

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

In the Matter of an Ordinance Amending Marion)
County Code, Title 17 (Rural -Zone Code))
Provisions and Declaring an Emergency)

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1387

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS
FOLLOWS:

SECTION I. Purpose

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

SECTION II. Authorization

The Marion County Board of Commissioners initiated legislative amendments to the Marion County Rural Zone Code, and referred the matter to the Marion County Planning Commission for a recommendation, by Resolution 17R-31, dated December 27, 2017. On January 31, 2018, the Marion County Board of Commissioners replaced Resolution 17R-31 by adopting Resolution 18R-1, which did not refer the matter to the Marion County Planning Commission. The Marion County Board of Commissioners held a public hearing on March 14, 2018, for which proper notice and advertisement were given. All persons present during the public hearing were given the opportunity to speak or present written statements. The hearing was closed and the Board considered the Planning Division file, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Evidence and Conclusion

Under Oregon state law and administrative rules, the county can choose whether or not to allow photovoltaic solar arrays to be placed in farm zones. If a county chooses to allow these uses, Oregon Revised Statutes require them to be subject to obtaining a conditional use permit and Oregon Administrative Rules contain minimum standards that must be satisfied. Counties can adopt more restrictive standards and criteria. Marion County considered adopting more restrictive standards and decided to repeal the use entirely from the EFU (Exclusive Farm Use) and SA (Special Agriculture) zones.

The amendments of the Marion County Rural Zone Code made hereunder are based on consideration and analysis of the operation of present zoning regulations and provisions of ORS Chapters 197 and 215 and the State Land Use Goals and related Oregon Administrative Rules. Due consideration was given to testimony in the hearing. The Board finds that the revision to the Rural Zone Code is in compliance with State Land Use Goals, the applicable policies in the Marion County Comprehensive Plan, and with ORS 197 and ORS 215.

SECTION IV. Amendments

Title 17 MCC (Marion County Rural Zone Code) is amended as set forth in Exhibit A, attached hereto and incorporated herein.

SECTION V. Severability and Savings Clause

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

SECTION VI. Effective Date

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

SIGNED and FINALIZED this 21 day of March 2018,
2018, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS


Chair


Recording Secretary

JUDICIAL NOTICE

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

EXHIBIT A

DELETIONS IN STRIKEOUT

Chapter 17.120

SPECIFIC CONDITIONAL USES

Sections:

Article I. Specific Conditional Uses

- 17.120.010 Mobile home parks.
- 17.120.020 Duplex on a corner lot.
- 17.120.030 Boat, camper, and trailer storage area or lot.
- 17.120.040 Temporary use of mobile home or recreational vehicle during certain hardship conditions.
- 17.120.050 Custom cabinet shop and sales firm.
- 17.120.075 Conditional home occupations.
- 17.120.080 Wireless communications facilities.
- 17.120.090 Agri-tourism events and activities.
- 17.120.100 Wind power generation facilities.
- ~~17.120.110 Photovoltaic solar power generating facilities.~~
- 17.120.120 Medical marijuana businesses.

~~17.120.110 Photovoltaic solar power generating facilities.~~

~~Photovoltaic solar power generating facilities shall be subject to the following criteria and definitions:~~

~~A. Definitions.~~

- ~~1. "Arable land" means land in a tract that is predominately cultivated or, if not currently cultivated, predominantly comprised of arable soils.~~
- ~~2. "Arable soils" means soils that are suitable for cultivation as determined by the governing body or its designate based on substantial evidence in the record of a local land use application, but "arable soils" does not include high value farmland soils described in ORS 195.300(10) unless otherwise stated.~~
- ~~3. "Nonarable land" means land in a tract that is predominately not cultivated and predominately composed of nonarable soils.~~
- ~~4. "Nonarable soils" means soils that are not suitable for cultivation. Soils with an NRCS agricultural capability classes V through VIII and no history of irrigation shall be considered nonarable land in all cases. The governing body or its designate may determine other soils, including soils with a past history of irrigation, to be nonarable based on substantial evidence in the record of a local land use application.~~
- ~~5. "Photovoltaic solar power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores, transfers, or both, that electricity. This includes photovoltaic modules, mounting and solar tracking equipment, foundations, inverters, wiring, storage devices and other components. Photovoltaic solar power generation facility also includes electrical cable collection systems connecting the photovoltaic solar power generation facility to a transmission line, all necessary grid integration equipment, new or expanded private roads constructed to serve the photovoltaic solar power generation facility, office, operation and maintenance buildings, staging areas and all other necessary appurtenances. For purposes of applying the acreage standards of this section, a photovoltaic solar power generation facility includes all existing and proposed facilities on a single tract, as well as any existing and proposed facilities determined to be under common ownership on lands with fewer than 1,320 feet of separation from the tract on which the new facility is proposed to be sited. Projects connected to the same parent company or individuals shall be considered to be in common ownership, regardless of the~~

operating business structure. A photovoltaic solar power generation facility does not include a net metering project consistent with ORS 757.300 and OAR Chapter 860, Division 039 or a feed-in tariff project established consistent with ORS 757.365 and OAR Chapter 860, Division 084.

B. For high value farmland soils described at ORS 195.300(10), the following must be satisfied:

1. A photovoltaic solar power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, Division 004;
2. The proposed photovoltaic solar power facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;
3. The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;
4. Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;
5. Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;
6. The project is not located on high value farmland soil unless it can be demonstrated that:
 - a. Non high value farmland soils are not available on the subject tract; or
 - b. Siting the project on non high value farmland soils present on the subject tract would significantly reduce the project's ability to operate successfully; or
 - c. The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised on non high value farmland soils;
7. A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:
 - a. If fewer than 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary;
 - b. When at least 48 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of the area. The stability of the overall land use pattern of the area will be materially altered if the overall

effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

C. For arable lands the following must be satisfied:

1. A photovoltaic solar power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, Division 004;
2. The proposed photovoltaic solar power facility will not create unnecessary negative impacts on agricultural operations conducted on any portion of the subject property not occupied by project components. Negative impacts could include, but are not limited to, the unnecessary construction of roads dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing photovoltaic solar power generation facility project components on lands in a manner that could disrupt common and accepted farming practices;
3. The presence of a photovoltaic solar power generation facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval;
4. Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval;
5. Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;
6. The project is not located on high value farmland or arable soils unless it can be demonstrated that:
 - a. Nonarable soils are not available on the subject tract; or
 - b. Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or
 - c. The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of nonarable soils;
7. A study area consisting of lands zoned for exclusive farm use located within one mile measured from the center of the proposed project shall be established and:
 - a. If fewer than 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits within the study area, no further action is necessary;
 - b. When at least 80 acres of photovoltaic solar power generation facilities have been constructed or received land use approvals and obtained building permits, either as a single project or multiple facilities within the study area, the local government or its designate must find that the photovoltaic solar power generation facility will not materially alter the stability of the overall land use pattern of

the area. The stability of the overall land use pattern of the area will be materially altered if the overall effect of existing and potential photovoltaic solar power generation facilities will make it more difficult for the existing farms and ranches in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland or acquire water rights, or will reduce the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

D. For nonarable lands the following must be satisfied:

1. A photovoltaic solar power generation facility shall not preclude more than 100 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, Division 004;
2. No more than 12 acres of the project will be sited on high value farmland soils described in ORS 195.300(10);
3. No more than 20 acres of the project will be sited on arable soils unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660, Division 004;
4. Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval;
5. The project is not located on high value farmland or arable soils unless it can be demonstrated that:
 - a. Siting the project on nonarable soils present on the subject tract would significantly reduce the project's ability to operate successfully; or
 - b. The proposed site is better suited to allow continuation of an existing commercial farm or ranching operation on the subject tract than other possible sites also located on the subject tract, including those comprised of nonarable soils;
6. If a photovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's comprehensive plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local comprehensive plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures; and
7. If a photovoltaic solar power generation facility is proposed, prior to January 1, 2022, to be located on land where the potential exists for adverse effects to state or federal special status species (threatened, endangered, candidate, or sensitive), or to wildlife species of concern identified and mapped by the Oregon Department of Fish and Wildlife (including big game winter range and migration corridors, golden eagle and prairie falcon nest sites, and pigeon springs), the applicant shall conduct a site specific assessment of the subject property in consultation with all appropriate state, federal, and tribal wildlife management agencies. A professional biologist shall conduct the site specific assessment by using methodologies accepted by the appropriate wildlife management agency and shall determine whether adverse effects to special status species or wildlife species of concern are anticipated. Based on results of the biologist's report, the site shall be designed to avoid adverse effects to state or federal special status species or to wildlife species of concern described above. If the applicant's site specific assessment shows that adverse effects cannot be avoided, the applicant and the appropriate wildlife management agency will cooperatively develop an agreement for project specific mitigation to offset the potential adverse effects of the facility. Where the applicant and resource management agency cannot agree on what mitigation will be carried out, the county is responsible for determining appropriate mitigation, if any, required for the facility.

~~E. A condition of any approval for a photovoltaic solar power generation facility shall require the project owner to sign and record in the deed records of Marion County a document binding the project owner and project owner's successor in interest, prohibiting them from pursuing a claim for federal relief or cause of action alleging injury from farming or forest practices defined in ORS 30.930(2) and (4).~~

~~F. Nothing in this section shall prevent a county from requiring a bond or other security from a developer or otherwise imposing on a developer the responsibility for retiring the photovoltaic solar power generation facility.~~

Chapter 17.136 EFU (EXCLUSIVE FARM USE) ZONE

17.136.050 Conditional uses.

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

F. The following utility uses:

1. Commercial utility facilities for the purpose of generating power, other than wind power generation or photovoltaic solar power generation, for public sale, subject to MCC 17.136.060(F).
2. Wind power generation facilities subject to MCC 17.120.100.
3. ~~Photovoltaic solar power generating facilities subject to MCC 17.120.110.~~
4. Transmission towers over 200 feet in height.

Chapter 17.137 SA (SPECIAL AGRICULTURE) ZONE

17.137.050 Conditional uses.

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

F. The following utility uses:

1. Commercial utility facilities for the purpose of generating power, other than wind power generation or photovoltaic solar power generation, for public sale, subject to MCC 17.137.060(E).
2. Wind power generation facilities subject to MCC 17.120.100.
3. ~~Photovoltaic solar power generating facilities subject to MCC 17.120.110.~~
4. Transmission towers over 200 feet in height.