

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY
STATE OF OREGON**

**In the Matter of Amending the Benton
County Development Code Chapters 51
& 55.**

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ORDINANCE No. 2015-0270

WHEREAS, Oregon Ballot Measure 91 (2014) as modified by Oregon House Bill 3400 (2015) decriminalizes recreational marijuana and establishes procedures by which persons may obtain state licenses to produce, process, wholesale or retail marijuana; and

WHEREAS, certain provisions of House Bill 3400 are mandatory with regard to marijuana-related land uses in exclusive farm use zones; and

WHEREAS, the proposed amendment will clarify, correct, and/or increase consistency with other sections of Benton County Development Code and with statute and administrative rules of the State of Oregon; and

WHEREAS, the proposed amendment will improve efficiency and promote sound land use decisions; and

WHEREAS, the Benton County Planning Commission held a duly advertised public hearing on October 6, 2015, and voted to recommend that the Board of Commissioners approve the attached Development Code amendment; and

WHEREAS, the Benton County Board of Commissioners held a duly advertised public hearing on November 3, 2015, to receive testimony from the public and to consider the request; and

WHEREAS, the Benton County Board of Commissioners finds that the proposed Development Code amendment complies with the criteria of Benton County Development Code; and

WHEREAS, the Benton County Board of Commissioners has considered the staff report, the recommendation of the Benton County Planning Commission, and the record as a whole. The Board of Commissioners deliberated and approved the proposed amendment to the Development Code and conducted the First Reading of the proposed Ordinance on November 3, 2015; and

WHEREAS, the Benton County Board of Commissioners conducted the Second Reading of the proposed Ordinance on November 24, 2015.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY ORDAINS AS FOLLOWS:

PART I: Short Title. Amendment to the Benton County Development Code Chapters 51 & 55.

PART II: Authority. The Board of County Commissioners of Benton County has authority to amend the Development Code pursuant to ORS Chapter 215 and the Benton County Charter.

PART III: The Development Code amendment proposed in Planning File No. LU-15-052 is hereby approved, based on the Findings of Fact and Conclusions of Law contained in the attached "Exhibit 1" and hereby adopted and incorporated herein.

PART IV: Benton County Development Code is hereby amended as shown in "Exhibit 2."

PART V: The effective date for this amendment to the Benton County Development Code will be:

First Reading: November 3, 2015

Second Reading: November 24, 2015

Effective Date: _____, 2015

BENTON COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

Approved as to Form:

County Counsel

Recording Secretary

Exhibit 1
Findings of Fact and Conclusions of Law
Amendments to Chapters 51 & 55; File # LU-15-052

A. FINDINGS APPLYING DEVELOPMENT CODE CRITERIA

Benton County Development Code Provisions for Text Amendment

BCC 53.605 On occasion, it may be appropriate to amend sections of the Comprehensive Plan or Development Code to respond to changing policies and conditions, or to clarify the text.

Findings: The proposed code amendments prompted by changes to state law are in response to “changing policies and conditions.” Other amendments are to correct or clarify text.

Conclusion: The proposed amendments meet the general criteria for consideration.

BCC 53.610(1) The Board of [County] Commissioners may initiate an amendment to this code. The Board shall direct the Planning Official to prepare a background report discussing the justification for the proposed text amendment.

Findings: The Board of Commissioners directed the Planning Official to initiate these code amendments on August 18, 2015. This staff report and the annotations within the attached code amendments, Attachment A, constitute a background report discussing the justifications for the proposed amendments.

Conclusion: The proposed amendments were properly initiated.

BCC 53.620 The Planning Commission shall conduct a public hearing to review a proposed text amendment. Following the hearing, the Commission shall make a recommendation to the Board to approve, deny, or modify the proposed text amendment.

Findings: The Planning Commission conducted a public hearing on October 6, 2015, and forwarded a recommendation that the Board of Commissioners approve the proposed text amendment.

Conclusion: The conduct of the hearing complied with the stipulated procedure.

BCC 53.625 The Board of Commissioners shall hold a public hearing to review a proposed text amendment. The Board may accept, reject, or modify the proposed text amendment in whole or in part. Incorporation of any text amendment into the Development Code shall proceed pursuant to the Ordinance adoption provisions of the Benton County Charter.

Findings: The Board of Commissioners held a public hearing on November 3, 2015. The Board accepted the proposed text amendment with one modification. The incorporation of the text amendment proceeded pursuant to the appropriate provisions of the Benton County Charter.

Conclusion: The conduct of the public hearing and ordinance adoption process has complied with the procedure stipulated here.

B. SUMMARY AND CONCLUSION

The Board of Commissioners findings and conclusions are:

The proposed amendment is consistent with the applicable provisions of the Benton County Development Code. The Planning Commission has recommended that the Board of Commissioners adopt the proposed code amendment attached. **The Board of Commissioners concludes that all criteria have been met and approves the Development Code text amendment.**

Exhibit 2
Development Code Text Amendment
Amendments to Chapters 51 & 55; File # LU-15-052

Added text is **underlined**.
Deleted text is **~~struck through~~**.

Chapter 51
Development Code Administration

51.020 Definitions. As used in BCC Chapters 51 to 100:

...

(13) "Farm use" means the following:

- (a) In only the Exclusive Farm Use, Forest Conservation, and Multi-Purpose Agriculture zones, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or produce of, livestock, poultry, fur-bearing animals, or honeybees, or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. Marijuana, grown commercially pursuant to a license issued by the State of Oregon, is a crop. "Farm Use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and other animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the Commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees defined in ORS 215.203 (3) or land described in ORS 321.267 (3) or 321.824. A wholesale or retail plant nursery is considered horticultural use and therefore is allowed under this definition.
- (b) In zones other than Exclusive Farm Use, Forest Conservation and Multi-Purpose Agriculture, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops, or by the feeding, breeding, management and sale of livestock, poultry, fur-bearing animals, or honeybees, or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry, or any combination thereof.

"Farm Use" includes the preparation and storage of the products raised on such land for human and animal use and disposal by marketing or otherwise. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. It does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees or for hardwood species marketable as fiber for manufacturing paper products as described in ORS 321.267(3) or 321.824. Farm use shall be appropriate for the continuation of existing, or the promotion of new, commercial agriculture enterprise in the area.

"Farm use" in zones other than Exclusive Farm Use, Forest Conservation and Multi-Purpose Agriculture nonresource zones is distinguished from the 51.020(13)(a) definition applying to resources zones by the exclusion of:

- (A) "stabling or training equines";
- (B) "bird and other animal species that are under the jurisdiction of the State Fish and Wildlife Commission"; ~~and~~

~~(C)~~ "on-site construction and maintenance of equipment and facilities" used for farm use; ~~and~~

~~(C)(D)~~ "marijuana, grown commercially pursuant to a license issued by the State of Oregon," as a farm crop.

(c) As used in the definition of "farm use",

(A) "Current employment" of land for farm use includes:

- (i) Farmland, the operation or use of which is subject to any farm-related government program;
- (ii) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;
- (iii) Land planted in orchards or other perennials, other than land specified in subparagraph ~~(D)~~(iv) of this paragraph, prior to maturity;
- (iv) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use value in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;
- (v) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

- (vi) Except for land under a single family dwelling, land under buildings supporting accepted farm practices, including the processing facilities allowed by ORS 215.213 (1)(u) and 215.283 (1)(r) and the processing of farm crops into biofuel as commercial activities in conjunction with farm use under ORS 215.213 (2)(c) and 215.283 (2)(a);
- (vii) Water impoundments lying in or adjacent to and in common ownership with farm use land;
- (viii) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;
- (ix) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;
- (x) Any land described under ORS 321.267 (3) or 321.824 (3); and
- (xi) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

 1. Only the crops of the landowner are being processed;
 2. The biofuel from all of the crops purchased for processing into biofuel is used on the farm of the landowner; or
 3. The landowner is custom processing crops into biofuel from other landowners in the area for their use or sale.
- (B) "Accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.
- (C) "Cultured Christmas trees" means trees:

 - (i) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;
 - (ii) Of a marketable species;
 - (iii) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and
 - (iv) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the

following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation. {ORS 215.203}

~~(A)~~(D) "Preparation" of products or by-products includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products; and

~~(B)~~(E) "Products or by-products raised on such land" means that those products or byproducts are raised on the farm operation where the preparation occurs or on other farm land provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land.

[Ord. 2001-0174, Ord 2006-0214]

* * *

(36) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

(37) "Marijuana crop" means marijuana grown commercially pursuant to a license issued by the State of Oregon.

* * *

~~(56)~~ "Residential facility" means a facility licensed by or under the authority of the Oregon Department of Human Services under ORS 443.400 to 443.460 which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet Oregon Department of Human ~~Resources~~ Services licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

~~(57)~~ "Residential home" means a home licensed by or under the authority of the Oregon Department of Human Services under ORS 443.400 to 443.825 which provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet Oregon Department of Human ~~Resources~~ Services licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

Chapter 55

Exclusive Farm Use Zone (EFU)

55.106 Uses permitted in the Exclusive Farm Use Zone subject to review by the Planning Official. Uses in this section are permitted, provided the standards listed below are met.

...

(2) **Administrative Review.** The following uses are permitted subject to review by the Planning Official pursuant to BCC 53.160.

(a) Farm Stand. A farm stand may be approved if:

~~(A)~~ (A) The farm stand is not used in conjunction with a marijuana crop;

~~(A)(B)~~ (A)(B) The structures are 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 if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

~~(B)(C)~~ (B)(C) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

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

~~(D)(E)~~ (D)(E) As used in this section, "local agricultural area" includes Oregon.

...

FARM-RELATED DWELLINGS

55.109 Farm Related Dwelling on High Value Farmland (\$80,000 Income Test).

(1) On land identified as high-value farmland pursuant to BCC 55.015(2), one dwelling considered customarily provided in conjunction with farm use may be allowed subject to administrative review by the Planning Official, pursuant to BCC 53.160, for compliance with the following criteria: (Note: there is an alternative ownership history option available under BCC 55.114.)

(a) The subject tract is currently employed for the farm use, on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products, not including marijuana, in each of the last two years or three of the last five years, or in an average of three of the last five years;

(b) In addition to the subject parcel or lot, other parcels or lots in the same ownership may be used to demonstrate the gross farm income required by subsection (a) of this section. If multiple parcels or lots are used, they shall be subject to BCC 55.113. Parcels or lots noncontiguous to the subject tract may be used provided they are zoned for farm use and are located in Benton, Linn, Lane, Lincoln or Polk Counties;

- (c) Except as permitted for seasonal farm worker housing that has been approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on lands zoned Exclusive Farm Use or Multi-Purpose Agriculture owned by the farm or ranch operator or on the farm or ranch operation; and
- (d) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in BCC 55.109(1)(a);
- (e) In determining the gross income required by BCC 55.109(1)(a):
 - (A) Gross income only from land zoned EFU and/or MPA, and owned by the farm or ranch operation, not leased or rented, shall be counted;
 - (B) The cost of purchased livestock shall be deducted from the total gross income; and
 - (C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used.
- (f) The subject parcel or lot is lawfully established; and [Ord 94-0108]
- (g) The landowner shall sign a covenant as required by BCC 55.405(6).
- ~~(g)~~(h) The subject tract is not employed in the growing of a marijuana crop.

[Ord 2001-0174; Ord 2006-0214; Ord 2015-0268] {OAR 660-033-0135(3)}

55.110 Farm Related Dwelling on 160 Acres or More of Non-High-Value Farmland.

- (1) One farm related dwelling may be permitted on land identified as non-high value pursuant to BCC 55.015(2), subject to administrative review by the Planning Official pursuant to BCC 53.160 for compliance with the following criteria:
 - (a) The parcel or lot on which the dwelling will be located is lawfully established, is at least 160 acres, and not designated as rangeland;
 - (b) The subject property is currently employed in farm use;
 - (c) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and
 - (d) Except as provided for seasonal farm worker housing approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract. [Ord 94-0108]
 - (e) The landowner shall sign a covenant as required by BCC 55.405(6).
 - (f) The subject tract is not employed in the growing of a marijuana crop.

[Ord 94-0108; Ord 2001-0174; Ord 2006-0214; Ord 2015-0268] {OAR 660-033-0135(1)}

55.111 Commercial Dairy Farm Dwelling.

- (1) One farm-related dwelling may be permitted on a lawfully established parcel or lot in conjunction with a commercial dairy farm, as defined by subsection (2) of this section, subject to administrative review by the Planning Official pursuant to BCC 53.160 for compliance with the following criteria:
 - (a) The subject tract will be employed as a commercial dairy as defined by subsection (2) of this section;

- (b) The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy;
 - (c) Except as permitted for seasonal farm worker housing approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on the subject tract;
 - (d) The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm use activities necessary to the operation of the commercial dairy farm;
 - (e) The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and
 - (f) The Oregon Department of Agriculture has approved the following:
 - (A) A permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and
 - (B) A Producer License for the sale of dairy products under ORS 621.072.
 - (g) The subject tract is not employed in the growing of a marijuana crop.
- (2) "Commercial dairy farm" is a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by BCC 55.109(1)(a) or 55.112(1)(a), whichever is applicable, from the sale of fluid milk.

[Ord 2006-0214; Ord 2015-0268] {OAR 660-033-0135(7)}

55.112 Farm Related Dwelling on Non-High-Value Farmland (\$40,000 Income Test).

- (1) One farm related dwelling may be permitted on land identified as non-high value farmland pursuant to BCC 55.015(2), subject to administrative review by the Planning Official pursuant to BCC 53.160 for compliance with the following criteria: (Note: there is an alternative ownership history option available under BCC 55.114.)
 - (a) The subject tract is currently employed for the farm use, on which, in each of the last two years or three of the last five years, or in an average of three of the last five years, the farm operator earned the lower of the following:
 - (A) At least \$40,000 in gross annual income from the sale of farm products, not including marijuana; or
 - (B) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon; and
 - (b) In addition to the subject parcel or lot, other parcels or lots in the same ownership may be used to demonstrate the gross farm income required by subsection (a) of this section. If multiple parcels or lots are used, they shall be subject to BCC 55.113. Parcels or lots noncontiguous to the subject tract may be used provided they are zoned for farm use and are located in Benton, Linn, Lane, Lincoln or Polk Counties;
 - (c) Except as permitted for seasonal farm worker housing approved pursuant to ORS 215.283(1)(p) (1999 Edition), there is no other dwelling on lands zoned Exclusive Farm Use or Multi-Purpose Agriculture owned by the farm or ranch operator or on the farm or ranch operation;
 - (d) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in BCC 55.112(1)(a);

- (e) In determining the gross income required by BCC 55.112(1)(a):
 - (A) Only gross income from land owned, not leased or rented, shall be counted;
 - (B) The cost of purchased livestock shall be deducted from the total gross income attributed to the farm or ranch operation;
 - (C) Gross farm income earned from a lot or parcel that has been used previously to qualify another lot or parcel for the construction or siting of a primary farm dwelling may not be used. [Ord 94-0108]
- (f) The subject parcel or lot is lawfully established; and
- (g) The landowner shall sign a covenant as required by BCC 55.405(6).
- ~~(g)~~(h) The subject tract is not employed in the growing of a marijuana crop.

[Ord 2001-0174; Ord 2006-0214; Ord 2015-0268] {OAR 660-033-0135(4) and (5)}

...

ACCESSORY FARM DWELLINGS

55.115 Accessory Farm–Related Dwellings for Year-Round and Seasonal Farmworkers.

- (1) Accessory farm-related dwellings may be permitted on a legally established parcel or lot, subject to administrative review by the Planning Official pursuant to BCC 53.160, if each accessory dwelling meets all the following requirements:
 - (a) The subject property and contiguous property in the same ownership are in farm use;
 - (b) The accessory dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the primary farm operator; [Ord 2009-0232]
 - (c) The accessory dwelling will be located:
 - (A) On the same lot or parcel as the dwelling of the primary farm operator; or
 - (B) On the same tract as the primary farm dwelling if the lot or parcel on which the accessory farm dwelling will be sited is consolidated with the other lots and parcels in the tract into a single parcel or lot when the dwelling is allowed; or
 - (C) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to a manufactured dwelling with a deed restriction. The deed restriction shall be filed in the Benton County Deed Records and shall require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules; or
 - (D) On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farmworker housing as that existing on farm or ranch operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. All accessory farm dwellings approved under this subparagraph shall be removed, demolished or converted to a nonresidential use when farmworker housing is no longer required. “Farmworker housing” means housing limited to occupancy by farmworkers and their immediate families; no dwelling unit may be occupied by a relative of the owner or operator of the farmworker

housing. Housing for a relative of the farm operator may be approved pursuant to BCC 55.120. "Relative" means a spouse of the owner or operator or an ancestor, lineal descendant or whole or half sibling of the owner or operator or the spouse of the owner or operator. Or,

- (E) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in BCC 55.109(1)(a) or 55.112(1)(a), whichever is applicable.
- (d) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling;
- (e) The principal farm dwelling to which the proposed dwelling would be accessory meets one of the following:
 - (A) On land not identified as high-value farmland, the primary farm dwelling is located on a tract that is currently employed for farm use, as defined in ORS 215.203, on which, in each of the last two years or three of the last five years, or in an average of three of the last five years, the farm operator earned the lower of the following:
 - (i) At least \$40,000 in gross annual income from the sale of farm products, not including marijuana. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
 - (ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the income from the sale of marijuana and the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
 - (B) On land identified as high-value farmland, the primary farm dwelling is located on a tract that is currently employed for farm use, as defined in ORS 215.203, on which the farm operator earned at least \$80,000 in gross annual income from the sale of farm products, not including marijuana, in each of the last two years or three of the last five years, or in an average of three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or
 - (C) It is located on a commercial dairy farm as defined by BCC 55.111(2); and
 - (i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and
 - (ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and
 - (iii) A Producer License for the sale of dairy products under ORS 621.072.
- (f) The landowner shall sign a covenant as required by BCC 55.405(6), and, if applicable, BCC 55.113.

~~(f)~~(g) The subject tract is not employed in the growing of a marijuana crop.

- (2) The governing body shall not approve a division of land that would separate the accessory farm dwelling approved pursuant to BCC 55.115 from the parcel or lot on which the dwelling of the farm operator is located, unless the dwelling meets the criteria for a principal farm related dwelling.
- (3) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to BCC 55.220.
- (4) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code."

[Ord 26, Ord 90-0069; Ord 94-0108; Ord 2001-0174; Ord 2006-0214; Ord 2009-0232; Ord 2015-0268] {OAR 660-033-0130(24)}

55.120 Farm-Help Dwelling for a Relative of the Farm Operator.

- (1) One farm-related dwelling may be permitted on a lawfully established parcel or lot, subject to administrative review by the Planning Official pursuant to BCC 53.160 for compliance with the following criteria:
 - (a) The dwelling will be located on property used for farm use;
 - (b) The dwelling will be located on the same lot or parcel as the dwelling of the farm operator, and occupied by a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of the farm operator or the farm operator's spouse, whose assistance in the management and farm use of the existing commercial farming operation (not including marijuana) is required by the farm operator;
 - (c) The farm operator shall continue to play the predominant role in the management and farm use of the farm. For purposes of this section, a farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.
 - (d) Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel requirements of the zone, if the owner of a dwelling described in this section obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the "homesite," as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect. For the purpose of this section, "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).
 - (e) The landowner shall sign a covenant as required by BCC 55.405(6).
 - ~~(f)~~ For the purpose of BCC 55.120(d), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(9)(a).

~~(f)~~ (g) The subject tract is not employed in the growing of a marijuana crop.

...

CONDITIONAL USES

55.205 Conditional Uses Reviewed by the Planning Official subject to BCC 53.215, BCC 53.220, and BCC 55.215. The following uses may be allowed in the Exclusive Farm Use Zone by conditional use permit approved by the Planning Official:

...

(2) Commercial activity in conjunction with farm use, subject to the following;

(a) A commercial activity shall not be permitted when carried on in conjunction with a marijuana crop; and

(b) A commercial activity may includeing, but is not limited to:

- (A) The processing of farm crops into biofuel not permitted under BCC 55.106(1)(b); or
- (B) A winery, if the winery:
 - (i) Does not qualify for siting under BCC 55.150(1) or ORS 215.453; or
 - (ii) Seeks to carry out uses or activities that are not authorized by BCC 55.150 or ORS 215.453.
 - (iii) For a winery authorized pursuant to this section after June 28, 2013, the gross income of the winery from any activity other than the production or sale of wine may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery. [Ord 2001-0174; 2006-0214; 2009-0232; 2015-0268]

...

55.340 Payment of Taxes Required. No final approval of a division of land for nonfarm use under this section shall be given unless additional taxes imposed upon the change in use have been paid. [Ord 94-0108; Ord 2001-0174]
