a fire protection plan approved by the fire protection district officer for the type, size, number and location of fire protection devices and equipment available at, in or near any location, including outdoor site, building, tent, stadium or enclosure, wherein or whereupon more than 10 persons may be expected to congregate at any time during the course of an outdoor mass gathering.

B. If the site for which the permit is applied for is located outside a fire prevention district, the organizer must show approval from the office of the State Fire Marshal or a fire prevention district that would respond in the event of an emergency. [Ord. 1230 § 9, 2006.]

9.25.100 State health rule compliance and medical service.

The county environmental health division shall have responsibility for approving plans relating to water supply, sewerage facilities, refuse storage and disposal, food and sanitary service, and emergency medical facilities in compliance with this chapter and rules governing outdoor mass gatherings, adopted by the Oregon Department of Human Services. Each outdoor mass gathering shall have no less than one first aid station staffed by two adult individuals trained in first aid techniques. [Ord. 1230 § 10, 2006.]

9.25.110 Public safety.

A. Prior to or on the date of application submittal, the organizer must submit plans for public safety at the outdoor mass gathering to the sheriff for approval demonstrating the following:

1. Adequate parking control and crowd protection policing must have been contracted for or otherwise provided by the organizer. There shall be provided one parking control person for each 250 persons expected or reasonably expected to be in attendance at any time during the event. Further, there shall be provided one crowd control person for each 100 persons expected or reasonably expected to be in attendance at any time during the event. The sheriff may approve plans that provide for a lesser number of parking control or crowd protection personnel than set forth above if, in the sheriff's discretion, adequate safety and security can be maintained under the circumstances. The organizer shall submit the names of the proposed parking control personnel to the sheriff.

2. The organizer shall submit the names and necessary background information, on forms provided by the sheriff, for all crowd control personnel to be used during the outdoor mass gathering for investigation by the sheriff as to fitness. Crowd control personnel must meet the following minimum standards in order to be approved as suitable by the sheriff:

a. Be 21 years of age or older;

b. Be in good physical health;

c. Never have been convicted of a felony and must not have been convicted of a misdemeanor involving moral turpitude in the last five years; and

d. Either have received reasonable minimum training in law enforcement, security or relevant on-the-job experience.

B. All of the policing personnel must wear an appropriate identifying uniform and must be on duty during the entire outdoor mass gathering unless a relief schedule has been planned and approved. A relief schedule will only be approved by the sheriff when sufficient policing strength on duty has been maintained.

C. It shall be the duty of the policing personnel to report any violations of the law to the sheriff, the sheriff's deputies or representatives and to take whatever action as can be reasonably expected of them to enforce the law. [Ord. 1230 § 11, 2006.]

9.25.120 Parking and traffic control.

Prior to or on the date of application the organizer shall provide the public works director with a parking and traffic control plan acceptable to the public works director. The plan shall include a scale drawing showing the parking facilities within or adjacent to the location for which the permit is requested. Ingress and egress shall be shown on the plan and provide for safe movement of any vehicle at any time to or from the parking area. The public works director may require that flaggers, traffic control devices or dust control measures be used during the outdoor mass gathering to ensure the safe and efficient flow of vehicles. If flaggers, traffic control devices or dust control measures are required, the plan must include details showing their expected use and placement. The use of flaggers, traffic control devices or dust control measures

must comply with standards established by the Marion County department of public works. [Ord. 1230 § 12, 2006.]

9.25.130 Permit posting.

Any permit issued as provided in this chapter shall be kept posted in a conspicuous place upon the premises of the assembly. No permit shall be transferable or assignable without the consent of the board. No rebate or refund of money paid for a permit shall be made. [Ord. 1230 § 13, 2006.]

9.25.140 Inspection of premises.

A. No application shall be granted under this chapter unless the organizer agrees and consents, in writing as part of the application for the permit, to allow law enforcement, public health and fire control officers to come upon the premises for which the permit has been granted for the purpose of inspection and enforcement of the terms and conditions of the permit issued pursuant to this chapter, and any other applicable laws or ordinances.

B. If any inspections described above reveal deficiencies in compliance with state or local law, the inspectors may return as often as needed until the deficiencies are cured. If the deficiencies are not cured or cannot be cured, the county sheriff may terminate the outdoor mass gathering or extended outdoor mass gathering as provided in MCC 9.25.170(C). [Ord. 1230 § 14, 2006.]

9.25.150 Restricted hours of operation.

A. When sound amplification is used, no outdoor mass gathering shall be conducted within 1,000 feet of any neighboring residence between the hours of 11:00 p.m. and 9:00 a.m.

B. If written consent from neighboring property owners and residents is submitted with the application, the board may modify these hours in the permit.

C. The board, in its discretion, may require that an outdoor mass gathering comply with all or portions of Chapter 8.45 MCC, Noise, if the board determines that doing so is necessary to preserve the comfort and repose of neighboring residents. [Ord. 1230 § 15, 2006.]

9.25.160 Organizer responsible for preserving order.

It is the intention of this chapter to put the burden of preserving order upon the organizer of the outdoor mass gathering, and if any outdoor mass gathering in the county is not being operated in accordance with the rules and regulations prescribed in this chapter and as set forth in state law, the organizer shall be subject to revocation of the permit, and the organizer or other individual responsible subject to such other sanction as the law and this chapter provide. [Ord. 1230 § 16, 2006.]

9.25.170 Enforcement.

A. The organizer shall keep a reasonable count of persons and vehicles entering and leaving the outdoor mass gathering.

B. If, at any time during the outdoor mass gathering held under a valid permit, the number of persons or vehicles attending the outdoor mass gathering exceeds by 10 percent or more the number of persons or vehicles estimated in the permit application, the sheriff, or any sheriff's deputy, has the authority to require the organizer to limit further admissions until a sufficient number of individuals or vehicles have left the site to bring the actual attendance down to the number estimated by the organizer.

C. For any outdoor mass gathering held under a valid permit, the county sheriff has the authority to order the crowd to disperse and leave the outdoor mass gathering site if the organizer cannot maintain order and compliance with all applicable state and local laws or refuses to maintain order and compliance with state and local laws or refuses or is unable to adhere to the terms and conditions of the permit.

D. In addition to state law provisions in ORS Chapter 433, including ORS 433.770(1), Marion County legal counsel may maintain an action in any court of general jurisdiction to prevent, restrain, or enjoin any violation of ORS 433.745.

E. If the organizer fails to remove all debris or residue from the event site or adjacent property within 72 hours after termination time of the event, or fails to remove all temporary structures within three weeks after the termination time of the event, any county code enforcement officer may issue citations to any organizer of the event. The county code enforcement officers may also issue citations to any persons who have left behind debris at the site or on adjacent property.

F. In addition to any other remedies provided, if the outdoor mass gathering site is not restored to its previous condition, or better, the county may arrange for cleanup of the site, and then file an action for damages against the organizer and the landowner or successor landowner.

G. If any organizer violates any provisions of this chapter, the board may immediately revoke any permit for an outdoor mass gathering and may seek any legal remedy available. [Ord. 1230 § 17, 2006.]

9.25.180 Intoxicating liquor prohibited.

A. Except as provided in subsection (B) of this section, no organizer, landowner or any person having charge or control thereof at any time when an outdoor mass gathering is being conducted shall permit any person to bring into such outdoor mass gathering or upon the premises thereof any intoxicating liquor, or permit intoxicating liquor to be consumed on the premises, and no person during such time shall take or carry onto such premises or drink thereon intoxicating liquor.

B. Subsection (A) of this section shall not apply to the sale and consumption of intoxicating liquor from a facility located on the premises of an outdoor mass gathering section if the express

approval of the Oregon Liquor Control Commission has been obtained in the form of a temporary license or letter of authority. [Ord. 1230 § 18, 2006.]

9.25.190 Use or possession of illegal drugs prohibited.

No firm, person, society, association or corporation conducting an outdoor mass gathering, nor any person having charge or control thereof at any time when an outdoor mass gathering is being conducted, shall permit any person to bring into the outdoor mass gathering, or upon the premises thereof, any illegal drugs, nor permit illegal drugs to be used on the premises. [Ord. 1230 § 19, 2006.]

9.25.200 Compliance required.

The terms and conditions of this chapter constitute minimum health, sanitation and safety provisions; and failure to comply with the terms and conditions of this chapter or state law shall constitute a public nuisance and shall be subject to all civil and equitable remedies as such. [Ord. 1230 § 20, 2006.]

9.25.210 Review of board's action.

All decisions of the board concerning the issuance of a permit for an outdoor mass gathering shall be subject to review by the circuit court of the state of Oregon in Marion County only by writ of review under the provisions of ORS 34.010 through 34.100. Decisions of the board concerning the issuance of a conditional use permit under Marion County Zoning Ordinance Chapters 119 and 126 are subject to review as land use decisions. [Ord. 1230 § 21, 2006.]

9.25.220 Public nuisance and violations.

A. Except as provided in subsection (B) of this section, violation of any provision of this chapter or the erection or construction of a permanent physical alteration to the real property that is the site of the outdoor mass gathering shall constitute a Class A violation as provided in ORS Chapter 153.

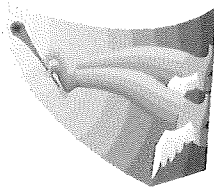
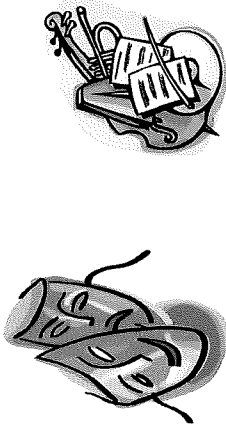
B. Any violation of MCC 9.25.040(A) is punishable upon conviction by a fine of not more than \$10,000 as provided for in ORS 433.990 (2005).

C. Enforcement shall be accomplished through Chapter 1.25 MCC. [Ord. 1230 § 22, 2006.]



Marion County
OREGON

Outdoor Mass Gatherings



Regulations for obtaining a permit for an outdoor mass gathering in rural Marion County

Marion County Planning Division
5155 Silverton Rd. NE, Salem OR 97305
(503) 588-5038 Fax (503) 589-3284
email: planning@co.marion.or.us

What is an "outdoor mass gathering"?

Marion County Code Chapter 9.25 allows an outdoor mass gathering of people in the unincorporated areas of Marion County by permit issued by the Board of Commissioners following a public hearing.

"Large gatherings" are events with an estimated attendance of 3001+, or more than 750 persons at any time on each of 3 calendar days expected to continue for more than 120 hours. A Conditional Use permit for a temporary use is also required before the large gathering permit application will be approved. The Board may consider applications for both permits at one public hearing.

"Small gatherings" are events with an estimated attendance of 751-3000 persons for 6 to 120 hours within any continuous 3-month period. The Board may approve a subsequent small gathering within three months of a prior small gathering on the same property. If a second small gathering is approved, no third small gathering shall be allowed within six months of the first small gathering.

A small outdoor mass gathering permit can be issued for a one-time, one year event, or a renewable permit, which is renewable for up to four years. For a renewable permit, once the first annual small gathering permit is issued by the Board, a yearly renewal permit request can be submitted to the Planning Division. A decision is issued by the Planning Director.

No permit required: Events with an estimated attendance of less than 750 persons do not require an outdoor mass gathering permit from Marion County. Also, events

with less than or equal to 3,000 but more than 750 persons held at wineries with valid land use permits, or conducted at state parks, are not subject to Chapter 9.25. Events conducted on property with a valid land use permit issued for the event or events conducted on property where the event is a pre-existing nonconforming use also are not subject to Chapter 9.25.

What are the requirements for obtaining an outdoor mass gathering permit? Due to scheduling of the public hearing, it is strongly recommended that applications be submitted at least 60 days prior to the first event. The following is a summary of the requirements as outlined in Chapter 9.25:

- (1) The property owner must sign the permit application.
- (2) One permit is required for each outdoor mass gathering.
- (3) Permanent physical alterations on the property are not allowed.
- (4) The application shall include:
 - a. Name and address of the Organizer and property owner.
 - b. Legal description of the location.
 - c. Name and date(s) of the event.
 - d. Estimated attendance.
 - e. Nature of the event, if sound amplification and/or fireworks will be used, and alcohol served.
 - f. A site plan with location of toilets, washing facilities, water supply, food service facilities and solid waste collection sites.
 - g. A contact person who shall remain at the event at all times.

- h. Approved fire protection, health/medical, public safety, and parking and traffic control plans.
1. If alcohol is available, by whom and at what location, and a copy of the Oregon Liquor Control Commission permit.
- m. Insurance certificate for a commercial general liability policy if required by Marion County.
- (5) Payment of application fee.

What is the process once an application is submitted? The Planning Division will schedule the mandatory public hearing before the Board of Commissioners.

Planning staff will request comments from other County departments and affected agencies. The event organizer may be required to meet with County officials to discuss and clarify the application.

Planning staff will prepare a staff report and a copy is mailed to the organizer and property owner. Notice of the public hearing will be mailed at least 7 days prior to the scheduled hearing to the organizer, property owner, and other property owners within the required notification area.

After the public hearing, the Board will issue an order denying or approving the request based on whether or not it complies with Chapter 9.25. If approved, the Board may impose reasonable conditions in the permit.

What is the process to renew an approved annual small gathering permit?

In the first year, the small gathering application is reviewed by the Board (see

previous section). If the request is approved, it may be renewed up to four additional consecutive years.

For a renewal, the applicant submits the application to the Planning Division. After reviewing the application, any complaints received about the event in the prior year, or information that the applicant failed to satisfy the conditions in the prior year, the Planning Director may grant a renewal, deny the request, or refer it to the Board for consideration following a public hearing.

A renewal permit is subject to all requirements in Chapter 9.25 and any conditions imposed by the Board for the first year. If the Planning Director renews an annual small gathering permit, notice will be sent to property owners within the required notification area. Notice will include the date or dates of the event, any permit conditions originally imposed by the Board, and information for neighbors to contact the Planning Director with any complaints or concerns.

What about hours of operation? When sound amplification is used, no outdoor mass gathering shall be conducted within 1,000 feet of any neighboring residence between the hours of 11:00 p.m. and 9:00 a.m. If written consent from neighboring property owners and residents is submitted the Board or Planning Director may modify these hours.

Use of Alcohol. The sale and consumption of alcohol is allowed from a facility located on the premises only if approved by the Oregon Liquor Control Commission.

Who controls the event? The Organizer shall keep a reasonable count of persons and

vehicles entering and leaving the event. If the number of persons or vehicles attending exceeds by 10% or more the number estimated in the permit application, the Sheriff's Office has the authority to require the Organizer to limit further admissions until a sufficient number of individuals or vehicles have left the site. The Sheriff's Office has the authority to order the crowd to disperse if the Organizer cannot or refuses to maintain order and compliance with conditions of the permit.

Violations and Enforcement. If an organizer violates any provisions of Chapter 9.25, the Board may immediately revoke any permit for an outdoor mass gathering. Any violation is punishable upon conviction by a fine of not more than \$10,000.00 as provided for in ORS 433.990 (2005).

For more information contact:

- Marion County Planning Division: (503) 588-5038.
- Fire protection approval: contact your local fire district or State Fire Marshal - (503) 373-1540.
- Health and medical: County Health Dept. (503) 588-5387.
- Public safety: Marion County Sheriff's Office (503) 588-5094.
- Parking and traffic control: Public Works Engineering (503) 585-5036.
- Insurance requirements: Marion County Risk Manager (503) 373-4426.
- Oregon Liquor Control Commission: (503) 260-6122 or (503) 260-6114.

Visit our website at:
publicworks.co.marion.or.us/planning

17.120.090 Agri-tourism events and activities.

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

A. A farming operation may conduct a single event on a tract in a calendar year subject to the following:

1. The event or activity shall be incidental and subordinate to the existing farm use on the tract; and
2. The duration of the event or activity shall not exceed 72 hours; and
3. The maximum attendance at the event or activity shall not exceed 500 people; and
4. The maximum number of motor vehicles parked at the site for the event or activity shall not exceed 250; and
5. The event or activity shall occur outdoors, in temporary structures, or existing permitted structures subject to fire life safety requirements. Temporary structures shall be removed at end of the event; and
6. The event or activity shall cause no alteration to land including, but not limited to, grading, filling or paving.

B. A farming operation may conduct up to six events or activities in a calendar year subject to the following:

1. The events or activities shall be incidental and subordinate to the existing farm use on the tract; and
2. The duration of each event or activity shall not exceed 72 hours; and
3. The events or activities shall not involve the construction or use of new permanent structures; and
4. The events or activities shall not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern of the area; and
5. The event or activity shall cause no alteration to land including, but not limited to, grading, filling or paving;
6. Any approval shall be valid for two years and may be renewed subject to a review that the use continues to meet all applicable criteria and standards.

C. A farming operation may conduct events more frequently or for a longer duration than provided for in subsections (A) and (B) of this section subject to the following:

1. The events or activities shall be incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area; and
2. The events or activities shall not involve the construction or use of new permanent structure; and
3. The events or activities shall not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern of the area; and
4. The event or activity shall cause no alteration to land including, but not limited to, grading, filling or paving; and
5. The lot or parcel that the event or activity takes place on shall comply with the minimum lot size of that zone; and
6. The events or activities do not exceed 18 events in a calendar year; and
7. Any approval shall be valid for two years and may be renewed for an additional two years subject to a review that the use continues to meet all applicable criteria and standards. After four years, the applicant must reapply for a permit and the county shall provide public notice and opportunity for public comment and limit review to approved activities and events, conformance with conditions and approval criteria and standards.

D. The events or activities in subsection (A), (B), or (C) of this section shall comply with conditions established for:

1. The types of events and activities authorized including the number of events or activities, duration of events or activities, attendance of events or activities, and hours of operation of events or activities; and
2. The location of existing and proposed temporary structures used in conjunction with the events or activities. Temporary structures must be removed at end of the event or activity; and
3. Location of access, egress, and parking facilities; and
4. Traffic management including project number of anticipated vehicles; and
5. Sanitation and solid waste;

6. Notice of public hearing or any decision approving events under the provisions of this section shall be mailed to all owners of property, any portion of which is within 1,500 feet of the subject property.

E. Any approval for events or activities under subsection (A) or (B) of this section is for the applicant only and does not apply to the land.

F. 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.

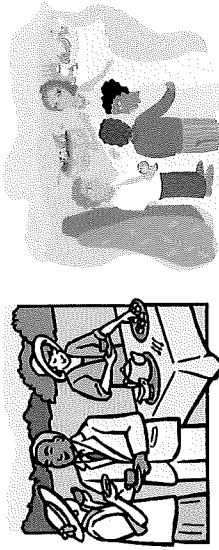
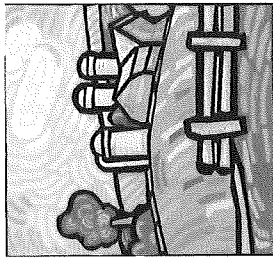
G. As used in this section, the term "agri-tourism" means a common, farm-dependent activity that promotes agriculture, any income from which is incidental and subordinate to the income of a working farm operation. Such activities may include hay rides, corn mazes and other similar uses that are directly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

H. Wineries approved for uses under this section are prohibited from qualifying for uses under MCC 17.125.030. [Ord. 1369 § 4 (Exh. B), 2016; Ord. 1326 § 4 (Exh. A), 2012.]



Marion County
OREGON

Agri-Tourism



Regulations for obtaining a permit to hold events and activities in rural Marion County

Marion County Planning Division
5155 Silverton Rd. NE, Salem OR 97305
(503) 588-5038 Fax (503) 589-3284
email: planning@co.marion.or.us

What is "Agri-Tourism"?

Marion County Code 17.120.090(G) defines agri-tourism as "...a common, farm-dependent activity that promotes agriculture, any income from which is incidental and subordinate to the income of a working farm operation. Such activities may include hay rides, corn mazes and other similar uses that are directly related to on-site agriculture. Any assembly of persons shall be for the purpose of taking part in agriculturally based activities such as animal or crop care, tasting farm products or learning about farm or ranch operations. Agri-tourism may include farm-to-plate meals and similarly small, farm-themed parties. Regularly occurring celebratory gatherings, weddings, parties or similar uses that cause the property to act as an event center or that take place in structures specifically designed for such events are not agri-tourism."

Is this countywide?

Yes, but only in farm zones – Exclusive Farm Use, Special Agriculture, and Farm/Timber. The agri-tourism events must be related to and supportive of the working farm operation on the property.

What is allowed in other zones?

Citizens can hold "personal" events on their property, regardless of the zone, including family weddings, reunions, celebratory parties, etc. Property owners can hold non-personal events on their property, regardless of the zone, provided they are not charging or collecting a fee or compensated in any way. For example, a property owner can allow a friend to have a wedding or family reunion on his/her property as long as they do not charge the friend a fee or collect a fee from attendees. When a property owner collects a fee or other

compensation for holding an event on his/her property, it is considered a business. This includes only being compensated for expenses the property owner incurred from the event.

What is the difference between an agri-tourism permit and a mass gathering permit?

The County's Outdoor Mass Gathering Permit is required for events with over 750 attendees and allowed in any zone subject to certain standards and regulations. The agri-tourism events are only for property in the agricultural zones.

Is there an Agri-Tourism Permit?

There are three types of agri-tourism permits processed under Marion County Code, Chapter 17.120.090, Specific Conditional Uses. In summary:

A Single Event Conditional Use Permit: a farming operation is allowed a single event in a calendar year. In addition:

- The event shall not exceed 72 hours.
- Maximum attendance at the event shall not exceed 500 people.
- Maximum number of motor vehicles parked at the site for the event shall not exceed 250.
- The event shall be incidental and subordinate to the existing farm use on the tract; and
- The event shall occur outdoors, in temporary structures, or existing permitted structures subject to fire life safety requirements. Temporary structures shall be removed at end of the event; and
- The event shall cause no alteration including grading, filling or paving

Up to Six Events Conditional Use Permit: a farming operation is allowed up to six events in a calendar year. In addition:

- The events shall be incidental and subordinate to the existing farm use on the tract.
- Each event shall not exceed 72 hours.
- The events shall not involve the construction or use of new permanent structures.
- The events shall not, in combination with other agri-tourism or other commercial events authorized in the area, materially alter the stability of the land use pattern of the area.
- The events shall cause no alteration to land including, but not limited to, grading, filling or paving.
- The permit is valid for two years and may be renewed subject to review.

Up to 18 Events Conditional Use Permit: a farming operation is allowed up to 18 events in a calendar year. In addition:

- Events shall be incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area.
- Events shall not involve the construction or use of new permanent structure.
- Events shall not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern of the area.
- The event shall cause no alteration to land including grading, filling or paving.

- The lot or parcel that the event takes place on shall comply with the minimum lot size of that zone (80 acres for agricultural zones).
- Permits are valid for two years and may be renewed for an additional two years subject to review. After four years, the applicant must reapply for a new permit.

How does Planning staff determine "...must be incidental and subordinate to existing farm use on the parcel"?

Generally speaking, the act of holding events on the parcel should be secondary or subsidiary to the farm use of the parcel. In addition, the property must be receiving farm deferral through the Assessor's Office. Review will occur on a case-by-case basis, as are all Conditional Use applications.

What happens if the owner isn't actively farming the property?

As noted above, if the property is not in farm deferral the events would not be "incidental and subordinate to existing farm use on the parcel" and the request would be denied.

How do I obtain an agri-tourism permit?

Marion County Planning Division issues the Conditional Use Agri-tourism Permits. You can download an application from our website or obtain one from the office.

Once a complete application is received, the Planning Division will request comments from other County departments and affected agencies. Staff will then review the application for compliance with various land use regulations. In 30-45 days a decision will be issued approving, conditionally approving, or denying the request. A copy is sent to the

applicant and property owners within 1500 feet of the subject property. There is a 15-day appeal period in which the applicant or any interested person who disagrees with the decision may appeal the decision to a Marion County hearings officer.

How much do these permits cost?

Single-event Conditional Use Permit - \$375.
"Up to Six" or "Up to Eighteen" event Conditional Use Permits are \$640.

For more information, contact Planning staff at (503) 588-5038; email planning@co.marion.or.us or <http://www.co.marion.or.us/PW/Planning/default.htm>.



Guidance on Specific State Land-Use Regulations Affecting Agritourism

Chances are you've had success in life and business by adopting the motto "better to ask for forgiveness than beg for permission" – after all, it's a hallmark of creative thinkers, pioneers and business innovators. Unfortunately, when it comes to navigating the policies and regulations regarding agriculture, failing to ask for and obtain permission can put you and your customers in jeopardy.

BACKGROUND ON OREGON LAND-USE LAW

In response to competing interests and a desire to strengthen the state's economy while simultaneously conserving farmland and natural resources, the Legislative Assembly passed the original Oregon Land Use Act in 1973. This act required all cities and counties to adopt comprehensive plans that met mandatory standards set by the state. These programs, and the semi-independent roles of the state and local jurisdictions, set the foundation for the land-use policies we encounter today.

For instance, even though the state legislature adopted Senate Bill (SB) 960 in 2011, which created a process and structure for agritourism events, each of Oregon's 36 counties has the option to respond by implementing those parameters as they are written in statute, to implement a lesser version, or to implement nothing. It's important to keep this in mind as you continue reading this section: Just because there's a policy in place at the state level doesn't mean it will directly translate to your location.

FIRST STEPS: PREPARING FOR PERMITS

As you embark on this venture, it's important to remember that you're doing something new, and the very thought of agritourism can cause quite the kerfuffle. Your neighbors may associate tourists with increased traffic and noise rather than with spending that bolsters the local economy. Planners and inspectors find themselves in the challenging position of meeting your needs and those of your neighbors, while ensuring the safety of the public. As you proceed through the permitting process, patience and frequent communication will work to your benefit as you gain allies rather than make enemies.

Give yourself plenty of time to deal with the agencies regulating the industry. Agencies are often understaffed and can seem slow to process applications. Your business idea may be brilliant, but it may take time to build the regulator's understanding of your proposed operation and goals. Sometimes rules and regulations can themselves be confusing. Keep in mind that regulations were written by lawyers, and it might take both you and the agency representative time to figure out what tools at their disposal can yield you the proper permits. You may need to appear before a board or committee whose agendas require a 30-day advance public notice. Given all these factors, arriving at your regulator's or inspector's office with only a few days to act tends to cause unnecessary conflicts and stress. Don't be afraid to ask questions, but remember to be patient and courteous.

Finally, don't be discouraged if your county hasn't adopted a policy that you feel you need to operate your business. Oftentimes, a lack of resources or a lack of demand is the only reason a policy hasn't been changed. You can work with your planners and regulators to make some improvements.



COMMON REGULATIONS THAT IMPACT AGRITOURISM ACTIVITIES

Below you will find information about the most common regulations that impact agritourism in Exclusive Farm Use zones.

A. FARM USE

Farm use is regulated by ORS 215.203. This statute allows direct sales and marketing of farm crops.

Types of Allowable Uses

Uses may be subject to county review, and include:

- Direct sales and marketing
- U-Pick
- U-Cut
- Christmas tree sales
- Community-Supported Agriculture (CSAs), limited to crops grown/harvested on-site

Limitations and Requirements

- Sales are limited to crops grown and harvested on-site.



B. MASS GATHERINGS

Mass gatherings are defined and regulated by ORS 433.735(1), ORS 433.750, ORS 433.755 and ORS 433.763(1). These statutes define “outdoor mass gatherings” to mean an anticipated assembly of more than 3,000 persons that continues, or can reasonably be expected to continue, for more than 24 consecutive hours but less than 120 total hours within any three-month period.

Other gatherings are defined as an assembly of 3,000 or fewer persons not anticipated to continue for more than 120 hours in any three-month period. Counties are allowed to make modifications to this definition (e.g., “large gatherings” in Marion County).

Types of Allowable Uses

- Concerts
- Festivals
- Fairs
- Carnivals

Limitations and Requirements

Mass gatherings:

- Subject to review by the planning commission.
- Demonstrate compatibility with existing land uses.
- Not materially alter stability of land-use pattern of the area.
- No permanent structures are allowed.
- Have very detailed requirements for sanitary services, parking, medical services on-site, sewage, trash and food service.

Small or “other” gatherings:

- Not subject to review (e.g., not a “land-use decision”).

Note: If you have an agritourism permit, you may not also apply for a mass gathering permit. If your county has adopted an agritourism policy based on SB960, you may not use “mass gathering” permits in lieu of an agritourism permit.

C. FARM STANDS

Farm stands are defined by ORS 215.283 (1)(o), which defines farm stands as structures “designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand.”

Types of Allowable Uses

- Direct sales of farm crops and livestock produced on the farm or other farms in Oregon, and retail incidental items.
- Fee-based activity to promote the sale of crops could potentially include a variety of uses, but it's worthy to note that these uses are based on a Court of Appeals case:
 - Small-scale gatherings such as a birthday or picnic
 - Corn mazes
 - School tours
 - Pumpkin patch events
 - Hay rides
 - Farm animal exhibits
 - Farm product food contests
 - Food preparation demonstrations
 - Outdoor farm-to-table dinners

Limitations and Requirements

- This statute does not include temporary or permanent structures designed for occupancy as a residence, or for activity other than the sale of farm crops or livestock.
- Nor does this statute provide for temporary or permanent structures designed for banquets, public gatherings and/or public entertainment.
- Annual sales of incidental items and fees from promotional activities are limited to 25% of total annual farm-stand retail sales.

D. AGRITOURISM/COMMERCIAL EVENTS OR ACTIVITIES

This is the core of SB 960, approved by the Oregon Legislature in 2011 and referenced earlier in this chapter. While agritourism events are defined by ORS 215.283(4), the statute doesn't specifically define the term “agritourism.” The customary definition is any commercial enterprise at a working farm or ranch conducted for the enjoyment of visitors that generates supplemental income for the owner. To date, your county may have chosen to adopt these regulations in whole, in part or not at all.

What is consistent no matter where you are is that agritourism and other commercial events must be related to and supportive of agriculture. All the activities approved by these provisions must be “incidental and subordinate to existing farm use.” To define that phrase a little further, think of it this way: Is this event secondary to your on-site farming in terms of income generated, area occupied and off-site impacts? Does this event generate supplemental income that will support your farming efforts?

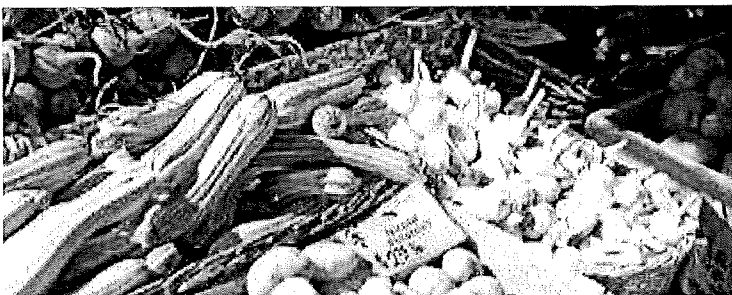
Types of Allowable Uses

The statute is not clear about the types of events and activities that might be allowed, so counties may interpret these uses differently. In general this permit could include activities related to:

- Education
- Hospitality
- Entertainment
- Outdoor recreation

More specifically, we see agritourism permits issued for:

- Cooking classes using farm products
- School tours (which could also be conducted with a farm stand permit)
- Farm/garden/nursery tours and stays
- Festivals and “Harvest Days”
- Pony rides, petting zoos, corn mazes
- Farm-to-table events



Limitations and Requirements

State law requires that the activities and events must be related to and supportive of agriculture, and be incidental and subordinate to existing farm use.

State law provides for a variety of permits; they increase in cost and intensity as the events do.

They are:

- One expedited event permit.
- One-event permit with a conditional land-use permit.
- Up to six events with a conditional land-use permit.
- Up to 18 events with a conditional land-use permit.

Conditions associated with these permits are set by the local jurisdiction, but are likely to include:

- Parking
- Noise
- Sanitation
- Signage
- Food service

Although there is no specified limitation on annual agritourism event revenue in relation to overall farm income, these events are intended to be subordinate to existing use.

E. WINERY, CIDERY AND BREWERY BUSINESSES

Wineries, as related to land use and events, are regulated by ORS 215.452 and ORS 215.453. A small winery is defined by statute as less than 50,000 gallons on at least 15 acres, or more than 50,000 gallons on at least 40 acres. A large winery is defined as at least 150,000 gallons on 80 acres or more. A cider business, as related to land use and events, is regulated by ORS 215.451 and may be established on land zoned for EFU if the cider business produces less than 100,000 gallons of cider annually and owns an on-site or contiguous orchard of at least 15 acres; or produces at least 100,000 gallons of cider annually and owns an on-site or contiguous orchard of at least 40 acres. It's worthy to note that statute defines cider as a product made of apple or pears. In general, wineries and cideries have a wider array of allowable activities. Certain activities are more restricted for wineries than for farms with permitted farm stands. However, there are also activities that are only permitted on EFU land occupied by wineries.

In 2019 SB 287 passed the Oregon Legislature and affords breweries the same opportunities based upon their size and crops. Specifically, a farm brewery may be established in an EFU zone if it produces less than 150,000 barrels of malt beverages annually, a portion of the production may be produced offsite. Additionally, if the farm brewery produces less than 15,000 barrels of malt beverages annually on site; owns an on-site or contiguous hop farm of at least 15 acres; 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 obtains hops from a total of 15 acres from any combination of sources described in the statute.

Types of Allowable Uses

Operations that are directly related to the sale or marketing of wine, cider or malt beverages produced in conjunction with the business may be allowed.

This includes limited service restaurants and the sale of incidental items directly related to on-site sales, including:

- Tours and tastings
- Buying club meetings
- Winemaker/cidermaker/brewer luncheons and dinners
- Business activities for wine/cider/brewing industry professionals
- Open houses to promote wine, cider or beer
- Bed-and-breakfast and room-and-board facilities

Agritourism or other commercial events in conjunction with these facilities are also allowed.

The promotion of wine, cider or beer produced in conjunction with the business is a secondary purpose of the event. Such events include:

- Outdoor concerts for which admission is charged
- Educational, cultural, health or lifestyle events
- Facility rentals
- Celebratory gatherings
- Charitable activities for which the winery does not charge a facility rental fee
- Other events

Limitations and Requirements

- Income from limited-service restaurants and sales of incidental items must not exceed 25% of income from wine/cider/beer sales.
- The size of the business and frequency of events determines what permits are required. For small operations that host events more than six days per year, and large operations that host events more than 24 days per year, land-use permits are required.
- Both 7-18 and over 25-day applications must address potential impacts and must be subordinate to the production and sales of wine/cider/beer and may not create adverse impacts to uses on surrounding land.
- Small wineries/cideries/breweries are allowed a maximum of 18 days per year for events.
- 1-6 days is not a land-use decision.
- 7-18 days requires a land-use decision.
- Large wineries/cideries/breweries are allowed a maximum of 25 days per year for events.
- A land-use permit is required.
- Restaurants, where permitted, may operate 25+ days.

F. GUEST RANCHES

Guest ranches as related to agritourism and events are regulated by ORS 215.296 (1)(2) and ORS 321.805. The guest ranch must be located on a lawfully established unit of land that is at least 160 acres, contains the dwelling of the individual conducting the livestock operation and is not on high-value farmland.

Types of Allowable Uses

- Lodging
- Hunting
- Fishing
- Hiking
- Biking
- Horseback riding
- Swimming

- Food service (only for guests of the guest ranch, individuals accompanying the guests and individuals attending a special event at the guest ranch)

Limitations and Requirements

You may not establish a guest ranch if the proposed site of the guest ranch is within the boundaries of or surrounded by:

- A federally designated wilderness area or a wilderness study area.
- A federally designated wildlife refuge.
- A federally designated area of critical environmental concern.
- An area established by an Act of Congress for the protection of scenic or ecological resources.

Additionally:

- A guest lodge must include no fewer than four and no more than 10 overnight guest lodging units.
- It may not exceed a total of 12,000 square feet in floor area, not counting the floor area of a lodge, that is dedicated to kitchen area, rest rooms, storage or other shared or common indoor space.
- For every increment of 160 acres that the lawfully established unit of land on which the guest ranch is located exceeds the minimum 160-acre requirement, up to five additional overnight guest lodging units not exceeding a total of 6,000 square feet of floor area may be included in the guest ranch, for a total of not more than 25 guest lodging units and 30,000 square feet of floor area.
- Recreation may not include the development of golf courses.
- The cost of meals, if any, may be included in the fee to visit or stay at the guest ranch; a guest ranch may not sell individual meals to an individual who is not a guest of the guest ranch, an individual accompanying a guest or an individual attending a special event at the guest ranch.

PHOTO: CHRISTIAN HEEB



Allowable Activities in Exclusive Farm Use Zones

Allowable Activities in Exclusive Farm Use Zones, as Included in ORS 215.213 & ORS 215.283

Permitted Uses	Farm Use	Commercial Activities with Farm Use	Room & Board	Mass Gathering	Farm Buildings	Farm Stand
Types of Agritourism	Permits vary by county, please always contact and consult your local planning department for assistance.					
Recreation	Fishing, hunting					
Education	Farm tours & demonstrations					Farm product promotional activities
Agri-tainment					Equestrian events & dog trials	Corn mazes, hay rides, harvest festivals, petting zoos
Food Service				Catered food		Farm-to-table dinners
Accommodations			Room & board for up to five unrelated persons in existing residence who work on the farm			
Sales	U-picks, CSA	Business-to-business sales; e.g., fertilizer & seed		Concerts, festivals, etc.	Farm stand sales	Raw & processed farm products
Celebratory Events						Farm-themed birthday parties

Allowable Activities in Exclusive Farm Use Zones, as Included in ORS 215.213 & ORS 215.283 (Continued)

Permitted Uses	Home Occupation	Private Park	Guest Ranch	Other Commercial Events	Wineries/ Cideries/ Breweries
Types of Agritourism	Permits vary by county, please always contact and consult your local planning department for assistance.				
Recreation		Low-intensity uses such as hiking trails	Fishing, hunting		
Education	Farm skills, craft and cooking classes		Farm/ranch skills classes	Farm skills, crafts and cooking classes	Tasting & tours
Agri-tainment	Farm skills, craft and cooking classes			Seasonal festivals and farm-related events (up to 18 days)	Up to 18 events that may include concerts & dances
Food Service	Food processing, breakfast for B&B guests		Meals for guests	Farm-to-table dinners	Limited food service for tastings; catered food service
Accommodations	B&B, up to five rooms	Camping in a limited number of tents or yurts	Up to 25 units		
Sales					Wine/cider/beer & incidentals
Celebratory Events					Weddings & retreats

Oregon Agritourism Network Policy Action Team: 2019

