



# ***Marion County*** **OREGON**

## **PUBLIC WORKS**

(503) 588-5036

### **MEMORANDUM**

**BOARD OF  
COMMISSIONERS**

Janet Carlson  
Kevin Cameron  
Sam Brentano

DATE: December 19, 2018

TO: Marion County Board of Commissioners

**DIRECTOR**

Alan Haley

FROM: Marion County Public Works – Brandon Reich, Senior Planner

**ADMINISTRATION**

SUBJECT: Work Session to Discuss Amendments to the Marion County  
Urban and Rural Zone Codes – Legislative Amendment 18-001

**BUILDING  
INSPECTION**

**BACKGROUND**

**EMERGENCY  
MANAGEMENT**

Generally, Marion County keeps its zone code up-to-date with changes made to state law. There have been recent changes to state law that the county should adopt into its zone code. In addition, staff is recommending the county consider various clarifying amendments to the code.

**ENGINEERING**

**ENVIRONMENTAL  
SERVICES**

**COMMENTS**

**OPERATIONS**

Oregon Department of Transportation commented that a 50 foot centerline setback is appropriate for Highway 99E.

**PARKS**

**PLANNING**

**FACTS AND ANALYSIS**

**SURVEY**

**Oregon Revised Statute Amendments**

HB 2179 (2017)	Mandatory 17.136, 17.137, 17.139	Permits onsite treatment of septage prior to application of biosolids on EFU land.
SB 677 (2017)	Mandatory 17.125, 17.136, 17.137, 17.139	Permits cider business similar to how wineries are now permitted.
SB 1051 (2017)	Mandatory 16.49	Requires a jurisdiction of a certain size to permit accessory dwelling units. County has already adopted standards, should incorporate definition in ORS 197.312 to be consistent with bill.

In 2017, the legislature adopted a number of bills that amended state statutes. These changes should be incorporated into the zone code.

HB 3012 (2017)	Optional 17.128	Permits a historic home to be converted to an ADU when home is replaced in an Acreage Residential zone.
----------------	--------------------	---

This bill permits a historic home (constructed between 1850 and 1945) to be converted to an accessory dwelling unit when it's replaced with a new home on a property. Staff recommends the rural code be amended to allow this provision.

HB 3012 (2018)	Optional 17.136, 17.137, 17.139	Permits equine and equine-affiliated therapeutic and counseling activities as a conditional use.
----------------	---------------------------------------	--

Marion County already could permit this use as a commercial activity in conjunction with farm use. The bill goes into effect in 2019 and limits the use to buildings that existed as of January 1, 2019. The bill limits the use to existing buildings or new buildings, if the new buildings are accessory, incidental and subordinate to the farm use of the tract, which is more restrictive than permitting them as a commercial activity in conjunction with farm use. In addition the bill places licensing requirements that staff may not be qualified to apply. Staff does not recommend this bill be incorporated into county code.

**Staff Recommended Amendments**

16.6.010	Optional	Permits a residence on a commercially zoned parcel in the Lyons Urban Growth Boundary.
----------	----------	--

There are numerous single-family dwellings on land zoned commercial within the Urban Growth Boundary of Lyons. The property owners of these parcels have trouble obtaining a loan, refinancing or selling their properties because the zone does not permit a single-family dwelling outright. The proposed amendment would permit a single-family dwelling outright, as well as allow for commercial uses, caretaker dwellings and the future redevelopment of a lot from a single-family use into a commercial use.

16.19.110 17.178.040	Optional	Clarifies standards by which an emergency facility could be approved in a floodplain.
-------------------------	----------	---

Clarifies that an emergency facility could be approved in a 500-year floodplain if the facility is needed to provide emergency response services in a timely manner.

16.28.020	Optional	Clarifies setbacks that apply to accessory structures in non-required front yard.
-----------	----------	---

Currently code is silent of what setbacks to apply to an accessory structure in the non-required front yard. (The required front yard is 12 feet). Planning has always permitted an accessory

structure in the non-required front yard to be placed using the same setbacks as the primary structure (i.e., dwelling, which has a 12 foot front yard setback and a 5 foot side yard setback). This amendment would codify permitting an accessory structure in the non-required front yard to be placed using the same setbacks as the primary structure.

16.38.010 17.110.840	Optional	Clarifies that the Board may send a matter to the planning commission or hearings officer for a recommendation without a hearing.
-------------------------	----------	---

Currently code is unclear whether the Board can refer an action to the county planning commission for a recommendation without the commission first holding a hearing on the matter. This clarifies that the Board may refer for a recommendation without a hearing and makes urban and rural codes match in this aspect.

17.116.120	Optional	Clarifies that the limits for adjustments do not apply to adjustments for the special setback in resource zones. The limits were not intended to apply, but appear to without the proposed amendment.
------------	----------	---

Special setbacks are applied to dwellings near resource land, 100 feet from farm uses and 200 feet from forest uses. Years ago the code was changed to permit a reduction in the special setback through the adjustment process instead of the previous administrative review process. Inadvertently, that code amendment made it appear that the limits for adjustments apply. This was not the intention and, in fact, the code amendment did not include limits on the adjustment amount for a special setback reduction. This code amendment clarifies that the process for adjustments applies to an adjustment for a special setback, but not the limits in 17.116.030.

17.119	Optional	Conditional use chapter references process in variance chapter. Moves language directly into conditional use chapter to clarify process. Makes conditional use effective for two years and cessation after one year, which is consistent with current practice.
--------	----------	---

The conditional use chapter has historically referenced parts of the variance chapter for its process, particularly appeals, effective date of the use, cessation and transfer of use, etc. There are differences between conditional uses and variances, for instance conditional uses must be exercised within two years to be effective and variances must be exercised within one year. Referencing the variance procedures in the conditional use section has been confusing and conflicting because of the different time limits. This amendment places the conditional use procedure solely in the conditional use section of code.

16.25.200 17.126.020	Optional	Permits kitchens connected by “open, livable” space and in a domestic suite. Covenant should not be required since planning reviews plans when building is
-------------------------	----------	--

		constructed.
--	--	--------------

Planning has historically permitted additional dwellings in a structure if the kitchens were connected by “open, livable” space, area of the dwelling that is finished and connected by hallways or rooms with no doorways between kitchens. This ensures that the dwelling remain for single-family use and cannot be used as a duplex, which is not permitted on rural land. It has recently come to planning’s attention that a domestic suite could be constructed where the two kitchens are separated by a door that locks. The locking door prevents the dwelling from being a duplex or shared housing. The domestic suite option would provide family members the ability to have their own quasi-separate living space while still being part of a single-family dwelling.

17.171.020	Optional	Permits wireless communication facilities (cellular towers) outright in Public zone without additional review.
------------	----------	--

Wireless communication facilities are a form of public utility, providing wireless phone service to customers in an area. The public zone permits utility services (except public power generation) outright. Wireless communication facilities are subject to additional review pertaining to appearance and location, similar to how they are reviewed in rural residential zones. However, the public zone seems an appropriate zone for wireless communication facilities to be permitted outright, since their use is consistent with other public utilities.

17.172.400	Optional	Clarifies when a parcel served by a sewage disposal system (septic system) must be reviewed through permitting. Corrects references in code.
------------	----------	--

Currently all parcels created through the partition or property line adjustment process require septic review. This amendment clarifies under what circumstances septic review would be required. For instance, in some instances the parcel is large enough or the septic system would be located entirely on one parcel and a review would not be necessary.

**General Amendments**

**Urban**

16.01.020	Mandatory	Includes zone/plan designations for Public zones.
16.19.100	Mandatory	Corrects reference to the county’s flood insurance study.
16.19.110 16.19.130	Optional	Moves an approved use from procedures section to exemptions section.
16.19.140	Mandatory	Adds reference to floodwater velocity standard that applies when crawlspace construction used in

		floodplain.
16.25.200	Scrivener's Error	Corrects reference in code.
16.49.171	Mandatory	Corrects definition to mobile food vendor to match current county code.

**Rural**

17.110.270	Scrivener's Error	Corrects reference in code
17.112.020	Optional	ODOT confirmed it does not require a 70 foot centerline setback. Removing this special setback would mean the standard 50 foot state highway setback would apply.
17.122	Optional	Clarifies language in the code.
17.128.020	Scrivener's Error	Corrects reference in code
17.136.040 17.137.040 17.138.035 17.139.040	Mandatory	DLCD no longer includes wildlife habitat conservation plan as a land use action. The property owner coordinates with the Marion County Tax Assessor to implement a plan.
17.136.050 17.137.050 17.138.040 17.139.050	Mandatory	Incorporates reference into code to MCC section regarding solid waste disposal facilities.
17.171.020	Optional	Permits wireless communication facilities (cellular towers) without provision of items since there is no requirement for a land use review.
17.172.400	Scrivener's Error	Corrects references in code
17.178.030	Mandatory	Corrects reference to the county's flood insurance study.
17.178.040 17.178.050	Optional	Moves an approved use from procedures section to exemptions section.
17.178.060	Mandatory	Includes reference to floodwater velocity that applies when crawlspace construction approved in floodplain.

**RECOMMENDATION**

On September 11, 2018 the Marion County Planning Commission held a work session to consider the amendments and on October 30, 2018, the Marion County Planning Commission held a public hearing to consider the amendments. No one provided public testimony at the hearing. The Marion County Planning Commission voted unanimously to recommend the code amendments be adopted by the Marion County Board of Commissioners.

The planning commission also requested staff modify the wording that describes how conditional uses are transferred (17.119.210) to match suggested wording from Salem's code. That change is in the amendments before the Board (as well as an amendment to the related section in the variance chapter (17.122.110)).

**Attachment:**

Proposed Amendments