

**POLK COUNTY BOARD OF COMMISSIONERS**

**DATE:** March 25, 2020  
**TIME:** 9:00 a.m.  
**PLACE:** Polk County Courthouse, Dallas, Oregon

THE LOCATION OF THIS MEETING IS ADA ACCESSIBLE. PLEASE ADVISE THE BOARD OF COMMISSIONERS (503-623-8173), AT LEAST 24 HOURS IN ADVANCE, OF ANY SPECIAL ACCOMMODATIONS NEEDED TO ATTEND OR PARTICIPATE IN THE MEETING.

**PAGE:**

**AGENDA ITEMS**

1. CALL TO ORDER AND NOTE OF ATTENDANCE
2. ANNOUNCEMENTS
  - (a) Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. The Tuesday meeting is held in the Board of Commissioners' Office Conference Room, 850 Main Street, Dallas, Oregon. The Wednesday meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principal subjects anticipated to be considered. Pursuant to ORS 192.640, the Board may consider and take action on subjects that are not listed on the agenda.
  - (b) Department Head/staff meetings with the Board of Commissioners are held on Monday, Thursday, and Friday. The meetings are held in the Board of Commissioners' Office Conference Room. The principal subjects anticipated to be considered are on-going, upcoming, and new matters bearing on County operations. Pursuant to ORS 192.640, the Board of Commissioners may consider and take action on subjects not listed within this announcement.
  - (c) Effectively immediately the Polk County offices will be closed to the general public. A majority of county services will be available by appointment only or via telephone and electronic means. Those department contact numbers are listed on the county website.
  - (d) Polk County Budget Hearings will be held Tuesday, April 7 through Thursday, April 9, 2020 from 9:00 a.m. to 5:00 p.m. in the Courthouse conference room.
  - (e) There will be no Board meetings Tuesday, April 7 or Wednesday, April 8, 2020 due to Budget Hearings.
3. COMMENTS (for items not on this agenda)
4. APPROVAL OF AGENDA
5. APPROVAL OF MINUTES OF MARCH 18, 2020
6. PUBLIC HEARING – COMMUNITY DEVELOPMENT  
Legislative Amendment 17-03; Wineries, Cider Business, and Farm Breweries  
(Sidney Mulder, Planning Supervisor)

THE BOARD OF COMMISSIONERS WILL MEET IN EXECUTIVE SESSION  
PURSUANT TO ORS 192.660.

ADJOURNMENT

POLK COUNTY PUBLIC MEETINGS AND PUBLIC HEARINGS  
GUIDELINE FOR CITIZENS

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REGULAR MEETING AGENDA

Regular meetings of the Polk County Board of Commissioners convene at 9 a.m. each Wednesday morning. Any person wishing to bring a matter before the Board at one of these meetings may do so by mailing or delivering written notice, concisely describing the nature of the item, to the Board of Commissioners, Polk County Courthouse, Dallas, Oregon 97338, by noon on the preceding Thursday. Unless otherwise announced, meetings are held in the Main Conference Room of the Courthouse.

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APPEARANCE OF INTERESTED CITIZENS

The Board sets aside a time at each regular meeting for comment by the public on subjects not appearing on the Agenda. Individuals may come forward and make any statement they wish, but not to exceed three (3) minutes in length, except as is required to give concise answers to questions from Board members. If the subject will require a lengthier presentation, or merits inclusion as an item on the Agenda of a future meeting, the Board shall schedule it accordingly.

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PUBLIC HEARING FORMAT

Land Use

1. Chairman opens hearing.
  - a. Reading of hearing request or appeal statement.
  - b. Call for abstentions (ex parte contact or conflict of interest).
2. County staff presents background, summary and its recommendation (20-minute limit).
3. Applicant (Appellant) presents his/her case (15-minute limit).
4. Public testimony. Note that all testimony and evidence must be directed toward the applicable factual and legal criteria as identified in the record and/or during this hearing. Do not repeat previous testimony. Simply note for the record that you are in agreement with that earlier testimony. Your time to present testimony is limited. FAILURE TO RAISE AN ISSUE IN THIS HEARING, IN PERSON OR BY LETTER, OR FAILURE TO PROVIDE ADEQUATE SPECIFICITY TO AFFORD THE BOARD AN OPPORTUNITY TO RESPOND TO THE ISSUE MAY PRECLUDE LATER APPEAL TO LUBA ON THAT ISSUE.
  - a. Individuals in favor of the application or appeal.
  - b. Individuals against the application or appeal. At the discretion of the Chairman, an attorney, consultant, or other designated representative of two or more individuals may be allowed the combined time for each represented individual who does not speak, not to exceed 20 minutes. The Chairman may require proof of designation.
5. Rebuttal by Applicant (Appellant) (10-minute limit).
6. Questions from Board (discussion limited to individuals questioned by the Board).
  - a. Staff.
  - b. Applicant (Appellant).
  - c. Individuals testifying.
7. Chairman closes hearing and announces closing of Record.
8. Chairman announces date for deliberation and decision.
9. The Board's decision is deemed the final decision of Polk County. It may be appealed to LUBA within 21 days of its issuance in written form. The address and phone number of LUBA may be obtained from the Polk County Community Development Department and will also appear on the Notice of Decision which will be mailed to all persons who testify, submit comments, or print their name and address on the hearing attendance sheet at the back of the hearing room.

**POLK COUNTY BOARD OF COMMISSIONERS**  
**MINUTES March 18, 2020**

**1. CALL TO ORDER & ATTENDANCE**

At 9:00 a.m., Commissioner Ainsworth declared the meeting of the Polk County Board of Commissioners to be in session. Commissioner Mordhorst and Commissioner Pope were present.

Staff present:           Greg Hansen, Administrative Officer  
                              Matt Hawkins, Administrative Service Director  
                              Morgan Smith, County Counsel

**2. ANNOUNCEMENTS**

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Polk County Budget Hearings will be held Tuesday, April 7 through Thursday, April 9, 2020 from 9:00 a.m. to 5:00 p.m. in the Courthouse conference room

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**3. COMMENTS (FOR ITEMS NOT ON THIS AGENDA)**

None

**4. APPROVAL OF AGENDA**

MOTION: COMMISSIONER POPE MOVED, COMMISSIONER MORDHORST SECONDED, TO APPROVE THE AGENDA.

MOTION PASSED UNANIMOUSLY.

**5. APPROVAL OF CONSENT CALENDAR**

MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER POPE SECONDED, TO APPROVE THE CONSENT CALENDAR.

MOTION PASSED UNANIMOUSLY.

**6. APPROVAL OF MINUTES OF BOARD MEETING OF MARCH 4, 2020**

MOTION: COMMISSIONER MORDHORST MOVED, COMMISSIONER POPE SECONDED, TO APPROVE THE MINUTES OF MARCH 4, 2020.

MOTION PASSED UNANIMOUSLY.

At 9:04 a.m., County Counsel announced that the meeting was recessed to Executive Session

pursuant to ORS 192.660(d) to conduct deliberations with person designated by the governing body to carry on labor negotiations

Commissioner Ainsworth called the meeting back into regular session and adjourned the meeting at 9:49 a.m.

The following items were approved by Motion under **5. APPROVAL OF CONSENT CALENDAR:**

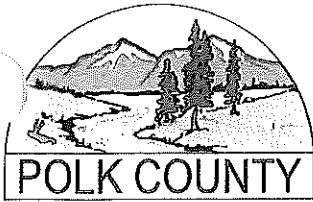
- (a) **CONTRACT NO. 20-37 – BEHAVIORAL HEALTH**  
Approve Contract No. 20-37, Employee Agreement with Erin Dannecker, Lead Behavioral Health Counselor in the Monmouth Office.
- (b) **CONTRACT NO. 20-39 – PUBLIC HEALTH**  
Approve Contract No. 20-29, Amendment 6 to Contract No. 19-111.
- (c) **HEALTH ADVISORY BOARD APPOINTMENT**  
Appoint Jennifer Broadus to the Health Advisory Board. Term to expire on December 31, 2021.
- (d) **CONTRACT NO. 20-40 – PUBLIC WORKS**  
Approve Contract No. 20-40, Amendment 1 to Contract No. 19-183. This amendment replaces exhibit a, which omitted some roads that were to be included for a Stripping and Chip Seal cost reimbursement.

**POLK COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Mike Ainsworth, Chair

\_\_\_\_\_  
Craig Pope, Commissioner

\_\_\_\_\_  
Lyle Mordhorst, Commissioner



# POLK COUNTY

POLK COUNTY COURTHOUSE \* DALLAS, OREGON 97338  
(503) 623-9237 \* FAX (503) 623-6009

COMMUNITY DEVELOPMENT

AUSTIN McGUIGAN  
Director

## MEMORANDUM

**TO:** Board of Commissioners  
**FROM:** Sidney Mulder, Planning Supervisor  
**DATE:** March 17, 2020  
**SUBJECT:** Legislative Amendment 17-03; Wineries, Cider Businesses, and Farm Breweries

### Public Hearing – March 25, 2020

#### ISSUE:

The Polk County Board of Commissioners will hold a public hearing to receive testimony and consider updates to the Polk County Zoning Ordinance (PCZO) that would implement Oregon Revised Statute (ORS) sections 215.283(1)(n), 215.452, 215.453, 215.454, and 215.465, which pertains to wineries; to adopted new standards for cider businesses that would implement ORS 215.283(1)(y) and 215.451; and to adopt new standards for farm breweries that would implement Senate Bill (SB) 287 (2019). The proposed amendments would bring the PCZO into consistency with State law.

The Planning Commission conducted a public hearing on February 11, 2020 at 6:00 P.M., and recommended that the Board of Commissioners amend PCZO Chapters 136, 138, 128.800, and 117 to updated winery criteria, and to adopt new standards for cider businesses and farm breweries, within the EFU, F/F, FFO and AF-10 Zoning Districts. The Board of Commissioners will hold a public hearing on March 25, 2020 at 9:00 A.M., to receive public testimony and make a final local decision on these matters.

#### RECOMMENDATION:

Staff recommends that the Board of Commissioners adopt the Planning Commission's recommendation to amend the PCZO as included in Exhibits A - D.

#### STAFF REPORT:

### I. BACKGROUND

PCZO Chapter 117 currently contains criteria for three different types of allowable wineries within the Exclusive Farm Use (EFU), Farm Forest (FF), Farm Forest Overlay (FFO), and Agriculture and Forestry – Ten Acre (AF-10) Zoning Districts. The first class of winery may produce any amount of wine, may operate a limited service restaurant, and lists specific types of private events that may occur at those wineries, which is limited to no more than 25 days per calendar year. The second class of winery is similar to the first class, however, this class of winery may also operate a full-service restaurant for 25 days or fewer during a calendar year. The third class of winery is similar to the first and second class, however it allows the winery to operate a full-service restaurant and offer private events on more than 25 days a calendar year. The third class of winery requires review through a conditional use application process.

Although most of the criteria within PCZO Chapter 117 is consistent with ORS 215.452 and 215.453, certain criteria that pertains to limitations for "agri-tourism and other commercial events"

is more restrictive in State law than what is currently listed in PCZO Chapter 117. PCZO 117.020(C)(3) simply states that services, including private events, hosted by the winery or patrons of the winery, are limited to 25 days or fewer in a calendar year. Although this is true for the second class of wineries described above, it is no longer true for the first class of wineries that produce less than 150,000 gallons of wine per year. Pursuant to ORS 215.452, agri-tourism and other commercial events are only permitted for up to 18 days per calendar year, and require a multi-year license for events on days 1-6 and a multi-year permit for events on days 7-18. The proposed amendments to PCZO Chapter 117 would identify the applicable criteria for agri-tourism and other commercial events permit and license requirements, and would mimic the current structure and statutory language found in ORS 215.452 and 215.453.

Currently, the PCZO does not contain any criteria for cider businesses, which is a permitted use within the EFU, FF, and FFO Zoning Districts pursuant to ORS 215.451. Therefore, staff is currently applying the statute directly to cider business applications. The applicable criteria for cider businesses are substantially similar to the criteria for the first class of wineries, where full-service restaurants are not permitted and agri-tourism and other commercial events are limited to operate no more than 18 days per calendar year. Because cider businesses are subject to substantially the same criteria as certain wineries, staff determined that the applicable criteria should be listed within PCZO Chapter 117 rather than within each zoning chapter of zones that permit a cider business. The proposed text amendments would implement ORS 215.451. In addition, because wineries are currently permitted as a conditional use within the AF-10 zone, staff finds that it would be reasonable to also allow cider businesses within this zone, subject to a conditional use application and approval.

Currently, the PCZO does not contain any criteria for farm breweries, which recently became a permitted use within the EFU, FF, and FFO Zoning Districts pursuant to SB 287 (2019). Therefore, if a farm brewery application were received, staff would apply SB 287 (2019) directly or the implementing ORS that will be updated in the future. The applicable criteria for a farm brewery is also substantially similar to the criteria for the first class of wineries, where full-service restaurants are not permitted and agri-tourism and other commercial events are limited to operate no more than 18 days per calendar year. Because farm breweries contain substantially the same criteria as certain wineries, staff determined that the applicable criteria should be listed within PCZO Chapter 117 rather than within each zoning chapter of the zones that permit a farm brewery. The proposed text amendments to PCZO Chapter 117 would implement SB 287 (2019), which became effective on January 1, 2020. In addition, because wineries are currently permitted as a conditional use within the AF-10 zone, staff finds that it would be reasonable to also allow farm breweries within this zone, subject to a conditional use application and approval.

ORS 197.646 states that when new land use regulations are adopted in State statute and administrative rule, counties must either adopt amendments to their local code to implement the changes to State law, or apply those changes directly to land use applications. Currently, the Planning Division applies State law directly to land use applications for wineries, cider businesses, and farm breweries.

ORS 215.452 and 215.453 permit wineries within the EFU, FF, and FFO Zoning Districts. In addition, PCZO 128.840(T) currently permits wineries, subject to the criteria found in PCZO Chapter 117, within the AF-10 Zoning District. ORS 215.451 and SB 287 (2019) permit cider businesses and farm breweries within the EFU, FF, and FFO Zoning Districts. The Planning Commissioners considered whether the AF-10 should also permit cider businesses and farm breweries, and if so, whether the applicable criteria that applies to the EFU, FF, and FFO zones should apply to the AF-10 zone, but subject to a conditional use permit. The proposed amendments developed by staff and recommended by the Planning Commission are included as Exhibits A through D, and are intended to implement the current standards for wineries, cider businesses, and farm breweries. PCZO Chapter 117 currently only contains standards for wineries. The applicable criteria for cider businesses and farm breweries are substantially similar to certain types of wineries, therefore, staff believes including the standards for cider businesses and farm breweries is

appropriate to also be included within this chapter. Exhibits A-D identify proposed additions to existing text in the PCZO which are double underlined. Proposed deletions are depicted in ~~strikethrough~~. "XX" are placeholders for the Ordinance number if adopted. Those amendments are summarized as follows:

- o Amendments to PCZO Chapter 136 (EFU zone), Chapter 138 (FF and FFO zones), and Chapter 128.800 (AF-10 zone).

These amendments would add "cider businesses" and "farm breweries" as a permitted use, subject to administrative review, in the EFU, FF and FFO zones; and as a permitted conditional use in the AF-10 zone, subject to standards found in PCZO Chapter 117, where the updated criteria would be listed. The AF-10 zone applies to properties that have been granted an exception to Statewide Planning Goals 3 and 4. The AF-10 zone therefore need not be subject to the standards implemented by ORS 215.452, 215.453, 215.451, and SB 287 (2019). In these amendments, the County could either link the standards for wineries, cider businesses, and farm breweries in the AF-10 zone to PCZO Chapter 117, or create separate standards for wineries, cider businesses, and farm breweries in the AF-10 zone. The proposed standards in Chapter 117 require wineries, cider businesses, and farm breweries to have 15 acres of on-site vineyards, orchards, or hops (or other agricultural malt beverage ingredients), or a contract to purchase the vineyards, orchards, or hops from 15 acres of a contiguous property. The AF-10 zone allows the creation of parcels that are 10 acres in size, so it may very well not be appropriate to require wineries, cider businesses, and farm breweries to comply with the standards in PCZO Chapter 117. Currently, only 41 acres in Polk County is zoned AF-10. As proposed in Exhibit C, wineries in the AF-10 would be required to comply with the updated criteria listed in PCZO Chapter 117, in addition to the requirement that the winery, cider business, or farm brewery "will not result in substantial conflicts with farm or forest practices on adjacent lands."

- o Updates to PCZO Chapter 117; Wineries

The standards for wineries have changed in ORS multiple times in the past several years. As a result, staff recommends updating PCZO Chapter 117 in order to implement the current regulations for wineries, which are more restrictive in ORS than the current criteria listed in PCZO Chapter 117. Because the applicable criteria for cider businesses and farm breweries are substantially similar to wineries, staff recommends that the "wineries" chapter also include the applicable criteria for cider businesses and farm breweries. Consolidating these standards into one chapter rather than listing the standards in each zone's chapter would assist with future updates because staff would be able to subsequently amend one chapter of the PCZO (Chapter 117), rather than each of the zones that permit wineries, cider businesses, and farm breweries. The standards for cider businesses and farm breweries are also long. If the cider business and farm brewery standards are added to each chapter that permits cider businesses and farm breweries, the EFU, FF, FFO, and AF-10 zones, the new standards would add three to four pages of length to each zoning chapter. The EFU zone is already 37 pages long and the FF/FFO zone is 48 pages long. A new chapter would help to curb the expansion of those zone's chapters.

#### Planning Commission Hearing and Recommendation

The Planning Commission conducted a public hearing regarding these matters on February 11, 2020 at 6:00 P.M. No written or oral testimony was received prior to or at the public hearing. The Planning Commission recommended that the Board of Commissioners adopt Staff's findings and proposed amendments to the PCZO without adding any additional standards.

## **II. COMMENTS RECEIVED**

No comments have been received as of the writing of this staff report.



### III. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the Polk County Zoning Ordinance (PCZO) may be approved provided that the request is based on substantive information providing a factual basis to support the change. In amending the PCZO, Polk County shall demonstrate compliance with PCZO 115.060. Staff's analysis and findings are provided below:

- (A) **Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4; [PCZO 115.060(A)]**
1. **A local government shall amend its acknowledged comprehensive plan or acknowledged regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals. [ORS 197.646(1)]**
  2. **When a local government does not adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan, as required by subsection (1) of this section, the new requirements apply directly to the local government's land use decisions. The failure to adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [ORS 197.646(3)]**
  3. **ORS 215.283(1)(n), 215.452, 215.453, 215.454, 215.456, 215.283(1)(y), and 215.451; and Senate Bill 287 (2019). [Included as Exhibit E]**

Findings: ORS 197.646 (1) and (3) require that when new land use regulations are adopted in ORS, counties must adopt amendments to their local code to implement the changes to State law. Until the county's local code is updated, the county must apply the ORS changes directly to land use applications. Currently, PCZO Chapter 117 contains standards for wineries within the EFU, FF, and FFO zones, which are less restrictive than the winery standards found in State law. Therefore, staff must apply the winery standards found in ORS 215 directly rather than implementing PCZO Chapter 117. Similarly, ORS 215.451 permits cider businesses and SB 287 (2019) permits farm breweries within the EFU, FF and FFO Zoning Districts, but Polk County has not yet incorporated the applicable criteria into the PCZO. Therefore, staff must apply State law directly for cider business and farm brewery applications within these zones.

The proposed amendments to the PCZO were designed to directly implement State law. The AF-10 zone, is not subject to ORS 215 or SB 287 (2019); however, the way that the amendments are written would require that wineries, cider businesses, and farm breweries in that zone be reviewed under the criteria found in PCZO Chapter 117; which implements ORS 215 and SB 287 (2019). The Board of Commissioners could choose to adopt different standards for wineries, cider businesses, and farm breweries in the AF-10 zone.

The proposed amendments to the PCZO would comply with and implement the applicable amendments to State law, included as Exhibit E. Consequently, this update process would be consistent with ORS 197.646(1). An exception to the Oregon Statewide Planning Goals is not required to approve these amendments. Staff concludes that the proposed text amendments to the PCZO would comply with this criterion.

- (B) **Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]**
1. **Polk County will permit those farm and nonfarm uses in agricultural areas**



**authorized by Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33. [PCCP Section 2, Element B, Agricultural Lands Policy 1.4]**

Findings: The Polk County Comprehensive Plan (PCCP) is implemented by the provisions in the PCZO and Polk County Subdivision and Partition Ordinance (PCSO). Section 7 of the PCCP, Implementation Techniques states: "in theory, the zoning ordinance is a legislative expression of the Comprehensive Plan and must satisfy certain standards set out by state statute." The PCCP is implemented within the bounds provided by State law.

As discussed above, ORS 197.646 requires that Polk County update its local code to implement changes to State law. Until such changes are made, the County must implement the new provisions of State law directly. In light of the discrepancies between PCZO Chapter 117 standards for wineries and the applicable criteria found in ORS 215.452 and 215.453; the recent addition of cider business criteria found in ORS 215.451; and the recent addition to State law to allow farm breweries, enacted by SB 287 (2019), Planning Staff is currently applying State law directly to applications for wineries, cider businesses, and farm breweries. The proposed amendments to the PCZO would incorporate the current standards for wineries, and would add the applicable criteria for cider businesses and farm breweries to Polk County's local ordinance. This would directly implement ORS 215.452, 215.453, and 215.451, and SB 287 (2019), and would be consistent with PCCP Section 2, Element B, Policy 1.4, which states that Polk County will permit those farm and nonfarm uses in agricultural areas authorized by ORS Chapter 215 and OAR 660-033. The proposed amendments would also allow for the continuation of certain types of large wineries that are currently permitted in the resource zones, consistent with the provisions of State law.

Based on the above findings, the proposed amendments to the Polk County Zoning Ordinance would comply with this criterion.

**(C) That the proposed change is in the public interest and will be of general public benefit; and [PCZO 115.060(C)]**

Findings: The purpose of this legislative amendment is to update the PCZO in order to reflect changes in State law that have occurred since 2011, which is when PCZO Chapter 117 was first created. The proposed amendments would be in the public interest because it would provide continuity between the requirements of State law and the PCZO. Currently, the Planning Division must apply ORS 215 and SB 287 (2019) directly to land use applications. This situation makes it difficult for applicants and property owners to understand what winery, cider business, or farm brewery regulations apply to their property. The proposed amendments would resolve that issue. This continuity would benefit both applicants and other property owners seeking to understand their property rights. This process also provided an opportunity for the Planning Commission to consider how to regulate wineries, cider businesses, and farm breweries in the AF-10 zone. The Planning Commission considered whether or not to apply the standards proposed in PCZO Chapter 117 in the AF-10 zone, or create separate, zone-specific standards. The Planning Commission chose to recommend Chapter 117 standards within the AF-10 zone, as recommended by Staff in Exhibits C and D.

Staff believes that approval of the attached amendments to the PCZO would be in the public interest and of general public benefit, because it would bring the PCZO into compliance with State law.

**(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.060(D)]**

Findings: Polk County has adopted intergovernmental agreements (IGAs) with each of the cities that have urban growth boundaries (UGB) that extend outside of city limits and into Polk County's planning jurisdiction. These cities are Salem, Dallas, Monmouth, Independence, and Willamina. The Falls City UGB is entirely located within city limits; therefore, Polk County does not have an IGA regarding UGB land use management with Falls City.

The proposed amendments to the PCZO would amend the standards for wineries, and would add standards for cider businesses and farm breweries in the EFU, FF, FFO, and AF-10 zones. While most properties in the UGB are zoned Suburban Residential (SR), where these proposed winery, cider business, and farm brewery standards would not apply, some properties in UGBs are zoned EFU. Most IGAs require that the County provide the City with advanced notification of any land use application and IGA provisions would not be affected by the proposed updates. As a result, the proposed amendments would comply with this criterion.

#### **IV. CONCLUSION**

Based on the findings above, Staff concludes that the proposed amendments to the Polk County Zoning Ordinance would comply with all of the applicable review and decision criteria for a legislative amendment.

#### **BOARD OF COMMISSIONERS ACTION:**

After opening the public hearing and receiving testimony, the Board of Commissioners options include the following:

- (1) Move to approve Legislative Amendment 17-03 as recommended by the Planning Commission; thereby amending the PCZO Chapters 136, 138, 128.800 and 117 to updated winery criteria, and to adopt new standards for cider businesses and farm breweries, within the EFU, F/F, FFO and AF-10 Zoning Districts.
  - (a) Adopting the PCZO amendments presented in Exhibits A - D, or
  - (b) As further amended by the Board of Commissioners (state revisions); or
- (2) Continue the public hearing; or
- (3) Other.

#### **EXHIBITS:**

- |   |   |   |
|---|---|---|
| A | - | Proposed Amendments to the PCZO Chapter 136     |
| B | - | Proposed Amendments to the PCZO Chapter 138     |
| C | - | Proposed Amendments to the PCZO Chapter 128.800 |
| D | - | Proposed Amendments to the PCZO Chapter 117     |
| E | - | Applicable ORS 215 and Senate Bill 287 (2019)   |

**Amendments to Polk County Zoning Ordinance Chapter 136;  
Exclusive Farm Use (EFU) Zoning District**

Additions are double underlined  
Deletions are in ~~strikethrough~~  
XX are placeholders

<b>RESOURCE USES</b>	<b>HV</b>	<b>OTHER</b>	<b>PCZO</b>
Farm Use as defined in ORS 215.203	P	P	030(A)
Facility for the Processing of Farm Crops	AR	AR	040( <del>Q</del> ) (S)
Use and Management of Forest Lands	P	P	030(B)
Farm and Forest Accessory Structures	P	P	030(C)
Forest Product Primary Processing Facility	CUP	CUP	050(A)
Wetland Creation/Restoration and Enhancement	P	P	030(D)
Wildlife Habitat Conservation and Management Plan	P	P	030(K)
Aquaculture	CUP	CUP	050(B)
Insect Breeding	CUP	CUP	050(C)
Operations for the Extraction and Bottling of Water	CUP	CUP	050(D)

<b>COMMERCIAL</b>	<b>HV</b>	<b>OTHER</b>	<b>PCZO</b>
Activity In Conjunction with Farm Use	CUP	CUP	050(I)
Food Service Safe Harbor	CUP	CUP	050(J)
Single Day Agri-Tourism Event	P	P	030(R)
Home Occupations	CUP	CUP	050(K)
Dog Kennels	NP	CUP	050(L)
Dog Training Classes or Testing Trials	AR	AR	040( <del>S</del> ) (U)
Training and Stabling Horses for Profit	P	P	030(A)
Winery, as described in ORS 215.452 <u>or 215.453</u>	AR & CUP	AR & CUP	040(O) & 050(P)
<u>Cider Business, as described in ORS 215.451</u>	<u>AR</u>	<u>AR</u>	<u>040(P)</u>
<u>Farm Brewery</u>	<u>AR</u>	<u>AR</u>	<u>040(Q)</u>
On-site Filming and Accessory Activities for 45 days or less	P	P	030(L)
On-site Filming and Accessory Activities for more than 45 days	CUP	CUP	050(M)
Farm Stand	<u>P &amp; AR</u>	<u>P &amp; AR</u>	030(Q) & 040( <del>P</del> ) (R)

Parking of not more than seven log trucks	AR	AR	<del>040(R)</del> (T)
Destination Resort	NP	CUP	050(N)
Landscape Contracting Business	CUP	CUP	050(O)

<b>UTILITIES &amp; SOLID WASTE DISPOSAL FACILITIES</b>	<b>HV</b>	<b>OTHER</b>	<b>PCZO</b>
Utility Facilities Necessary for Public Service, including wetland waste treatment systems but not including commercial power generating facilities or transmission towers over 200 feet in height	AR	AR	<del>040(T)</del> (V)
Transmission Towers over 200 feet in height	CUP	CUP	050(W)
Solid Waste Disposal Site under ORS 459.245	NP	CUP	050(X)
Composting Facilities	AR	CUP	<del>040(V)</del> (X) 050(Y)
Commercial Power Generating Facilities	CUP	CUP	050(Z)
Commercial Wind Power Generating Facilities	CUP	CUP	050(AA)
Fire service facilities providing rural fire protection services	P	P	030(M)
Irrigation canals, delivery lines and those structures and accessory operation facilities associated with a district as defined in ORS 540.505	P	P	030(N)
Utility facility service lines	P	P	030(O)
Non-commercial wind energy systems, meteorological towers and photovoltaic systems	P	P	030(P)
Non-commercial wind energy systems and meteorological towers needing a height or type of construction modification	AR	AR	<del>040(U)</del> (W)
Non-commercial wind energy systems and meteorological towers in a UGB	CUP	CUP	050(BB)

<b>PARKS/PUBLIC/QUASI-PUBLIC FACILITIES</b>	<b>HV</b>	<b>OTHER</b>	<b>PCZO</b>
Schools, public or private (K-12) that serve the residents of the rural area	NP	CUP	050(II)
Churches and Associated Cemeteries	NP	AR	<del>040(X)</del> (Z)
Parks, private, including playgrounds, hunting/fishing preserves and campgrounds	NP	CUP	050(DD)
Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120	CUP	CUP	050(CC)
Model Aircraft Takeoff and Landing Sites	AR	AR	<del>040(W)</del> (Y)

Expansion of Existing County Fairgrounds	CUP	CUP	050(EF)
Golf Courses	NP	CUP	050(FG)
Community centers owned by a governmental agency or a nonprofit organization	CUP	CUP	050(GG)
Firearms training facility as provided in ORS 197.770	AR	AR	040( <del>Y</del> ) (AA)
Living history museum	CUP	CUP	050(HH)

**136.040. USES SUBJECT TO ADMINISTRATIVE REVIEW.** The following uses are permitted, subject to review and approval under the prescriptive standards specified herein and as may otherwise be indicated by federal, state and local regulations and permits:

#### COMMERCIAL USES

- (P) Cider Business [ORS 283.451], subject to the requirements of PCZO Chapter 117.  
[Amended by Ordinance 20-XX]
- (Q) Farm Brewery [Senate Bill 287 (2019)], subject to the requirements of PCZO Chapter 117. [Amended by Ordinance 20-XX]

**136.050 CONDITIONAL USES [OAR 660-033-0130].** The following uses may be approved, subject to compliance with the procedures and criteria under Chapter 119, applicable state and federal regulations, and other specific criteria as may be indicated:

#### COMMERCIAL ACTIVITIES

- (P) Winery with a Full-Service Restaurant [ORS 215.4523], subject to the requirements of PCZO Chapter 117. [Amended by Ordinance 11-09 and Ordinance 20-XX]

**Amendments to Polk County Zoning Ordinance Chapter 138;  
Farm/Forest (FF) & Farm Forest Overlay (FFO) Zoning Districts**

Additions are double underlined  
Deletions are in ~~strikethrough~~  
XX are placeholders

<b>COMMERCIAL</b>	<b>AUTHORIZATION</b>	<b>PCZO</b>
On-site Filming and Accessory Activities for 45-days or less (ORS 215.306).	P	040(L)
Single Day Agri-Tourism/Commercial Event	P	040(N)
Winery, as described in ORS 215.452 or 215.453	AR & CUP	050(B) & 060(N)
<u>Cider Business, as described in ORS 215.451</u>	<u>AR</u>	<u>050(C)</u>
<u>Farm Brewery</u>	<u>AR</u>	<u>050(D)</u>
Farm Stand	P & AR	040(M) & 050( <del>CE</del> )
Commercial Activity In Conjunction with Farm Use	CUP	060(H)
Food Service Safe Harbor	CUP	060(I)
Home Occupations	CUP	060(J)
On-site Filming and Accessory Activities for more than 45-days (ORS 215.306).	CUP	060(K)
Dog Kennels**	CUP	060(L)
Dog Training Classes or Testing Trials	AR	050( <del>DE</del> )
Landscape Contracting Business	CUP	060(M)

<b>UTILITIES AND SOLID WASTE DISPOSAL FACILITIES</b>	<b>AUTHORIZATION</b>	<b>PCZO</b>
Utility Facility Service Lines	P	040(V)
Non-Commercial Wind Energy Systems, Meteorological Towers and Photovoltaic Systems	P	040(W)
Utility Facilities Necessary for Public Service, excepting commercial power generating facilities, transmission towers over 200 feet in height, and a communications tower over 200 feet in height	AR	050( <u>EG</u> )
Non-Commercial Wind Energy Systems and Meteorological Towers that Require a Height or Type of Construction Modification	AR	050( <u>FH</u> )

## EXHIBIT B

Solid Waste Disposal Site under ORS 459.245	CUP	060(W)
Composting Facilities**	CUP	050(GI) & 060(X)
Communication and Broadcast Towers over 200 feet in height	CUP	060(Y)
Commercial Power Generating Facilities	CUP	060(Z)
Commercial Wind Power Generating Facilities	CUP	060(AA)
New Electric Transmission Lines with right of way widths of up to 100 feet as specified in ORS 772.210 and Distribution Lines with right-of-way widths of up to 50 feet.	CUP	060(BB)
Drinking Water Facilities (Intake, Treatment, pumping stations, etc.)	CUP	060(CC)
Reservoirs and Water Impoundments	CUP	060(DD)
Non-Commercial Wind Energy Systems and Meteorological Towers in a UGB	CUP	060(EF)

<b>PARKS/PUBLIC/QUASI-PUBLIC FACILITIES</b>	<b>AUTHORIZATION</b>	<b>PCZO</b>
Uninhabitable Structures Accessory to Fish and Wildlife Enhancement	P	040(X)
Private Fee Hunting Operations without any accommodations.	P	040(Y)
Caretaker Residence for Parks and Hatcheries	P	040(Z)
Firearms Training Facility (ORS 197.770)	P	040(AA)
Model Aircraft Takeoff and Landing Sites	AR	050(HJ)
Churches and Associated Cemeteries**	AR	050(KK)
Destination Resorts pursuant to ORS 197.435 to 197.465 and Statewide Planning Goal 8**	AR	050(JL)
Parks, Private, including Playgrounds, Hunting/Fishing Preserves and Campgrounds**	CUP	060(FF)
Parks, Public or Nonprofit, including Playgrounds or Community Centers**	CUP	060(GG)
Private Seasonal Accommodations for Fee Hunting Operations	CUP	060(HH)
Private Seasonal Accommodations for Fee Fishing Operations	CUP	060(II)
Expansion of an Existing County Fairgrounds	CUP	060(JJ)
Golf Courses and accessory uses**	CUP	060(KK)
Cemeteries	CUP	060(LL)



## EXHIBIT B

Community Centers	CUP	060(MM)
Living History Museum	CUP	060(NN)
Schools, Public or Private (K-12) that serve the residents of the rural area**	CUP	060(OO)

RESIDENTIAL USES	AUTHORIZATION	PCZO
Replacement Dwelling	AR	050(K <del>M</del> )
Replacement of Historic Dwelling	AR	050(L <del>N</del> )
Temporary Hardship Dwelling	AR	050(M <del>O</del> )
Residential Home (ORS 197.660)	CUP	060(PP)
Room and Board Arrangements	CUP	060(QQ)

**138.050 USES SUBJECT TO ADMINISTRATIVE REVIEW** The following uses are permitted, subject to review and approval under the prescriptive standards specified herein, the general siting standards for dwellings and structures under Section 138.110, the fire siting standards for dwellings and structures under 138.120, and as may otherwise be indicated by federal, state and local permits or regulations. [Amended by Ordinance 11-03]

**COMMERCIAL**

- (C) Cider Business [ORS 215.451], subject to the requirements of PCZO Chapter 117. [Amended by Ordinance 20-XX]
- (D) Farm Brewery [Senate Bill 287 (2019)], subject to the requirements of PCZO Chapter 117. [Amended by Ordinance 20-XX]

**138.060 CONDITIONAL USES** The following conditional uses may be approved, subject to compliance with the procedures and criteria under Chapter 119, the general siting standards for dwellings and structures under Section 138.110, the fire siting standards for dwellings and structures under 138.120, applicable state and federal regulations, and other specific criteria as may be indicated: [Amended by Ordinance 11-03]

**COMMERCIAL ACTIVITIES**

- (N) Winery with a Full-Service Restaurant [ORS 215.4523], subject to the requirements of PCZO Chapter 117. [Amended by Ordinance 11-09 and Ordinance 20-XX]

**Amendments to Polk County Zoning Ordinance Chapter 128.800;  
Agriculture and Forestry-Ten Acre (AF-10) Zoning District**

Additions are double underlined

Deletions are in ~~strikethrough~~

XX are placeholders

**128.840. CONDITIONAL USE.** All uses permitted as conditional uses shall be subject to the general provisions of Chapter 119 of this Ordinance, "Conditional Uses".

- (U) Cider Business, may be permitted subject to the requirements of PCZO Chapter 117 and findings that the winery use will not result in substantial conflicts with farm or forest practices on adjacent lands. [Amended by Ordinance 20-XX]
- (V) Farm Brewery, may be permitted subject to the requirements of PCZO Chapter 117 and findings that the winery use will not result in substantial conflicts with farm or forest practices on adjacent lands. [Amended by Ordinance 20-XX]

**Amendments to Polk County Zoning Ordinance Chapter 117; Wineries**

Additions are double underlined

Deletions are in ~~striketrough~~

XX are placeholders

**CHAPTER 117**

**WINERIES, CIDER BUSINESSES, and FARM BREWERIES**

- 117.010. Purpose
- 117.020. Winery - Any Production Level
- 117.030. Winery - 150,000 Gallons or More Each Year
- 117.040. Winery - 150,000 Gallons or More Each Year with Full-Service Restaurant
- 117.050. ~~Fee-Based Events at Wineries~~ Lawful Continuation of Certain Winery-Related Uses or Structures
- 117.060. ~~Legal, Non-Conforming Wineries~~ Siting a Winery as a Commercial Activity in Conjunction with Farm Use
- 117.070. Cider Business - Any Production Level
- 117.080. Farm Brewery
- 117.090. Agri-tourism and Other Commercial Events – License
- 117.100. Agri-tourism and Other Commercial Events – Permit
- 117.110. Development Standards

**117.010. PURPOSE.** The purpose of the winery, cider business, and farm brewery Chapter is to provide specific requirements for wineries, cider businesses, and farm breweries that are permitted by administrative review or as conditional uses in the EFU, FF, FFO, and AF-10 zones.

**117.020. WINERY – ANY PRODUCTION LEVEL [ORS 215.452].** A winery may be permitted through the administrative review process in the EFU, FF, and FFO zones and through the conditional use review process in the AF-10 zone, subject to the following requirements: if the winery produces wine with a maximum annual production of:

- (A) Less than 50,000 gallons and the winery: ~~A winery that produces wine with a maximum annual production of less than 50,000 gallons shall:~~
  - (1) Owns an on-site vineyard of at least 15 acres;
  - (2) Owns a contiguous vineyard of at least 15 acres;
  - (3) ~~Have~~ Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
  - (4) Obtains grapes from any combination of paragraphs (1), (2), or (3) of this subsection; or
- (B) At least 50,000 gallons and the winery: ~~A winery that produces wine with a maximum annual production of at least 50,000 gallons shall:~~
  - (1) Owns an on-site vineyard of at least 40 acres;
  - (2) Owns a contiguous vineyard of at least 40 acres;
  - (3) ~~Have~~ Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or
  - (4) Owns an on-site vineyard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of vineyards in Oregon that are located within 15 miles of the winery site; or Obtain grapes from any combination of paragraphs (1), (2) or (3) of this subsection.
  - (5) Obtains grapes from any combination of paragraphs (1), (2), (3) or (4) of this subsection.
- (C) Prior to the issuance of a permit to establish a winery under subsection (A) or (B) of this section, the applicant shall show that the vineyards have been planted or that the contract has been executed, as applicable. A winery described in subsection (A) or (B) of this section may:
  - (1) ~~Market and sell wine produced in conjunction with the winery, including the following activities:~~
    - (a) ~~Wine tours;~~
    - (b) ~~Wine tastings in a tasting room or other location at the winery;~~
    - (c) ~~Wine clubs; and~~
    - (d) ~~Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;~~
  - (2) ~~Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010; and~~

- (3) ~~Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:~~
  - ~~(a) Are directly related to the sale or promotion of wine produced in conjunction with the winery;~~
  - ~~(b) Are incidental to the retail sale of wine on-site; and~~
  - ~~(c) Are limited to 25 days or fewer in a calendar year.~~
- (D) ~~The gross income of the winery from the sale of incidental items pursuant to subsection (C)(2) of this section and services provided pursuant to subsection (C)(3) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. In addition to producing and distributing wine, a winery established under subsection (A) or (B) of this section may:~~
  - (1) Market and sell wine produced in conjunction with the winery;
  - (2) Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:
    - (a) Wine tastings in a tasting room or other location on the premises occupied by the winery;
    - (b) Wine club activities;
    - (c) Winemaker luncheons and dinners;
    - (d) Winery and vineyard tours;
    - (e) Meetings or business activities with winery suppliers, distributors, wholesale customers, and wine-industry members;
    - (f) Winery staff activities;
    - (g) Open house promotions of wine produced in conjunction with the winery; and
    - (h) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery.
  - (3) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to on-site retail sale of wine, including food and beverages:
    - (a) Required to be made available in conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or
    - (b) Served in conjunction with an activity authorized by paragraphs (2), (4), or (5) of this subsection.
  - (4) Subject to subsection (G) of this section, carry out agri-tourism or other commercial events on the tract occupied by the winery.
  - (5) Host charitable activities for which the winery does not charge a facility rental fee.
- (E) ~~Beginning January 1, 2013, at the request of Polk County, the winery shall submit a written statement prepared by a certified public accountant that certifies compliance with subsection (D) of this section for the previous tax year. A winery may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in subsection (D)(3)~~

of this section. Food and beverage services authorized under subsection (D)(3) of this section may not utilize menu options or meal services that cause the kitchen facilities to function as a café or other dining establishment open to the public.

- (F) A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established. The gross income of the winery from the sale of incidental items or services provided pursuant to subsection (D)(3) to (5) of this section 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. At the request of Polk County, the winery shall submit to Polk County a written statement that is prepared by a certified public accountant and certifies the compliance of the winery with this subsection for the previous tax year.
- (G) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (A) or (B) of this section have been planted or that the contract has been executed, as applicable. A winery may carry out agri-tourism or other commercial events for up to 18 days per calendar year.
  - (1) Events on the first six days of the 18-day limit per calendar year are authorized by Polk County through the issuance of a renewable multi-year license, subject to section 117.090.
  - (2) Events on days seven through 18 of the 18-day limit per calendar year are authorized by Polk County through the issuance of a renewable multi-year permit, subject to section 117.100.
- (H) Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands: When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:
  - (1) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
  - (2) Provision of direct road access and internal circulation. The meals may be served at the bed and breakfast facility or at the winery.
- (I) The winery shall comply with: As used in this section:
  - (1) Criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access, and airport safety; "Agri-tourism or other commercial events" includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings, and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.
  - (2) Regulations for the public health and safety; and "On-site retail sale" includes the retail sale of wine in person at the winery site, through a wine club, or over the Internet or telephone. [Amended by Ordinance 20-XX]
  - (3) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.
- (J) As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings.

**117.030. WINERY – 150,000 GALLONS OR MORE EACH YEAR [ORS 215.452~~3~~].** A winery may be permitted through the administrative review process in the EFU, FF, and FFO zones and through the conditional use review process in the AF-10 zone, subject to the following requirements:

- (A) The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;
- (B) The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in subsection (A) of this section; and
- (C) The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three of the last five calendar years before the winery is established under this section.
- (D) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (A) and (B) of this section have been planted. A winery described in subsections (A) through (C) of this section may:
  - (1) ~~Market and sell wine produced in conjunction with the winery, including the following activities:~~
    - (a) ~~Wine tours;~~
    - (b) ~~Wine tastings in a tasting room or other location at the winery;~~
    - (c) ~~Wine clubs; and~~
    - (d) ~~Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;~~
  - (2) ~~Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010, wine not produced in conjunction with the winery and gifts; and~~
  - (3) ~~Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:~~
    - (a) ~~Are directly related to the sale or promotion of wine produced in conjunction with the winery;~~
    - (b) ~~Are incidental to the retail sale of wine on-site; and~~
    - (c) ~~Are limited to 25 days or fewer in a calendar year.~~
- (E) ~~The gross income of the winery from the sale of incidental items pursuant to subsection (D)(2) of this section and services provided pursuant to subsection (D)(3) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. In addition to producing and distributing wine, a winery described in subsections (A) through (C) of this section may:~~
  - (1) Market and sell wine produced in conjunction with the winery;
  - (2) Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:
    - (a) Wine tastings in a tasting room or other location on the premises occupied by the winery;
    - (b) Wine club activities;



- (c) Winemaker luncheons and dinners;
- (d) Winery and vineyard tours;
- (e) Meetings or business activities with winery suppliers, distributors, wholesale customers, and wine-industry members;
- (f) Winery staff activities;
- (g) Open house promotions of wine produced in conjunction with the winery; and
- (h) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;
- (3) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages:
  - (a) Required to be made available in conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or
  - (b) Served in conjunction with an activity authorized by subsections (E)(2), (4), or (5) of this section;
- (4) Provide services, including agri-tourism or other commercial events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:
  - (a) Are directly related to the sale or promotion of wine produced in conjunction with the winery;
  - (b) Are incidental to the retail sale of wine on-site; and
  - (c) Are limited to 25 days or fewer in a calendar year.
- (5) Host charitable activities for which the winery does not charge a facility rental fee.
- (F) Beginning January 1, 2013, at the request of Polk County, the winery shall submit a written statement prepared by a certified public accountant that certifies compliance with subsection (E) of this section for the previous tax year. The gross income of the winery from the sale of incidental items pursuant to subsection (E)(3) of this section and services provided pursuant to subsection (E)(4) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.
- (G) At the request of Polk County, the winery shall submit to Polk County a written statement, prepared by a certified public accountant, that certifies compliance with subsection (F) of this section for the previous tax year. A winery operating under this section:
  - (1) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.
  - (2) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.
- (H) The winery shall be limited to operating a restaurant that is open to the public for no more than 25 days in a calendar year and may provide for private events on no more than 25 days in a calendar year. A winery operating under this section may operate a restaurant, as defined in ORS 624.010, that is open to the public for no more than 25

days in a calendar year, in which food is prepared for consumption on the premises of the winery.

- (I) A person may not have a substantial ownership interest in more than one winery operating a restaurant under this section or Section 117.040.
- (J) ~~Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsections (A) and (B) of this section have been planted.~~ Polk County may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events only if Polk County issued permits to wineries operating under this section in similar circumstances before August 2, 2011.
- (K) ~~A winery operating under this section shall provide for:~~ When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:
  - (1) ~~Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and~~ The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
  - (2) ~~Direct road access and internal circulation.~~ The meals may be served at the bed and breakfast facility or at the winery.
- (L) ~~The proposed winery shall comply with:~~ As used in this section:
  - (1) ~~Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety; “Agri-tourism or other commercial events” includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.~~
  - (2) ~~Regulations for the public health and safety; and “On-site retail sale” includes the retail sale of wine in person at the winery site, through a wine club, or over the Internet or telephone. [Amended by Ordinance 20-XX]~~
  - (3) ~~Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.~~
- (M) ~~Polk County may authorize a winery described in this section that is located in the EFU, FF, or FFO zone, to sell or deliver items or provide services not described in subsection (D)(2), (D)(3), or (E) of this section under the criteria for a commercial activity in conjunction with farm use.~~
- (N) ~~As used in this section, “private events” includes, but is not limited to, facility rentals and celebratory gatherings.~~

**117.040. WINERY – 150,000 GALLONS OR MORE EACH YEAR AND A FULL-SERVICE RESTAURANT [ORS 215.4523].** A winery may be permitted as a conditional use under this section in the EFU, FF, FFO, and AF-10 zones, subject to the requirements of Section 119.070, other applicable standards of the zone, and the following:

- (A) The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;
- (B) The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in subsection (A) of this section; and

- (C) The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three of the last five calendar years before the winery is established under this section.
- (D) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (A) and (B) of this section have been planted. A winery described in subsections (A) through (C) of this section may:
- (1) ~~Market and sell wine produced in conjunction with the winery, including the following activities:~~
    - (a) ~~Wine tours;~~
    - (b) ~~Wine tastings in a tasting room or other location at the winery;~~
    - (c) ~~Wine clubs; and~~
    - (d) ~~Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;~~
  - (2) ~~Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages served by a limited service restaurant, as defined in ORS 624.010, wine not produced in conjunction with the winery and gifts; and~~
  - (3) ~~Provide services, including private events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:~~
    - (a) ~~Are directly related to the sale or promotion of wine produced in conjunction with the winery;~~
    - (b) ~~Are incidental to the retail sale of wine on-site; and~~
    - (c) ~~Are limited to 25 days or fewer in a calendar year.~~
- (E) The gross income of the winery from the sale of incidental items pursuant to subsection (D)(2) of this section and services provided pursuant to subsection (D)(3) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. In addition to producing and distributing wine, a winery described in subsections (A) through (C) of this section may:
- (1) Market and sell wine produced in conjunction with the winery;
  - (2) Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:
    - (a) Wine tastings in a tasting room or other location on the premises occupied by the winery;
    - (b) Wine club activities;
    - (c) Winemaker luncheons and dinners;
    - (d) Winery and vineyard tours;
    - (e) Meetings or business activities with winery suppliers, distributors, wholesale customers, and wine-industry members;
    - (f) Winery staff activities;
    - (g) Open house promotions of wine produced in conjunction with the winery; and

- (h) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;
  - (3) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages:
    - (a) Required to be made available in conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or
    - (b) Served in conjunction with an activity authorized by subsections (E)(2), (4) or (5) of this section;
  - (4) Provide services, including agri-tourism or other commercial events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:
    - (a) Are directly related to the sale or promotion of wine produced in conjunction with the winery;
    - (b) Are incidental to the retail sale of wine on-site; and
    - (c) Are limited to 25 days or fewer in a calendar year, unless a permit is obtained pursuant to subsection (I) of this section.
  - (5) Host charitable activities for which the winery does not charge a facility rental fee.
- (F) Beginning January 1, 2013, at the request of Polk County, the winery shall submit a written statement prepared by a certified public accountant that certifies compliance with subsection (E) of this section for the previous tax year. The gross income of the winery from the sale of incidental items pursuant to subsection (E)(3) of this section and services provided pursuant to subsection (E)(4) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.
- (G) At the request of Polk County, the winery shall submit to Polk County a written statement, prepared by a certified public accountant, that certifies compliance with subsection (F) of this section for the previous tax year. A winery operating under this section:
  - (1) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.
  - (2) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.
- (H) A winery that operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for private events occurring on more than 25 days in a calendar year shall demonstrate that the proposed restaurant and/or events: A winery operating under this section may operate a restaurant, as defined in ORS 624.010, which is limited to 25 days or fewer in a calendar year, unless a permit is obtained pursuant to subsection (I) of this section.
  - (1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;
  - (2) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use;
  - (3) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and

- (4) Does not materially alter the stability of the land use pattern in the area.
- (I) If Polk County issues a permit under subsection (H) of this section for private events, Polk County shall review the permit at least once every five years and, if appropriate, may renew the permit. The winery shall obtain a permit from Polk County if the winery operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for agri-tourism or other commercial events authorized under subsection (E)(4) of this section occurring more than 25 days in a calendar year.
- (J) A person may not have a substantial ownership interest in more than one winery operating a restaurant under this section or Section 117.030. In addition to any other requirements, Polk County may approve a permit application under subsection (I) of this section if Polk County finds that the authorized activity:
  - (1) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;
  - (2) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use;
  - (3) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and
  - (4) Does not materially alter the stability of the land use pattern in the area.
- (K) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsections (A) and (B) of this section have been planted. If Polk County issues a permit for agri-tourism or other commercial events, Polk County shall review the permit at least once every five years and, if appropriate, may renew the permit.
- (L) A person may not have a substantial ownership interest in more than one winery operating a restaurant under this section or section 117.030. A winery operating under this section shall provide for:
  - (1) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and
  - (2) Direct road access and internal circulation.
- (M) Polk County may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events only if Polk County issued permits to wineries operating under this section in similar circumstances before August 2, 2011. The proposed winery shall comply with:
  - (1) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;
  - (2) Regulations for the public health and safety; and
  - (3) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.
- (N) Polk County may authorize a winery described in this section that is located in the EFU, FF, or FFO zone to sell or deliver items or provide services not described in subsection (D)(2), (D)(3), or (E) of this section under the criteria for a commercial activity in conjunction with farm use. When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:

- (1) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
- (2) The meals may be served at the bed and breakfast facility or at the winery.
- (O) As used in this section, "private events" includes, but is not limited to, facility rentals and celebratory gatherings. As used in this section:
  - (1) "Agri-tourism or other commercial events" includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.
  - (2) "On-site retail sale" includes the retail sale of wine in person at the winery site, through a wine club or over the Internet or telephone. [Amended by Ordinance 20-XX]

**117.050. FEE BASED EVENTS AT WINERIES.** [ORS 215.452]. A winery operating under Sections 117.020 through 117.040 may be permitted to host outdoor concerts for which admission is charged, facility rentals or celebratory events if Polk County issued a permit to the winery operating under those sections in similar circumstances before August 2, 2011.

**LAWFUL CONTINUATION OF CERTAIN WINERY-RELATED USES OR STRUCTURES [ORS 215.454]**

- (A) A use or structure in an area zoned for exclusive farm use that exists on June 28, 2011, may be lawfully continued, altered, restored, or replaced pursuant to ORS 215.130 if the use or structure is located on the same tract, as defined in ORS 215.010, as a winery established under ORS 215.283(1)(n) that produced more than 250,000 gallons of wine in calendar year 2010.
- (B) Subsection (A) of this section does not affect the lawful continuation, alteration, restoration, or expansion of the winery sited on the same tract.
- (C) A winery established under ORS 215.283(1)(n) that produced more than 150,000 gallons and not more than 250,000 gallons of wine in calendar year 2010 does not require a permit under ORS 215.283(2)(a). However, the winery must comply with all provisions of ORS 215.452 except the annual production requirements.
- (D) A use or structure that is lawfully established at a winery located in an exclusive farm use zone and that exists on August 2, 2011, including events and activities that exceed the income limit imposed by ORS 215.452, may be continued, altered, restored, or replaced pursuant to ORS 215.130.
- (E) Subsection (D) of this section does not affect the lawful continuation, alteration, restoration, or replacement of the winery sited on the same tract.
- (F) A use or structure that is lawfully established at a winery located in an exclusive farm use zone and that exists on June 28, 2013, including events and activities that exceed the income limit imposed by ORS 215.452, may be continued, altered, restored, or replaced pursuant to ORS 215.130.
- (G) Subsection (F) of this section does not affect the lawful continuation, alteration, restoration, or replacement of the winery sited on the same tract. [Amended by Ordinance 20-XX]

**117.060. LEGAL, NON-CONFORMING WINERIES.** A use or structure that was lawfully established at a winery located in the EFU, FF, or FFO zone and that existed on August 2, 2011, including events and activities that exceed the income limits imposed under this chapter, may be continued, altered, restored or replaced pursuant to ORS 215.130. This does not affect the lawful continuation, alteration, restoration or replacement of the winery sited on the same tract.

**SITING A WINERY AS A COMMERCIAL ACTIVITY IN CONJUNCTION WITH FARM USE [ORS 215.456 and 215.453(10)]**

(A) Polk County may authorize the siting of a winery in the EFU, FF, and FFO Zoning Districts, pursuant to the standards that apply to a commercial activity in conjunction with farm use under PCZO 136.050(J) or 138.060(H), if the winery:

- (1) Does not qualify for siting under sections 117.020, 117.030, or 117.040; or
- (2) Seeks to carry out uses or activities that are not authorized by sections 117.020, 117.030, or 117.040.

(B) If Polk County authorizes the establishment of a winery on land zoned EFU, FF, or FFO, under provisions other than sections 117.020, 117.030, or 117.040 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.

[Amended by Ordinance 20-XX]

**117.070. CIDER BUSINESS – ANY PRODUCTION LEVEL [ORS 215.451].** A cider business may be established as a permitted use through the administrative review process on land zoned EFU, FF or FFO, and through the conditional use review process in the AF-10 zone, if the cider business produces:

(A) Less than 100,000 gallons of cider annually and the cider business:

- (1) Owns an on-site orchard of at least 15 acres;
- (2) Owns a contiguous orchard of at least 15 acres;
- (3) Has a long-term contract for the purchase of all of the apples or pears from at least 15 acres of an orchard contiguous to the cider business; or
- (4) Obtains apples or pears from any combination of paragraphs (1), (2) or (3) of this subsection; or

(B) At least 100,000 gallons of cider annually and the cider business:

- (1) Owns on on-site orchard of at least 40 acres;
- (2) Owns a contiguous orchard of at least 40 acres;
- (3) Has a long-term contract for the purchase of all of the apples or pears from at least 40 acres of an orchard contiguous to the cider business;
- (4) Owns an on-site orchard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of orchard in Oregon that are located within 15 miles of the cider business site; or
- (5) Obtains apples or pears from any combination of paragraphs (1), (2) (3) or (4) of this paragraph.

(C) In addition to any other any other activities authorized for a cider business, a cider business established under subsections (A) or (B) may:

- (1) Market cider produced in conjunction with the cider business.
- (2) Conduct operations that are directly related to the sale or marketing of cider produced in conjunction with the cider business, including:
  - (a) Cider tastings in a tasting room or other location on the premises occupied by the cider business;
  - (b) Cider club activities;
  - (c) Cidermaker luncheons and dinners;
  - (d) Cider business and orchard tours;



- (e) Meetings or business activities with cider business suppliers, distributors, wholesale customers, and cider industry members;
  - (f) Cider business staff activities;
  - (g) Open house promotions of cider produced in conjunction with the cider business; and
  - (h) Similar activities conducted for the primary purpose of promoting cider produced in conjunction with the cider business.
- (3) Market and sell items directly related to the sale or promotion of cider produced in conjunction with the cider business, the marketing and sale of which is incidental to on-site retail sale of cider, including food and beverages:
- (a) Required to be made available in conjunction with the consumption of cider on the premise by the Liquor Control Act or rules adopted under the Liquor Control Act; or
  - (b) Served in conjunction with an activity authorized by subsection (C)(2), (4) or (5).
- (4) Subject to subsection (G) of this section, carry out agri-tourism or other commercial events on the tract occupied by the cider business.
- (5) Host charitable activities for which the cider business does not charge a facility rental fee.
- (6) Site a bed and breakfast as a home occupation on the same tract, and in association with, the cider business:
- (a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
  - (b) The meals may be served at the bed and breakfast facility or at the cider business.
- (D) A cider business may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in subsection (C)(3) of this section. Food and beverage services authorized under subsection (C)(3) of this section may not utilize menu options or meal service that cause the kitchen facilities to function as a café or other dining establishment open to the public.
- (E) The gross income of the cider business from the sale of incidental items or services provided pursuant to subsection (C)(3) to (5) of this section may not exceed 25 percent of the gross income from the on-site retail sale of cider produced in conjunction with the cider business. The gross income of a cider business does not include income received by third parties unaffiliated with the cider business.
- (F) At the request of Polk County with land use jurisdiction over the site of a cider business, the cider business shall submit to Polk County a written statement prepared by a certified public accountant that certifies the compliance of the cider business with subsection (E) for the previous tax year.
- (G) A cider business may carry out agri-tourism or other commercial events for up to 18 days per calendar year.
- (1) Events on the first six days of the 18-day limit per calendar year are authorized by Polk County through the issuance of a renewable multi-year license, subject to section 117.090.

- (2) Events on days seven through 18 of the 18-day limit per calendar year are authorized by Polk County through the issuance of a renewable multi-year permit, subject to section 117.100.

**117.080. FARM BREWERY** [Senate Bill 287 (2019)]. A farm brewery may be established as a permitted use through the administrative review process on land zoned EFU, FF, or FFO; and through the conditional use review process in the AF-10 zone, if the farm brewery produces:

- (A) Less than 150,000 barrels of malt beverages annually, inclusive of malt beverages produced by the farm brewery's owners or operators at the farm brewery or elsewhere, through any entity owned or affiliated with the farm brewery;
- (B) Produces less than 15,000 barrels of malt beverages annually on the farm brewery site; and
  - (1) Owns an on-site hop farm of at least 15 acres;
  - (2) Owns a contiguous hop farm of at least 15 acres;
  - (3) 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
  - (4) Obtains hops from any combination of paragraphs (1), (2) or (3) of this section.
  - (5) For purposes of paragraphs (1), (2), (3), or (4) of this subsection, land planted with other ingredients used in malt beverages produced by the farm brewery counts towards the acreage minimums.
- (C) In addition to any other any other activities authorized for a farm brewery, a farm brewery established under subsections (A) or (B) of this section may:
  - (1) Market malt beverages produced in conjunction with the farm brewery.
  - (2) Conduct operations that are directly related to the sale or marketing of malt beverages produced in conjunction with the farm brewery, including:
    - (a) Malt beverage tastings in a tasting room or other location on the premises occupied by the farm brewery;
    - (b) Malt beverage club activities;
    - (c) Brewer luncheons and dinners;
    - (d) Farm brewery and hop farm tours;
    - (e) Meetings or business activities with farm brewery suppliers, distributors, wholesale customers, and malt beverage industry members;
    - (f) Farm brewery staff activities;
    - (g) Open house promotions of malt beverages produced in conjunction with the farm brewery; and
    - (h) Similar activities conducted for the primary purpose of promoting malt beverages produced in conjunction with the farm brewery.
  - (3) Market and sell items directly related to the sale or promotion of malt beverages produced in conjunction with the farm brewery, the marketing and sale of which is incidental to on-site retail sale of malt beverages, including food and beverages:
    - (a) Required to be made available in conjunction with the consumption of malt beverages on the premise by the Liquor Control Act or rules adopted under the Liquor Control Act; or

- (b) Served in conjunction with an activity authorized by subsection (C)(2), (4) or (5).
- (4) Subject to the subsection (G) of this section, carry out agri-tourism or other commercial events on the tract occupied by the farm brewery.
- (5) Host charitable activities for which the farm brewery does not charge a facility rental fee.
- (6) Site a bed and breakfast as a home occupation on the same tract, and in association with, the farm brewery:
  - (a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
  - (b) The meals may be served at the bed and breakfast facility or at the farm brewery.
- (D) A farm brewery may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in subsection (C)(3) of this section. Food and beverage services authorized under subsection (C)(3) of this section may not utilize menu options or meal services that cause the kitchen facilities to function as a café or other dining establishment open to the public.
- (E) The gross income of the farm brewery from the sale of incidental items or services provided pursuant to subsection (C)(3) to (5) of this section may not exceed 25 percent of the gross income from the on-site retail sale of malt beverages produced in conjunction with the farm brewery. The gross income of a farm brewery does not include income received by third parties unaffiliated with the farm brewery.
- (F) At the request of Polk County, the farm brewery shall submit to Polk County a written statement prepared by a certified public accountant that certifies the compliance of the farm brewery with subsection E of this section for the previous tax year.
- (G) A farm brewery may carry out agri-tourism or other commercial events for up to 18 days per calendar year.
  - (1) Events on the first six days of the 18-day limit per calendar year are authorized by Polk County through the issuance of a renewable multi-year license, subject to section 117.090.
  - (2) Events on days seven through 18 of the 18-day limit per calendar year are authorized by Polk County through the issuance of a renewable multi-year permit, subject to section 117.100.

#### **117.090. AGRI-TOURISM AND OTHER COMMERCIAL EVENTS – LICENSE.**

- (A) Events on the first six days of the 18-day limit per calendar year must be authorized by Polk County through the issuance of a renewable multi-year license that:
  - (1) Has a term of five years; and
  - (2) Is subject to an administrative review to determine necessary conditions pursuant to section (C) of this section.
- (B) Polk County's decision on a license under subsection (A) of this section is not:
  - (1) A land use decision, as defined in ORS 197.015, and is not subject to review by the Land Use Board of Appeals.
  - (2) A permit, as defined in ORS 215.402 or 227.160.

(C) As necessary to ensure that agri-tourism or other commercial events on a tract occupied by a winery, cider business, or farm brewery are subordinate to the production and sale of wine, cider, or malted beverages and do not create significant adverse impacts to uses on surrounding land, Polk County may impose conditions on a license issued pursuant to this sections related to:

- (1) The number of event attendees;
- (2) The hours of event operation;
- (3) Access and parking;
- (4) Traffic management;
- (5) Noise management; and
- (6) Sanitation and solid waste.

#### **117.100. AGRITOURISM AND OTHER COMMERCIAL EVENTS – PERMIT.**

(A) Events on days seven through 18 of the 18-day limit per calendar year must be authorized by the Polk County through the issuance of a renewable multi-year permit that:

- (1) Has a term of five years;
- (2) Is subject to an administrative review to determine necessary conditions pursuant to subsection (C) of this section; and
- (3) Is subject to notice as specified in ORS 215.416 (11) or 227.175 (10).

(B) Polk County's decision on a permit under subsection (A) of this section is:

- (1) A land use decision, as defined in ORS 197.015, and is subject to review by the Land Use Board of Appeals.
- (2) A permit, as defined in ORS 215.402 or 227.160.

(C) As necessary to ensure that agri-tourism or other commercial events on a tract occupied by a winery, cider business, or farm brewery are subordinate to the production and sale of wine, cider, or malted beverages and do not create significant adverse impacts to uses on surrounding land, Polk County may impose conditions on a permit issued pursuant to this sections related to:

- (1) The number of event attendees;
- (2) The hours of event operation;
- (3) Access and parking;
- (4) Traffic management;
- (5) Noise management; and
- (6) Sanitation and solid waste.

#### **117.110. DEVELOPMENT STANDARDS The following development standards shall be applicable to all wineries, cider businesses, and farm breweries authorized by this Chapter.**

- (A) A winery, cider business, or farm brewery shall provide parking for all activities or uses of the lot, parcel or tract on which the winery, cider business, or farm brewery is established.
- (B) An application for a winery, cider business, or farm brewery shall demonstrate compliance with:

- (1) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access, and airport safety;
  - (2) Regulations of general applicability for the public health and safety; and
  - (3) Regulations for resource protection acknowledged to comply with any statewide goal regarding open spaces, scenic and historic areas, and natural resources.
- (C) For the purpose of limiting demonstrated conflicts with accepted farm and forest practices on adjacent lands, the proposed winery, cider business, or farm brewery shall:
  - (1) Establish a setback of at least 100 feet from all property lines for the winery, cider business, or farm brewery, and all public gathering places, unless a variance is granted in compliance with Chapter 122 of the Polk County Zoning Ordinance; and
  - (2) Provide direct road access and internal circulation for the winery, cider business, or farm brewery, and for all public gathering places.

**WINERIES**

215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules. (1) The following uses may be established in any area zoned for exclusive farm use:

(n) A winery, as described in ORS 215.452 or 215.453.

215.452 Winery; conditions; permissible products and services; local government findings and criteria; fees.

(1) A winery may be established as a permitted use on land zoned for exclusive farm use under ORS 215.213 (1)(p) and 215.283 (1)(n) or on land zoned for mixed farm and forest use if the winery produces wine with a maximum annual production of:

(a) Less than 50,000 gallons and:

- (A) Owns an on-site vineyard of at least 15 acres;
- (B) Owns a contiguous vineyard of at least 15 acres;
- (C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
- (D) Obtains grapes from any combination of subparagraph (A), (B) or (C) of this paragraph; or

(b) At least 50,000 gallons and the winery:

- (A) Owns an on-site vineyard of at least 40 acres;
- (B) Owns a contiguous vineyard of at least 40 acres;
- (C) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery;
- (D) Owns an on-site vineyard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of vineyards in Oregon that are located within 15 miles of the winery site; or
- (E) Obtains grapes from any combination of subparagraph (A), (B), (C) or (D) of this paragraph.

(2) In addition to producing and distributing wine, a winery established under this section may:

(a) Market and sell wine produced in conjunction with the winery.

(b) Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:

- (A) Wine tastings in a tasting room or other location on the premises occupied by the winery;
- (B) Wine club activities;
- (C) Winemaker luncheons and dinners;
- (D) Winery and vineyard tours;
- (E) Meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members;
- (F) Winery staff activities;

- (G) Open house promotions of wine produced in conjunction with the winery; and
- (H) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery.
- (c) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to on-site retail sale of wine, including food and beverages:
  - (A) Required to be made available in conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or
  - (B) Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this subsection.
- (d) Carry out agri-tourism or other commercial events on the tract occupied by the winery subject to subsections (5), (6), (7) and (8) of this section.
- (e) Host charitable activities for which the winery does not charge a facility rental fee.
- (3) A winery may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in subsection (2)(c) of this section. Food and beverage services authorized under subsection (2)(c) of this section may not utilize menu options or meal services that cause the kitchen facilities to function as a cafe or other dining establishment open to the public.
- (4) The gross income of the winery from the sale of incidental items or services provided pursuant to subsection (2)(c) to (e) of this section 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. At the request of a local government with land use jurisdiction over the site of a winery, the winery shall submit to the local government a written statement that is prepared by a certified public accountant and certifies the compliance of the winery with this subsection for the previous tax year.
- (5) A winery may carry out up to 18 days of agri-tourism or other commercial events annually on the tract occupied by the winery.
- (6) For events described in subsection (5) of this section for a winery in the Willamette Valley:
  - (a) Events on the first six days of the 18-day limit per calendar year must be authorized by the local government through the issuance of a renewable multi-year license that:
    - (A) Has a term of five years; and
    - (B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (7) of this section.
  - (b) The local government's decision on a license under paragraph (a) of this subsection is not:
    - (A) A land use decision, as defined in ORS 197.015, and is not subject to review by the Land Use Board of Appeals.
    - (B) A permit, as defined in ORS 215.402 or 227.160.



- (c) Events on days seven through 18 of the 18-day limit per calendar year must be authorized by the local government through the issuance of a renewable multi-year permit that:
  - (A) Has a term of five years;
  - (B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (7) of this section; and
  - (C) Is subject to notice as specified in ORS 215.416 (11) or 227.175 (10).
- (d) The local government's decision on a permit under paragraph (c) of this subsection is:
  - (A) A land use decision, as defined in ORS 197.015, and is subject to review by the Land Use Board of Appeals.
  - (B) A permit, as defined in ORS 215.402 or 227.160.
- (7) As necessary to ensure that agri-tourism or other commercial events on a tract occupied by a winery are subordinate to the production and sale of wine and do not create significant adverse impacts to uses on surrounding land, the local government may impose conditions on a license or permit issued pursuant to subsection (6) of this section related to:
  - (a) The number of event attendees;
  - (b) The hours of event operation;
  - (c) Access and parking;
  - (d) Traffic management;
  - (e) Noise management; and
  - (f) Sanitation and solid waste.
- (8) A local government may charge a fee for processing a license or permit under subsections (6) and (7) of this section. A fee may not exceed the actual or average cost of providing the applicable licensing or permitting service.
- (9) A winery operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.
- (10) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (1) of this section have been planted or that the contract has been executed, as applicable.
- (11) A local government shall apply the standards described in this subsection. Standards imposed on the siting of a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:
  - (a) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places unless the local government grants an adjustment or variance allowing a setback of less than 100 feet; and
  - (b) Provision of direct road access and internal circulation.
- (12) A local government shall apply:
  - (a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;
  - (b) Regulations of general applicability for the public health and safety; and

- (c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.
- (13) When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:
  - (a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
  - (b) The meals may be served at the bed and breakfast facility or at the winery.
- (14) As used in this section:
  - (a) "Agri-tourism or other commercial events" includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.
  - (b) "On-site retail sale" includes the retail sale of wine in person at the winery site, through a wine club or over the Internet or telephone. [1989 c.525 §4; 1993 c.704 §6; 1997 c.249 §61; 2001 c.613 §20; 2009 c.850 §11; 2010 c.97 §§1,2; 2011 c.679 §§2,3,3a; 2013 c.554 §2]

215.453 Large winery; conditions; products and services; local government findings and criteria.

- (1) A winery may be established as a permitted use on land zoned for exclusive farm use under ORS 215.213 (1)(p) or 215.283 (1)(n) or on land zoned for mixed farm and forest use if:
  - (a) The winery owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard;
  - (b) The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in paragraph (a) of this subsection; and
  - (c) The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine in at least three of the five calendar years before the winery is established under this section.
- (2) In addition to producing and distributing wine, a winery described in subsection (1) of this section may:
  - (a) Market and sell wine produced in conjunction with the winery;
  - (b) Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:
    - (A) Wine tastings in a tasting room or other location on the premises occupied by the winery;
    - (B) Wine club activities;
    - (C) Winemaker luncheons and dinners;
    - (D) Winery and vineyard tours;
    - (E) Meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members;
    - (F) Winery staff activities;

- (G) Open house promotions of wine produced in conjunction with the winery; and
  - (H) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery;
  - (c) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to retail sale of wine on-site, including food and beverages:
    - (A) Required to be made available in conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or
    - (B) Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this subsection;
  - (d) Provide services, including agri-tourism or other commercial events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, that:
    - (A) Are directly related to the sale or promotion of wine produced in conjunction with the winery;
    - (B) Are incidental to the retail sale of wine on-site; and
    - (C) Are limited to 25 days or fewer in a calendar year; and
  - (e) Host charitable activities for which the winery does not charge a facility rental fee.
- (3)(a) The gross income of the winery from the sale of incidental items pursuant to subsection (2)(c) of this section and services provided pursuant to subsection (2)(d) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.
- (b) At the request of a local government with land use jurisdiction over the site of a winery, the winery shall submit to the local government a written statement, prepared by a certified public accountant, that certifies compliance with paragraph (a) of this subsection for the previous tax year.
- (4) A winery operating under this section:
- (a) Shall provide parking for all activities or uses of the lot, parcel or tract on which the winery is established.
  - (b) May operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery.
- (5)(a) A winery shall obtain a permit from the local government if the winery operates a restaurant that is open to the public for more than 25 days in a calendar year or provides for agri-tourism or other commercial events authorized under subsection (2)(d) of this section occurring on more than 25 days in a calendar year.
- (b) In addition to any other requirements, a local government may approve a permit application under this subsection if the local government finds that the authorized activity:
- (A) Complies with the standards described in ORS 215.296;
  - (B) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery; and

- (C) Does not materially alter the stability of the land use pattern in the area.
- (c) If the local government issues a permit under this subsection for agri-tourism or other commercial events, the local government shall review the permit at least once every five years and, if appropriate, may renew the permit.
- (6) A person may not have a substantial ownership interest in more than one winery operating a restaurant under this section.
- (7) Prior to the issuance of a permit to establish a winery under this section, the applicant shall show that vineyards described in subsection (1) of this section have been planted.
- (8) A local government shall require a winery operating under this section to provide for:
- (a) Establishment of a setback of at least 100 feet from all property lines for the winery and all public gathering places; and
  - (b) Direct road access and internal circulation.
- (9) A local government shall apply:
- (a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;
  - (b) Regulations for the public health and safety; and
  - (c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.
- (10) The local government may authorize a winery described in subsection (1) of this section to sell or deliver items or provide services not described in subsection (2)(c) or (d) or (3) of this section under the criteria for a commercial activity in conjunction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a) or under other provisions of law.
- (11)(a) A local government may issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government issued permits to wineries operating under this section in similar circumstances before August 2, 2011.
- (b) A local government may not issue a permit for a winery operating under this section to host outdoor concerts for which admission is charged, facility rentals or celebratory events if the local government did not issue permits to wineries operating under this section in similar circumstances before August 2, 2011.
- (12) When a bed and breakfast facility is sited as a home occupation on the same tract as a winery established under this section and in association with the winery:
- (a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
  - (b) The meals may be served at the bed and breakfast facility or at the winery.
- (13) As used in this section:
- (a) "Agri-tourism or other commercial events" includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.

- (b) "On-site retail sale" includes the retail sale of wine in person at the winery site, through a wine club or over the Internet or telephone. [2011 c.679 §5; 2011 c.679 §5a; 2013 c.554 §6]

215.454 Lawful continuation of certain winery-related uses or structures.

- (1)(a) A use or structure in an area zoned for exclusive farm use that exists on June 28, 2011, may be lawfully continued, altered, restored or replaced pursuant to ORS 215.130 if the use or structure is located on the same tract, as defined in ORS 215.010, as a winery established under ORS 215.213 (1)(p) or 215.283 (1)(n) that produced more than 250,000 gallons of wine in calendar year 2010.
- (b) This subsection does not affect the lawful continuation, alteration, restoration or expansion of the winery sited on the same tract.
- (2) A winery established under ORS 215.213 (1)(p) or 215.283 (1)(n) that produced more than 150,000 gallons and not more than 250,000 gallons of wine in calendar year 2010 does not require a permit under ORS 215.213 (2)(c) or 215.283 (2)(a). However, the winery must comply with all provisions of ORS 215.452 except the annual production requirements.
- (3) A use or structure that is lawfully established at a winery located in an exclusive farm use zone and that exists on August 2, 2011, including events and activities that exceed the income limit imposed by ORS 215.452, may be continued, altered, restored or replaced pursuant to ORS 215.130.
- (4) Subsection (3) of this section does not affect the lawful continuation, alteration, restoration or replacement of the winery sited on the same tract.
- (5) A use or structure that is lawfully established at a winery located in an exclusive farm use zone and that exists on June 28, 2013, including events and activities that exceed the income limit imposed by ORS 215.452, may be continued, altered, restored or replaced pursuant to ORS 215.130.
- (6) Subsection (5) of this section does not affect the lawful continuation, alteration, restoration or replacement of the winery sited on the same tract. [2011 c.567 §6; subsections (3) and (4) of 2013 Edition enacted as 2011 c.679 §6; subsections (5) and (6) of 2013 Edition enacted as 2013 c.554 §5]

215.456 Siting winery as commercial activity in exclusive farm use zone.

- (1) A local government may authorize the siting of a winery, on land zoned for exclusive farm use, pursuant to the standards that apply to a commercial activity in conjunction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a) or other law if the winery:
  - (a) Does not qualify for siting under ORS 215.452 or 215.453; or
  - (b) Seeks to carry out uses or activities that are not authorized by ORS 215.452 or 215.453.
- (2) If a county authorizes the establishment of a winery on land zoned for exclusive farm use or mixed farm and forest use under provisions of law other than ORS 215.452 or 215.453 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.

**CIDER BUSINESSES**

- 215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules. (1) The following uses may be established in any area zoned for exclusive farm use:
- (y) A cider business, as described in ORS 215.451.
- 215.451 Cider business; conditions; permissible products and services; local government findings and criteria.
- (2) A cider business may be established as a permitted use on land zoned for exclusive farm use under ORS 215.213 (1)(aa) and 215.283 (1)(y) or on land zoned for mixed farm and forest use if the cider business produces:
- (a) Less than 100,000 gallons of cider annually and the cider business:
- (A) Owns an on-site orchard of at least 15 acres;
  - (B) Owns a contiguous orchard of at least 15 acres;
  - (C) Has a long-term contract for the purchase of all of the apples or pears from at least 15 acres of an orchard contiguous to the cider business; or
  - (D) Obtains apples or pears from any combination of subparagraph (A), (B) or (C) of this paragraph; or
- (b) At least 100,000 gallons of cider annually and the cider business:
- (A) Owns an on-site orchard of at least 40 acres;
  - (B) Owns a contiguous orchard of at least 40 acres;
  - (C) Has a long-term contract for the purchase of all of the apples or pears from at least 40 acres of an orchard contiguous to the cider business;
  - (D) Owns an on-site orchard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of orchards in Oregon that are located within 15 miles of the cider business site; or
  - (E) Obtains apples or pears from any combination of subparagraph (A), (B), (C) or (D) of this paragraph.
- (3) In addition to any other activities authorized for a cider business, a cider business established under this section may:
- (a) Market cider produced in conjunction with the cider business.
  - (b) Conduct operations that are directly related to the sale or marketing of cider produced in conjunction with the cider business, including:
    - (A) Cider tastings in a tasting room or other location on the premises occupied by the cider business;
    - (B) Cider club activities;
    - (C) Cidermaker luncheons and dinners;
    - (D) Cider business and orchard tours;
    - (E) Meetings or business activities with cider business suppliers, distributors, wholesale customers and cider industry members;
    - (F) Cider business staff activities;
    - (G) Open house promotions of cider produced in conjunction with the cider business; and

- (H) Similar activities conducted for the primary purpose of promoting cider produced in conjunction with the cider business.
- (c) Market and sell items directly related to the sale or promotion of cider produced in conjunction with the cider business, the marketing and sale of which is incidental to on-site retail sale of cider, including food and beverages:
  - (A) Required to be made available in conjunction with the consumption of cider on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or
  - (B) Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this subsection.
- (d) Subject to subsections (6) to (9) of this section, carry out agri-tourism or other commercial events on the tract occupied by the cider business.
- (e) Host charitable activities for which the cider business does not charge a facility rental fee.
- (f) Site a bed and breakfast as a home occupation on the same tract, and in association with, the cider business.
- (4) A cider business may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in subsection (3)(c) of this section. Food and beverage services authorized under subsection (3)(c) of this section may not utilize menu options or meal services that cause the kitchen facilities to function as a cafe or other dining establishment open to the public.
- (5)(a) The gross income of the cider business from the sale of incidental items or services provided pursuant to subsection (3)(c) to (e) of this section may not exceed 25 percent of the gross income from the on-site retail sale of cider produced in conjunction with the cider business. The gross income of a cider business does not include income received by third parties unaffiliated with the cider business.
- (b) At the request of a local government with land use jurisdiction over the site of a cider business, the cider business shall submit to the local government a written statement prepared by a certified public accountant that certifies the compliance of the cider business with this subsection for the previous tax year.
- (6) Except as provided by subsections (7) and (8) of this section, a cider business may carry out agri-tourism or other commercial events described in subsection (3)(d) of this section for up to 18 days per calendar year.
- (7) A cider business in the Willamette Valley may carry out agri-tourism or other commercial events as provided in subsection (6) of this section, provided:
  - (a) Events on the first six days of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multi-year license that:
    - (A) Has a term of five years; and
    - (B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (8) of this section.
  - (b) The local government's decision on a license under paragraph (a) of this subsection is not:
    - (A) A land use decision, as defined in ORS 197.015, and is not subject to review by the Land Use Board of Appeals.

- (B) A permit, as defined in ORS 215.402 or 227.160.
- (c) Events on days seven through 18 of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multi-year permit that:
  - (A) Has a term of five years;
  - (B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (8) of this section; and
  - (C) Is subject to notice as specified in ORS 215.416 (11) or 227.175 (10).
- (d) The local government's decision on a permit under paragraph (c) of this subsection is:
  - (A) A land use decision, as defined in ORS 197.015, and is subject to review by the Land Use Board of Appeals.
  - (B) A permit, as defined in ORS 215.402 or 227.160.
- (8)(a) A local government with land use jurisdiction over the site of a cider business shall ensure that agri-tourism or other commercial events occurring as described in subsection (3)(d) of this section are subordinate to the production and sale of cider and do not create significant adverse impacts to uses on surrounding land.
- (b) A local government may impose conditions on a license or permit issued pursuant to subsection (7) of this section as necessary to meet the requirements of paragraph (a) of this subsection. The conditions must be related to:
  - (A) The number of event attendees;
  - (B) The hours of event operation;
  - (C) Access and parking;
  - (D) Traffic management;
  - (E) Noise management; and
  - (F) Sanitation and solid waste.
- (9) A local government may charge a fee for processing a license or permit under subsections (6) and (7) of this section. The fee may not exceed the actual or average cost of providing the applicable licensing or permitting service.
- (10) When a bed and breakfast facility is sited as a home occupation on the same tract as a cider business as described in subsection (3)(f) of this section:
  - (a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
  - (b) The meals may be served at the bed and breakfast facility or at the cider business.
- (11) A cider business operating under this section shall provide parking for all activities or uses of the lot, parcel or tract on which the cider business is situated.
- (12) A local government with land use jurisdiction over the site of a cider business shall ensure that the cider business complies with:
  - (a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;
  - (b) Regulations of general applicability for the public health and safety; and



- (c) Regulations for resource protection acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources.
- (13)(a) For the purpose of limiting demonstrated conflicts with accepted farm and forest practices on adjacent lands, a local government with land use jurisdiction over the site of a cider business shall:
  - (A) Except as provided in paragraph (b) of this subsection, establish a setback of at least 100 feet from all property lines for the cider business and all public gathering places; and
  - (B) Require cider businesses to provide direct road access and internal circulation for the cider business and all public gathering places.
- (b) A local government may allow a setback of less than 100 feet by granting a cider business an adjustment or variance to the requirement described in paragraph (a)(A) of this subsection. [2017 c.253 §2]

### **FARM BREWERIES:**

Senate Bill 287 (2019)

Section(2) (a) A farm brewery may be established as a permitted use on land zoned for exclusive farm use under ORS 215.213 (1)(bb) and 215.283 (1)(z) or on land zoned for mixed farm and forest use if the farm brewery:

- (A) Produces less than 150,000 barrels of malt beverages annually, inclusive of malt beverages produced by the farm brewery's owners or operators at the farm brewery or elsewhere, through any entity owned or affiliated with the farm brewery;
- (B) Produces less than 15,000 barrels of malt beverages annually on the farm brewery site; and
- (C)
  - (i) Owns an on-site hop farm of at least 15 acres;
  - (ii) Owns a contiguous hop farm of at least 15 acres;
  - (iii) 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
  - (iv) Obtains hops from a total of 15 acres from any combination of sources described in sub-subparagraph (i), (ii) or (iii) of this subparagraph.
- (b) For purposes of this subsection, land planted with other ingredients used in malt beverages produced by the farm brewery counts towards the acreage minimums.
- (3) In addition to any other activities authorized for a farm brewery, a farm brewery established under this section may:
  - (a) Market malt beverages produced in conjunction with the farm brewery.
  - (b) Conduct operations that are directly related to the sale or marketing of malt beverages produced in conjunction with the farm brewery, including:
    - (A) Malt beverage tastings in a tasting room or other location on the premises occupied by the farm brewery;
    - (B) Malt beverage club activities;
    - (C) Brewer luncheons and dinners;

- (D) Farm brewery and hop farm tours;
  - (E) Meetings or business activities with farm brewery suppliers, distributors, wholesale customers and malt beverage industry members;
  - (F) Farm brewery staff activities;
  - (G) Open house promotions of malt beverages produced in conjunction with the farm brewery; and
  - (H) Similar activities conducted for the primary purpose of promoting malt beverages produced in conjunction with the farm brewery.
- (c) Market and sell items directly related to the sale or promotion of malt beverages produced in conjunction with the farm brewery, the marketing and sale of which is incidental to on-site retail sale of malt beverages, including food and beverages:
- (A) Required to be made available in conjunction with the consumption of malt beverages on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or
  - (B) Served in conjunction with an activity authorized by paragraph (b), (d) or (e) of this subsection.
- (d) Subject to subsections (6) to (9) of this section, carry out agri-tourism or other commercial events on the tract occupied by the farm brewery.
- (e) Host charitable activities for which the farm brewery does not charge a facility rental fee.
- (f) Site a bed and breakfast as a home occupation on the same tract as, and in association with, the farm brewery.
- (4) A farm brewery may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in subsection (3)(c) of this section. Food and beverage services authorized under subsection (3)(c) of this section may not utilize menu options or meal services that cause the kitchen facilities to function as a cafe or other dining establishment open to the public.
- (5)
- (a) The gross income of the farm brewery from the sale of incidental items or services provided pursuant to subsection (3)(c) to (e) of this section may not exceed 25 percent of the gross income from the on-site retail sale of malt beverages produced in conjunction with the farm brewery. The gross income of a farm brewery does not include income received by third parties unaffiliated with the farm brewery.
  - (b) At the request of a local government with land use jurisdiction over the site of a farm brewery, the farm brewery shall submit to the local government a written statement prepared by a certified public accountant that certifies the compliance of the farm brewery with this subsection for the previous tax year.
- (6) Except as provided by subsections (7) and (8) of this section, a farm brewery may carry out agri-tourism or other commercial events described in subsection (3)(d) of this section for up to 18 days per calendar year.
- (7) A farm brewery in the Willamette Valley may carry out agri-tourism or other commercial events as provided in subsection (6) of this section, provided:
- (a) Events on the first six days of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multiyear license that:
    - (A) Has a term of five years; and

- (B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (8) of this section.
- (b) The local government's decision on a license under paragraph (a) of this subsection is not:
  - (A) A land use decision, as defined in ORS 197.015, and is not subject to review by the Land Use Board of Appeals.
  - (B) A permit, as defined in ORS 215.402 or 227.160.
- (c) Events on days seven through 18 of the 18-day limit per calendar year are authorized by the local government through the issuance of a renewable multiyear permit that:
  - (A) Has a term of five years;
  - (B) Is subject to an administrative review to determine necessary conditions pursuant to subsection (8) of this section; and
  - (C) Is subject to notice as specified in ORS 215.416 (11) or 227.175 (10).
- (d) The local government's decision on a permit under paragraph (c) of this subsection is:
  - (A) A land use decision, as defined in ORS 197.015, and is subject to review by the Land Use Board of Appeals.
  - (B) A permit, as defined in ORS 215.402 or 227.160.
- (8)
  - (a) A local government with land use jurisdiction over the site of a farm brewery shall ensure that agri-tourism or other commercial events occurring as described in subsection (3)(d) of this section are subordinate to the production and sale of malt beverages and do not create significant adverse impacts to uses on surrounding land.
  - (b) A local government may impose conditions on a license or permit issued pursuant to subsection (7) of this section as necessary to meet the requirements of paragraph (a) of this subsection. The conditions must be related to:
    - (A) The number of event attendees;
    - (B) The hours of event operation; (C) Access and parking;
    - (D) Traffic management;
    - (E) Noise management; and
    - (F) Sanitation and solid waste.
- (9) A local government may charge a fee for processing a license or permit under subsections (6) and (7) of this section. The fee may not exceed the actual or average cost of providing the applicable licensing or permitting service.
- (10) When a bed and breakfast facility is sited as a home occupation on the same tract as a farm brewery as described in subsection (3)(f) of this section:
  - (a) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and
  - (b) The meals may be served at the bed and breakfast facility or at the farm brewery.
- (11) A farm brewery operating under this section shall provide parking for all activities or uses of the tract on which the farm brewery is situated.

- (12) A local government with land use jurisdiction over the site of a farm brewery shall ensure that the farm brewery complies with:
  - (a) Local criteria regarding floodplains, geologic hazards, the Willamette River Greenway, solar access and airport safety;
  - (b) Regulations of general applicability for the public health and safety; and
  - (c) Regulations for resource protection acknowledged to comply with any statewide goal relating to open spaces, scenic and historic areas and natural resources.
- (13) (a) For the purpose of limiting demonstrated conflicts with accepted farm and forest practices on adjacent lands, a local government with land use jurisdiction over the site of a farm brewery shall:
  - (A) Except as provided in paragraph (b) of this subsection, establish a setback of at least 100 feet from all property lines for the farm brewery and all public gathering places; and
  - (B) Require farm breweries to provide direct road access and internal circulation for the farm brewery and all public gathering places.
- (b) A local government may allow a setback of less than 100 feet by granting a farm brewery an adjustment or variance to the requirement described in paragraph (a)(A) of this subsection.