

# CHAPTER 39 – MULTNOMAH COUNTY ZONING CODE

## PART 8.0: SPECIFIC USE STANDARDS

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## 8.A – Design Review

### § 39.8000 [36.7000]- PURPOSES.

MCC 39.8000 through 39.8050 (Design Review) provides for the review and administrative approval of the design of certain developments and improvements in order to promote functional, safe, innovative and attractive site development compatible with the natural and ~~man~~ human-made environment.

### § 39.8005 [36.7005] ELEMENTS OF DESIGN REVIEW PLAN.

The elements of a Design Review Plan are: The layout and design of all existing and proposed improvements, including but not limited to, buildings, structures, parking and circulation areas, outdoor storage areas, landscape areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut and fill actions, accessways, pedestrian walkways, buffering and screening measures.

### § 39.8010 [36.7010] DESIGN REVIEW PLAN APPROVAL REQUIRED.

No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to this section, nor shall such a use be commenced, enlarged, altered or changed until a final design review plan is approved by the Planning Director, under this Code.

### § 39.8015 [36.7015] EXCEPTIONS.

The provisions of MCC 39.8000 through 39.8050 shall not be applied to the following:

- (A) Single family residences.
- (B) Type C Home Occupations unless located in the RC, BRC, OR, PH-RC or SRC base zones.
- (C) Type C Home Occupations located in the RC, BRC, OR, PH-RC, or SRC base zones that require the addition of less than 400 square feet of ground coverage.
- (D) Commercial photovoltaic solar power generation facility.

## **§ 39.8020 [36.7020] APPLICATION OF REGULATIONS.**

(A) Except those exempted by MCC 39.8015, the provisions of MCC 39.8000 through 39.8050 shall apply to all conditional and community service uses, and to specified uses, in any base zone.

(B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 39.6590 shall only be subject to the following Design Review approval criteria: MCC 36.8040A)(1)(a) and (1)(c), (4) and (7), except when located in the RC, BRC, OR, OCI, PH-RC or SRC zone base zones.

(C) All other uses are subject to all of the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.

(D) Alteration or modification of the physical development previously reviewed through the Design Review process shall be subject to the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.

(E) A multiplex, garden apartment or apartment dwelling or structure.

(F) A boarding, lodging or rooming house.

(G) A hotel or motel.

(H) A business or professional office or clinic.

~~(I) A use listed in the BPO Base zone.~~

~~(J)~~ A use listed in any commercial base zone.

~~(K)~~ A use listed in any manufacturing base zone.

## **§ 39.8025 [36.7030] DESIGN REVIEW PLAN CONTENTS.**

(A) The design review application shall be filed on forms provided by the Planning Director and shall be accompanied by a site plan, floor plan, architectural elevations and landscape plan, as appropriate, showing the proposed development.

(B) Plans shall include the following, drawn to scale:

- (1) Access to site from adjacent rights-of-way, streets, and arterials;
- (2) Parking and circulation areas;
- (3) Location, design, materials and colors of buildings and signs;
- (4) Orientation of windows and doors;
- (5) Entrances and exits;
- (6) Existing topography and natural drainage;
- (7) Pedestrian circulation;
- (8) Boundaries of areas designated Significant Environmental Concern, ~~Hillside Development~~ Geologic Hazards and Areas of Special Flood Hazards;
- (9) Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;
- (10) Areas to be landscaped;
- (11) Exterior lighting location and design;
- (12) Special provisions for handicapped persons;
- (13) Surface and storm water drainage and on-site waste disposal systems;
- (14) The size, species, and approximate locations of plant materials to be retained or placed on the site; and
- (15) Proposed ground-disturbance, grading, filling and site contouring.

**§ 39.8030 [36.7040] FINAL DESIGN REVIEW PLAN.**

Prior to land use approval for building permit review or commencement of physical development where no additional permits are necessary, the applicant shall revise the plans to show compliance with the land use approvals granted, all conditions of approval and required modifications. Final design review plan shall contain the following, drawn to scale:

- (A) Site Development and Landscape Plans drawn to scale, indicating the locations and specifications of the items described in MCC 39.8025, as appropriate;
- (B) Architectural drawings, indicating floor plans, sections, and elevations; and
- (C) Approved minor exceptions from yard, parking, and sign requirements.

#### **§ 39.8035 [36.7045] DELAY IN THE CONSTRUCTION OF A REQUIRED FEATURE**

When the Planning Director determines that immediate execution of any feature of an approved final design review plan is impractical due to climatic conditions, unavailability of materials or other temporary condition, the Director shall, as a precondition to the issuance of a required permit under MCC 39.8010 and 39.8020, require the posting of a performance bond, cash deposit, or other surety, to secure execution of the feature at a time certain.

#### **§ 39.8040 [36.7050] DESIGN REVIEW CRITERIA.**

- (A) Approval of a final design review plan shall be based on the following criteria:
  - (l) Relation of Design Review Plan Elements to Environment.
    - (a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.
    - (b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.
    - (c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter related, and shall provide spatial variety and order.

(2) Safety and Privacy - The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.

(3) Special Needs of Handicapped - Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheelchairs and braille signs.

(4) Preservation of Natural Landscape - The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.

(5) Pedestrian and Vehicular Circulation and Parking - The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.

(6) Drainage - Surface drainage and stormwater systems shall be designed so as not to adversely affect neighboring properties or streets. Systems that insure that surface runoff volume after development is no greater than before development shall be provided on the lot.

(7) Buffering and Screening - Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.

(8) Utilities - All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.

(9) Signs and Graphics - The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.

(B) Guidelines designed to assist applicants in developing design review plans may be adopted by the Planning Commission.

## **§ 39.8045 [36.7055] REQUIRED MINIMUM STANDARDS.**

(A) Private and Shared Outdoor Recreation Areas in Residential Developments:

(1) Private Areas - Each ground level living unit in a residential development subject to design review plan approval shall have an accessible outdoor private space of not less than 48 square feet in area. The area shall be enclosed, screened or otherwise designed to provide privacy for unit residents and their guests.

(2) Shared Areas - Usable outdoor recreation space shall be provided for the shared use of residents and their guests in any apartment residential development, as follows:

(a) One or two-bedroom units: 200 square feet per unit.

(b) Three or more bed-room units: 300 square feet per unit.

(B) Storage

Residential Developments - Convenient areas shall be provided in residential developments for the storage of articles such as bicycles, barbecues, luggage, outdoor furniture, etc. These areas shall be entirely enclosed.

(C) Required Landscape Areas

The following landscape requirements are established for developments subject to design review plan approval:

(1) A minimum of 15% of the development area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.

(2) All areas subject to the final design review plan and not otherwise improved shall be landscaped.

(3) The following landscape requirements shall apply to parking and loading areas:



(a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totaling no less than 25 square feet per parking space.

(b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in width, and any other lot line by a landscaped strip at least 5 feet in width.

(c) A landscaped strip separating a parking or loading area from a street shall contain:

1. Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;

2. Low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and

3. Vegetative ground cover.

(d) Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.

(e) A parking landscape area shall have a width of not less than 5 feet.

(4) Provision shall be made for watering planting areas where such care is required.

(5) Required landscaping shall be continuously maintained.

(6) Maximum height of tree species shall be considered when planting under overhead utility lines.

(7) Landscaped means the improvement of land by means such as contouring, planting, and the location of outdoor structures, furniture, walkways and similar features.

~~(D) When the Planning Director determines that immediate execution of any feature of an approved final design review plan is impractical due to climatic conditions, unavailability of materials or other temporary condition, the Director shall, as a precondition to the issuance of a required permit under MCC 36.7010 through 36.7020, require the posting of a~~

~~performance bond, cash deposit, or other surety, to secure execution of the feature at a time certain.~~

## **§ 39.8050 [36.7060] MINOR EXCEPTIONS: YARD, PARKING, SIGN, AND LANDSCAPE REQUIREMENTS.**

(A) In conjunction with final design review plan approval, the Planning Director may grant minor exceptions from the following requirements:

- (1) Dimensional standards for yards as required in the primary base zone;
- (2) Dimensional standards for off-street parking as required under MCC 39.6560 and 39.6565;
- (3) Standards for minimum number of off-street parking spaces as required in the primary base zone; and
- (4) Dimensional standards for signs as required in the primary base zone;
- (5) In the case of a proposed alteration, standards for landscaped areas under MCC 39.8045 (C).

(B) Except under subsection (A) (5) above, no minor exception shall be greater than 25% of the requirement from which the exception is granted.

(C) Approval of a minor exception shall be based on written findings, as required in this subsection.

(1) In the case of a minor yard exception, the Planning Director shall find that approval will result in:

- (a) More efficient use of the site;
- (b) Preservation of natural features, where appropriate;
- (c) Adequate provision of light, air, and privacy to adjoining properties; and
- (d) Adequate emergency accesses.

(2) In the case of a minor exception to the dimensional standards for off-street parking spaces or the minimum required number of off-street parking spaces, the Planning Director shall find that approval will provide adequate off-street parking in relation to user demands. The following factors may be considered in granting such an exception:

(a) Special characteristics of users which indicate low demand for off-street parking (e.g., low income, elderly);

(b) Opportunities for joint use of nearby off-street parking facilities;

(c) Availability of public transit;

(d) Natural features of the site (topography, vegetation, and drainage) which would be adversely affected by application of required parking standards.

(3) In the case of a minor exception to the dimensional standards for signs, the Planning Director shall find that approval is necessary for adequate identification of the use on the property and will be compatible with the elements of the design review plan and with the character of the surrounding area.

(4) In the case of a minor exception to the standards for landscaped areas, the Planning Director shall find that approval is consistent with MCC 39.8000, considering the extent and type of proposed alteration and the degree of its impact on the site and surrounding areas.

## **8.B – Adjustments and Variances**

### **§ 39.8200 [36.7601]      Adjustments And Variances; Generally.**

(A) MCC 39.8200 through MCC 39.8215 (Adjustments and Variances) are designed to implement the Policies of the Comprehensive Plan. However, it is also recognized that because of the diversity of lands and properties found in the county there should be a zoning provision that permits justifiable departures from certain Zoning Code dimensional standards where literal application of the regulation would result in excessive difficulties or unnecessary hardship on the property owner.

(B) To address those situations, modification of the dimensional standards given in MCC 39.8205 may be permitted if the approval authority finds that the applicant has satisfactorily addressed and met the respective approval criteria in MCC 39.8210, Adjustments, or 39.8215, Variances. If an Adjustment or Variance request is approved, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.

(C) The Adjustment review process provides a mechanism by which certain dimensional standards may be modified no more than 40 percent if the proposed development continues to meet the intended purpose of the regulations. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the regulation.

(D) The Variance review process differs from the Adjustment review by providing a mechanism by which a greater variation from the standard than 40 percent may be approved for certain zoning dimensional requirements. The Variance approval criteria are based upon the traditional variance concepts that are directed towards consideration of circumstances or conditions on a subject property that do not apply generally to other properties in the same vicinity.

(E) All proposed modification of the dimensional standards given in MCC 39.8205(A)(2) shall be reviewed under the Variance review process regardless of the proposed percentage modification.

## **§ 39.8205 [36.7606] SCOPE**

(A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

(1) Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) Overlays are prohibited. Additionally, reductions to the fire safety zones in the Commercial Forest Use base zones are not allowed under the Adjustment process; and

(2) Reduction of yards and setback requirements within the ~~Hillside Development~~ Geologic Hazards Overlay (GH) shall only be reviewed as a Variance; and

(3) Reduction of yards/setback/buffer/re-source protection setback requirements within the Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be reviewed as Variances; and

(4) Minor modification of yards and setbacks in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.

(B) Dimensional standards that may be modified under a Variance review are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, building height, sign height, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

(1) Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) Overlays; and

(2) Modification of fire safety zone standards given in Commercial Forest Use base zones; and

(3) Increase to any billboard height or any other dimensional sign standard.

(C) The dimensional standards listed in (A) and (B) above are the only standards eligible for Adjustment or Variance under these provisions. Adjustments and Variances are not allowed for any other standard including, but not limited to, minimum lot area, modification of a threshold of review (e.g. cubic yards for a Large Fill), modification of a definition (e.g. 30 inches of unobstructed open space in the definition of yard), modification of an allowed density in a Planned Development or houseboat moorage, or to allow a land use that is not allowed by the Base zone.

## **§ 39.8210 [36.7611]      ADJUSTMENT APPROVAL CRITERIA**

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (E) are met:

(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

(B) Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

(C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the base zone; and

(D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and

(E) If in the Rural Residential (RR), Rural Center (RC), Burlington Rural Center (BRC), Orient Residential (OR), Orient Commercial-Industrial, Pleasant Hill Rural Center, or Springdale Rural Center base zone, the proposal will not significantly detract from the livability or appearance of the residential area.

## **§ 39.8215 [36.7616] VARIANCE APPROVAL CRITERIA**

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (F) are met:

(A) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or base zone. The circumstance or condition may relate to:

(1) The size, shape, natural features and topography of the property, or

(2) The location or size of existing physical improvements on the site, or

(3) The nature of the use compared to surrounding uses, or

(4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or base zone, or

(5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.

(6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

(B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

(C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

(D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or base zone in which the property is located, or adversely affects the appropriate development of adjoining properties.

(E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.

(F) Any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

## **8.C – Nonconforming Uses**

### **§39.8300 [36.7200] NONCONFORMING USES**

(A) The purpose of MCC 39.8300 through 39.8315 (Nonconforming Uses) is to establish standards and procedures regulating the continuation, alteration, expansion, and replacement of nonconforming uses. The intent is to allow procedures for considering changes to nonconforming uses that do not increase the level of adverse impacts on the

neighborhood, or changes required for the use to comply with State or County health or safety requirements.

(B) The Planning Director must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of the nonconforming use will have a greater adverse impact on the neighborhood under MCC 39.8315 (C).

(C) Nonconforming uses shall be allowed to continue without additional permission, except that such uses may be replaced, altered or expanded only as provided in MCC 39.8310 and 39.8315 after verification under MCC 39.8305.

(D) If a nonconforming use is abandoned or discontinued for any reason for more than two years, it shall not be re-established unless the resumed use conforms with the requirements of this Zoning Code at the time of the proposed resumption.

(E) Notwithstanding any other provisions of this Code, a surface mining use shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, provided:

(1) The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a State of Oregon exemption from surface mining regulation; and

(2) The surface mining use was not inactive for a period of 12 consecutive years or more.

(3) For purposes of this subsection, inactive means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

(F) A nonconforming use may be maintained with ordinary care.

(G) A change in ownership or occupancy of a nonconforming use is permitted.

(H) No application under this section is required for the alteration, expansion, or replacement of a lawfully established habitable dwelling when the base zone regulates such alteration, expansion, or replacement and the proposed alteration, expansion, or replacement satisfies the dimensional requirements of the base zone.



**§ 39.8305 [36.7204]  
STATUS.**

**VERIFICATION OF NONCONFORMING USE**

(A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:

(1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and

(2) Has not been abandoned or interrupted for a continuous two year period.

(B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:

(1) Description of the use;

(2) The types and quantities of goods or services provided and activities conducted;

(3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

(4) The number, location and size of physical improvements associated with the use;

(5) The amount of land devoted to the use; and

(6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.

(7) A reduction of scope or intensity of any part of the use as determined under this subsection (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

(C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.

(D) Except for nonconforming uses considered under MCC 39.8315 (B), the Planning Director may impose conditions to any verification of nonconforming use status to ensure compliance with said verification.

(E) An applicant may prove the continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.

(F) For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately proceeding the date of application. Evidence proving the continuity, nature and extent of the use for the 20-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.

### **§ 39.8310 [36.7209] RESTORATION OR REPLACEMENT DUE TO FIRE, OTHER CASUALTY OR NATURAL DISASTER.**

After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 39.8305, the Planning Director may authorize restoration or replacement of that nonconforming use based on findings that:

(A) The restoration or replacement is made necessary by fire, other casualty or natural disaster, and

(B) The application for restoration or replacement must be submitted within one year from the date of occurrence of the fire, casualty or natural disaster.

**§ 39.8315 [36.7214]      ALTERATION, EXPANSION OR REPLACEMENT OF NONCONFORMING USES.**

(A) Alteration, expansion or replacement of a nonconforming use includes a change in the use, structure, or physical improvement of no greater adverse impact on the neighborhood, or alterations, expansions or replacements required for the use to comply with State or County health or safety requirements.

(B) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 39.8305, the Planning Director shall authorize alteration of a nonconforming use when it is demonstrated that:

(1) The alteration, expansion or replacement is necessary to comply with state or local health or safety requirements, or

(2) The alteration is necessary to maintain in good repair the existing structures associated with the nonconformity.

(C) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 39.8305, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.

(1) The character and history of the use and of development in the surrounding area;

(2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;

(3) The comparative numbers and kinds of vehicular trips to the site;

(4) The comparative amount and nature of outside storage, loading and parking;

- (5) The comparative visual appearance;
- (6) The comparative hours of operation;
- (7) The comparative effect on existing flora;
- (8) The comparative effect on water drainage or quality; and
- (9) Other factors which impact the character or needs of the neighborhood.

(D) Any decision on alteration, expansion or replacement of a nonconforming use shall be processed as a Type II permit as described in Part 1 of this Zoning Code.

## **8.D – Special Permits and Applications**

### **8.D.1 – Bus Passenger Shelters**

#### **§ 39.8400 [36.0530] BUS PASSENGER SHELTERS**

(A) In addition to all other uses permitted in any base zone, bus passenger shelters (hereinafter shelters) intended for use by the general public and owned or controlled by a city, county, state or municipal corporation shall be allowed.

(B) Prior to installing a shelter, the sponsor shall notify owners of property located within 150 feet of the center point of the proposed site location that the sponsor intends to apply to the Planning Director for authority to install a shelter. Thereafter, the sponsor may submit to the Planning Director an application which shall include a plot plan setting out the location of and plans and specifications for the proposed shelter. With the consent of the Director, more than one shelter location may be included in an application.

(C) Within 30 days after the application, the Planning Director shall review it in light of the effects on:

- (1) Surrounding land uses;
- (2) Vehicular traffic and pedestrian safety;

- (3) Drainage;
- (4) Native or landscaped vegetation;
- (5) Public and private utilities;
- (6) Road construction and maintenance;
- (7) Access or egress from adjacent property; and
- (8) Compliance with the applicable building code.

(D) If the application is approved, the shelter may be installed. If the application is not approved, the sponsor shall be given written notice of that determination and the basis therefore.

#### **8.D.2 – Historical Structures and Sites Permits**

### **§ 39.8450 [36.0520] HISTORICAL STRUCTURES AND SITES PERMITS**

The following requirements and procedures shall apply in addition to the provisions of the State Building Code, to a permit application under MCC Chapter 29, Building Regulations, concerning any historical landmark as defined in MCC 39.5155, or any building structure or premises classified HP under MCC 39.5100.

(A) In addition to the other applicable provisions of this Chapter, approval of a building permit to enlarge, alter, repair, improve or convert a building or structure described in this Section or to erect, construct, locate or relocate a building or structure on any premises so described, shall also be subject to the applicable design review provisions of MCC 39.8000 through 39.8050.

(B) In addition to the final design review criteria listed in MCC 39.8040 and the standards and exceptions of MCC 39.8045 and 39.8050, approval of a final design review plan for a building or structure described in this Section shall be based on the following criteria:

- (1) The appearance as to the design, scale, proportion, mass, height, structural configuration, materials, architectural details, texture, color, location and similar factors

shall relate harmoniously with the historical characteristics of the premises and of any existing building or structure, consistent with Building Code requirements.

(2) The factors listed in Subsection (B)(1) of this Section which have previously been changed and which significantly depart from the original historical character of the premises, building or structure, shall be restored to the maximum practical degree, within limitations of the scope of the work proposed under the permit.

(C) An application for a permit to remove or demolish a building or structure described in this Section shall be subject to the following:

(1) The permit shall not be issued for 120 days following the date of filing, unless otherwise authorized by the Board under Subsection (C)(7) of this Section.

(2) The permit application shall be considered a Type IV decision to be initiated by the record owner or the owner's agent.

(3) Except as otherwise provided in this Subsection (C) of this Section, the application shall be subject to the applicable provisions of Part 1 of this Zoning Code.

(4) A hearing on the application shall be held by the Planning Commission.

(5) The decision of the Planning Commission shall be in the form of a recommendation to the Board.

(a) The Planning Commission may recommend measures to preserve the building or structure, with or without conditions, including by purchase, trade, relocation or by approval of a change of use notwithstanding the use limitations of the base zone;

(b) The Planning Commission may recommend removal or demolition of the building or structure based upon a finding that practical preservation measures are inadequate or unavailable.

(c) The Planning Commission recommendation shall be based upon findings in relation to the applicable policies of the Comprehensive Plan.

(6) The Planning Commission decision shall be submitted to the Clerk of the Board by the Planning Director not later than ten days after the decision is announced.

(7) The Board shall conduct a de novo hearing on the application under the notice and review procedures of a type IV decision and the approval criteria in Subsection (C)(5) of this Section. The Board may affirm, reverse, or modify the recommendation of the Planning Commission. The approval criteria of MCC 39.1205 shall not apply to the decision.

(8) In the event the Board fails to act on the application within the 120-day period specified in Subsection (C)(1) of this Section, the Building Official may issue the permit.

(D) Notwithstanding the provisions of MCC 29.009, action to abate an unsafe building nuisance or an abandoned drive-in business nuisance, by demolition or removal of a building or structure described in this Section, shall be subject to the provisions of Subsection (C) of this Section.

(E) Exception. Abatement of an unsafe building or structure may proceed under MCC 29.009, upon a finding by the Director of Community Services that the condition of the building or structure is beyond practical repair or restoration or is a continuous threat to the safety of life or property which cannot otherwise be eliminated.

#### **8.D.2 – Marijuana Business**

### **§ 39.8500 [36.0560] MARIJUANA BUSINESS**

(A) The purpose of this Section is to protect and preserve the public health, safety and general welfare of the community by establishing restrictions on the siting and operation of Marijuana Businesses. The nature, extent, scope, and operation of Marijuana Businesses is authorized and prescribed by state law and administrative rule, not by this or any other County ordinance or act. No County ordinance or other act shall be interpreted as authorizing any person to engage in any activity prohibited by law nor shall any County ordinance or other act be applied in any manner that would authorize any person to engage in any activity prohibited by law. Accordingly, this Section, through Table A and the other provisions of this Section, imposes restrictions on the establishment and operation of Marijuana Businesses and does not constitute a separate source of authority for the establishment and operation of Marijuana Businesses. Nothing in this Section regulates the personal use of marijuana.

(B) In construing this Section, including the definitions of the terms given in Subsection (C) of this Section, related provisions of state law and administrative rule provide relevant context.

(C) The following definitions apply to this Section and to the implementation of this Section through other provisions of the Multnomah County Code.

(1) The term “Marijuana Business” and its derivations means an enterprise authorized by state law involving medical or recreational marijuana production, medical or recreational marijuana processing, recreational marijuana wholesaling, medical marijuana dispensing, or retailing of recreational marijuana. Nothing in this section authorizes collocation of medical and recreational enterprises beyond that allowed under state law.

(2) The term “Outdoor Production” means producing marijuana:

(a) In an expanse of open or cleared ground; or

(b) In a greenhouse, hoop house or similar non-rigid structure that does not utilize any artificial lighting on mature marijuana plants, including but not limited to electrical lighting sources.

(3) The term “Indoor Production” means producing marijuana in any manner:

(a) Utilizing artificial lighting on mature marijuana plants; or

(b) Other than “outdoor production,” as that is defined in this section.

(D) A proposal for establishing, altering, expanding or replacing a Marijuana Business will be reviewed as specified in Table A below and is subject to the specified criteria therein as well as the criteria set forth in paragraph E of this section. For purposes of MCC 39.8315, a proposal for the alteration or expansion of an existing building or structure by more than 400 square feet of floor area or ground coverage, or for replacement of a building or structure shall be deemed to have a greater adverse impact on the neighborhood. Where no review process for a particular Marijuana Business in a particular base zone is specified in Table A, the Marijuana Business may not operate in that base zone.

#### **Table A**

X = Not Allowed



Base Zone	Marijuana Production	Marijuana Processing	Marijuana Wholesaling	Marijuana Dispensing or Retailing
CFU CFU-1 CFU-2 CFU-3 CFU-4 CFU-5	Outdoor Production only 39.4070(C)	X	X	X
EFU	39.4220(A)	39.4225(L)	X	X
MUA-20	39.4310(A)	39.4320(B)(2)	X	X
UF-20	39.4751(B)	39.4753(B)(2)	X	X
RR	Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet. 39.4360(B)	X	X	X
LR-5	X	X	X	X
LR-7	X	X	X	X
LR-10	X	X	X	X
RC	Indoor Production only 39.4410(A)	39.4420(B)(4)	39.4420(B)(3)(a)	39.4420(B)(1)
PH-RC	Indoor Production only 39.4510(A)	39.4520(B)(6)	39.4520(B)(4)	39.4520(B)(1)

OR	Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet. 39.4610(B)	X	X	X
OCI	Indoor Production only 39.4660(B)	39.4665(C)	39.4665(B)(3)	39.4665(A)
BRC	Indoor Production only 39.4460(A)	393.4470(B)(3)	X	39.4470(B)(1)
SRC	Indoor Production only 39.4560(A)	39.4570(B)(3)	X	39.4570(B)(1)
All Other Base Zones	X	X	X	X

(E) A Marijuana Business is required to meet the criteria referenced in Table A and must comply with the following:

(1) A Marijuana Business shall be located a minimum of 1,000 feet from a public or private school.

(a) The measurement in the Exclusive Farm Use base zone shall be made using a straight line extending horizontally from the closest school property line to the closest part of any canopy area or building or structure used for marijuana production or marijuana processing.

(b) The measurement in all other base zones shall be made using a straight line extending horizontally from the closest point anywhere on the property line of the Marijuana Business property to the closest school property line.

(2) Outdoor marijuana canopies, buildings and structures used for indoor or outdoor marijuana production, and buildings and structures used for marijuana processing shall be located at least 100 feet from any property line, unless an Adjustment or Variance is approved. The distance shall be measured using a straight line extending horizontally from the closest part of the canopy area or building or structure used for marijuana production or marijuana processing to the closest property line. This 100 foot setback does not apply to a building or structure lawfully established prior to January 1, 2016.

(3) All Marijuana Business buildings must be equipped with an air filtration system designed and verified by an Oregon licensed mechanical engineer to ensure no marijuana odor at property lines. The system must be operated and maintained in the manner designed and instructed by the Oregon licensed mechanical engineer. Doors and windows shall remain closed, except for the minimum length of time needed for ingress to or egress from the building. The air filtration system requirement does not apply to a building used as part of outdoor production.

(4) A Marijuana Business in a Rural Residential (RR) base zone shall not produce or permit to be produced sound that is detectable at the property line. A Marijuana Business in all other base zones shall comply with the county Sound Control Law, MCC 15.265 – 15.274. A Marijuana Business is not eligible for a variance as prescribed in MCC 15.271 of the county Sound Control Law.

(5) During the period commencing 30 minutes before sunset and ending 30 minutes after sunrise the following day, artificial lighting shall not be visible from outside a building or structure used for marijuana production.

(6) With respect to the establishment, alteration, expansion or replacement of a Marijuana Business supported by a building or other structure, the Significant Environmental Concern Overlays, MCC 39.5500 through MCC 39.5860 (SEC), shall not apply to a building or structure lawfully established prior to January 1, 2016, but shall apply to all other buildings and structures within the SEC. The farm use exception in MCC 39.5515(A) from SEC permit requirements shall apply only to marijuana production in the Exclusive Farm Use base zone and shall not apply to a Marijuana Business in any other instance.

(7) Fences, walls or other barriers:

(a) Shall be limited in area by being located no more than 20-feet in any direction from the outer extent of all areas used for Marijuana Business activities, including but not limited to buildings, structures, outdoor marijuana canopies, and areas used for off-street parking, loading, and storage.

(b) Shall not be electrified, use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.

(c) Shall not include plastic sheeting, knitted polyethylene, woven polypropylene, vinyl coated polyester, or similar materials.

(d) No variance, adjustment, deviation or any other modification to these fencing standards is allowed.

(8) No more than one of each of the following Marijuana Businesses may be established on the same Lot of Record.

- (a) Marijuana production
- (b) Marijuana processing
- (c) Marijuana wholesaling
- (d) Marijuana retailing
- (f) Marijuana dispensary.

(9) The following uses are not allowed as a Home Occupation: Marijuana Business, private or public research of cannabis, or laboratory for the testing of marijuana items.

(10) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses:

- (a) A new dwelling used in conjunction with a marijuana crop.
- (b) A farm stand, as described in ORS 215.213(1)(r) or 215.283(1)(o), used in conjunction with a marijuana crop.
- (c) A commercial activity, as described in ORS 215.213(2)(c) or ORS 215.283(2)(a), carried on in conjunction with a marijuana crop.

#### 8.D.4 Mobile Homes and Mobile Home Parks

### **§ 39.8600 [11.15.7705] DEVELOPMENT STANDARDS FOR MOBILE HOMES ON INDIVIDUAL LOTS WITHIN URBAN BASE ZONES**

A mobile home on an individual lot located in any Urban base zone shall:

- (A) Be a *manufactured home* constructed after June 15, 1976, and carry a State insignia indicating compliance with applicable Oregon State mobile home construction or equipment standards;
- (B) Notwithstanding deterioration which may have occurred due to misuse, neglect, accident or other cause, meet the State standards for mobile home construction evidenced by the required insignia;
- (C) Be placed on an excavated and back-filled foundation and enclosed at the perimeter;
- (D) Have a minimum floor area of 1,000 square feet;
- (E) Have a pitched roof with a pitch of at least a nominal three feet in height for each 12 feet in width (3:12);
- (F) Be multisectional. A "tip-out" or "expandable" unit is not a multisectional home.
- (G) Be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce heat loss to levels equivalent to the performance standards required of single family dwellings constructed under the state building code as defined in ORS 455.010.

### **§ 39.8605 [11.15.7710] MOBILE HOME PARK APPROVAL CRITERIA**

In approving a mobile home park the approval authority shall find that the proposal:

- (A) Is located outside a "Developed Neighborhood" as designated in the Community Plan;
- (B) Will have direct pedestrian and two-way vehicular access to a publically maintained road;
- (C) Will be located on a site free from development limitations such as slopes exceeding 20%, severe erosion or earth slide potential, or a high seasonal water table;

- (D) Will provide for the privacy of the occupants of the mobile homes, of adjoining dwellings and of outdoor living areas through such means as the placement of mobile homes and accessory structures, the arrangement of landscaping, parking and circulation and the preservation of natural vegetation and other features;
- (E) Will provide for the conservation of energy through orientation of mobile homes, accessory structures and open spaces with regard to solar exposure and climatic conditions (MCC 39.4798 through 39.4803);
- (F) Will provide outdoor or indoor recreation spaces of a type and location suitable to the needs of the residents of the park; and
- (G) Will satisfy the mobile home park development standards of MCC 39.8610.

### **§ 39.8610 [11.15.7715] MOBILE HOME PARK DEVELOPMENT STANDARDS**

A mobile home park approved under this Chapter shall comply with the State standards in effect at the time of construction, the other applicable requirements of this Chapter, and the following:

- (A) Application for a permit shall include evidence that the park will be eligible for a certificate of sanitation required by State law;
- (B) The space provided for each mobile home shall be supplied with piped potable water and electrical and sewage disposal connections;
- (C) Not more than 40 percent of the area of a mobile home space may be occupied by a mobile home and any attached or detached structure used in conjunction with the mobile home;
- (D) Only those accessory structures authorized by Oregon Administrative Rule may be attached to a mobile home;
- (E) The only detached structures located on a mobile home space shall be a carport or a fully-enclosed storage building;
- (F) A mobile home and any attached accessory structure shall not be located less than:
  - (1) Ten feet from any other mobile home or accessory structure attached thereto;
  - (2) Ten feet from any detached accessory building or other building located within the mobile home park; or

(3) Five feet from a mobile home park property line.

(G) A permanent building in a mobile home park shall not be located less than ten feet from another permanent building and shall meet the yards as required in the base zone;

(H) A sight-obscuring fence of not less than six feet in height, with openings only for required entrances or exits to a street or public place, shall be provided between mobile homes and a mobile home park property line;

(I) Each vehicular way in a mobile home park of 50 spaces or more shall be named and marked with signs of a design similar to those for public streets. A map of the named vehicular ways and of the mobile home space numbers shall be provided by the owner to the fire base zone;

(J) There shall be no outdoor storage of furniture, electrical appliances, tools, equipment, building materials or supplies within a mobile home park;

(K) Any mobile home in a mobile home park within an LR-7 or LR-5 base zone shall:

(1) Be located in a mobile home space which complies with the standards of this subsection;

(2) Be a *manufactured home* constructed after June 15, 1976, and carry a State insignia indicating compliance with applicable Oregon State mobile home construction or equipment standards;

(3) Notwithstanding deterioration which may have occurred due to misuse, neglect, accident or other cause, the mobile home shall meet the State standards for mobile home construction evidenced by the required insignia;

(4) Have a minimum floor area of not less than 800 square feet;

(5) Have a roof with a minimum slope of 16 percent (2:12); and

(L) Any mobile home in a mobile home park within an MR-4 base zone shall:

(1) Be located in a mobile home space which complies with the standards of this subsection;

(2) Be a *residential trailer* or *manufactured home* which has a state insignia or other documentation indicating compliance with Oregon State mobile home construction and equipment standards in effect at the time of manufacture, reconstruction or equipment installation;

(3) Notwithstanding deterioration which may have occurred due to misuse, neglect, accident or other cause, the mobile home shall meet the State standards for mobile home construction evidenced by the required insignia;

- (4) Have a minimum floor area of not less than 225 square feet;
- (5) Be equipped with a water closet, lavatory, shower or bath tub, and with a sink in a kitchen or other food preparation space;
- (6) Be provided with a continuous skirting; and
- (7) If a single-wide unit, be tied down with devices which meet state tie-down standards.

#### 8.D.5 – Temporary Dwelling for a Health Hardship Permit

### § 39.8700 [36.0515] TEMPORARY DWELLING FOR A HEALTH HARDSHIP PERMIT.

(A) The purpose of the Temporary Dwelling for a Health Hardship Permit authorized in this Section is to allow the convenient provision of supervision and/or assistance with daily care to a person or persons with a demonstrated health hardship by allowing the placement of one temporary dwelling on a lot with a single-family dwelling on a renewable term. This use is temporary in nature and shall not increase the residential density in the rural plan area.

(B) The Planning Director may grant a Temporary Dwelling for a Health Hardship Permit to allow occupancy of a temporary dwelling on a lot in conjunction with an existing single-family dwelling allowed in the zone subject to the following:

- (1) The person with the health hardship is either one of the property owners or is a relative of one of the property owners.
  - (a) If the person with the health hardship is one of the property owners, then the care provider in the other residence is not required to be a relative.
  - (b) If the person with the health hardship is a relative of one of the property owners, then the care provider must be a relative.
  - (c) For the purposes of this section, a relative is defined as child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either.



(2) For each person with a health hardship, a written statement by a licensed physician dated within 90 days of submittal of the initial application, verifying the following information:

(a) The person identified in the application has a health hardship as defined in MCC 39.2000;

(b) The person needs supervision and/or assistance with daily care as that term is defined in MCC 39.2000; and

(c) The proposed care provider is capable of providing the supervision and/or assistance with daily care needed by the person with the health hardship.

(3) Each proposed care provider shall provide a written statement dated within 90 days of submittal of the initial application that the provider understands the physician's determination of the extent of daily care required and is capable of providing and will provide the necessary supervision and/or assistance during implementation of the Temporary Health Hardship Permit.

(4) The following criteria are satisfied:

(a) The temporary dwelling shall be either a mobile home, park-model recreational vehicle or travel trailer.

(b) The temporary dwelling shall be located within 100 feet of the single-family dwelling on the subject lot, unless an adjustment or variance pursuant to MCC 39.8200 through 39.8215 is approved. This distance shall be measured from the closest portion of each building.

(c) The temporary dwelling shall be connected to the same utilities (on-site sewage disposal, power main, well/water meter) as the single-family dwelling. In addition, the temporary dwelling shall be accessed by the same driveway entrance as the single-family dwelling, although the driveway may be extended.

(d) The temporary dwelling will not require any attached or detached accessory structures other than wheelchair ramps.

(C) Prior to installation of the temporary dwelling on the site, the property owner shall:

(1) Obtain the necessary permits to place the temporary dwelling on the site and connect utilities,

(2) The property owner shall record a covenant that states that the dwelling is temporary and must be removed as set forth in (G) below and that the Temporary Health Hardship Permit is not transferable to another party.

(3) In the EFU and CFU zones, the property owner shall record a statement that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules and to conduct accepted farming practices.

(D) Expiration of the Temporary Dwelling for a Health Hardship Permit. The Temporary Dwelling for a Health Hardship Permit expires automatically two years after the date of final approval of the permit unless an extension is approved as set forth in (E) below.

(E) Extension of the Temporary Dwelling for a Health Hardship Permit. The expiration date of a Temporary Dwelling for a Health Hardship Permit may be extended upon satisfaction of the requirements in (B)(1) through (4) above. More than one extension may be granted, but each extension is limited to a period of two years from the date the permit would have otherwise expired. To obtain an extension, the property owner shall use the forms provided by the Planning Director and shall submit the application at least 30 days prior to expiration of the permit. Upon approval of an extension, the Planning Director shall mail notification to the property owners that are contiguous to the subject lot.

(F) Occupancy of the Temporary Dwelling. Occupancy of the temporary dwelling may occur only while the person for which the Temporary Health Hardship Permit was granted lives on the property.

(G) Removal of Temporary Dwelling. The temporary dwelling shall be removed and utility and septic connections shall be terminated within 30 days of expiration of the Temporary Health Hardship Permit, end of the health hardship or the provision of supervision or assistance with daily care.

#### **8.D.6 – Temporary Permits for Certain Uses**

## **§ 39.8750 [36.0510]      TEMPORARY PERMITS FOR CERTAIN USES**

(A) Notwithstanding the limitations of use as established by this Chapter in each of the several base zones, the Planning Director may issue temporary permits, valid for a period of not more than one year after issuance, for structures, or uses which are of a temporary nature, such as:

- (1) Storage of equipment during the building of roads or developments;
- (2) Real estate office used for the sale of lots or housing in subdivisions;
- (3) Temporary storage of structures or equipment;
- (4) Sheds used in conjunction with the building of a structure;
- (5) Temporary housing; or
- (6) Other uses of a temporary nature when approved by the Planning Director.

### **8.D.7 – Type A Home Occupation**

## **§ 39.8800 [33.0540]      TYPE A HOME OCCUPATION**

(A) Type A home occupation is a lawful commercial activity that is conducted within a dwelling unit by a business operator, is subordinate to the residential use of the dwelling unit, is registered with the Planning Director by completing and filing a form provided by the Planning Director, and complies with the following:

- (1) Type A home occupation shall not exceed 20 percent of the gross floor area of the dwelling and attached garage, or 500 sq. ft., whichever is less.
- (2) No more than one non-resident employee or two customers on the premises at any one time. A maximum of eight customer visits may happen per day.
- (3) Modifications to the dwelling to facilitate the use shall be limited to the alteration, replacement or addition of windows or doors or other typically used residential appurtenances.

(4) No deliveries or pick-ups associated with the home occupation between the hours of 7 p.m. - 7 a.m. are permitted. Deliveries and pick-ups shall occur on the premises only. The road serving the premises may not be used for loading or unloading purposes. No more than two pick-ups or deliveries shall occur on any given day.

(5) No outdoor storage or displays shall occur on the premises. Outdoor parking of the business vehicle, motor vehicle owned by the employee or customer is allowed. The use, parking or storing of any vehicle in excess of a gross vehicle weight of 11,000 pounds is prohibited.

(6) No signage shall be allowed, including temporary signage and those exempted under MCC 39.6720 with the exception of property numbers.

(7) The use shall not generate noise, vibration, glare, flashing lights, dust, smoke, fumes, or odors detectable at the property line. This standard does not apply to vehicles entering or exiting the premises, but does apply to idling vehicles. All storage, use and disposal of chemicals and materials shall be in conformance with all other applicable state pollution control regulations.

(8) No repair or assembly of any motor or motorized vehicles. A motorized vehicle includes any vehicle or equipment with an engine including automobiles, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, and chain saws. No operation of a dispatch center where employees enter the premises for the purpose of being dispatched to other locations.

(B) Notwithstanding the transfer of approval rights in MCC 39.1230, registration of a Type A home occupation does not run with the land and is not transferred with ownership of the land. Registration of a Type A home occupation is personal to the business operator and specific to the registered dwelling unit. Registration of a Type A home occupation terminates automatically, immediately and without notification if the business owner ceases to reside full-time in the registered dwelling unit.

(C) Existing Type A Home Occupations that were registered prior to August 18, 2012, which complied with all provisions of the ordinance then in effect, may continue provided any alteration, expansion or establishment of a new home occupation shall be subject to the applicable home occupation regulations. The adoption of this ordinance is not intended to make these existing registrations non-conforming and proposals for alteration, expansion or establishment of a new Type A home occupation on the parcel shall be pursuant to this

ordinance.

#### **~~11.15.2134 Accessory Uses~~**

~~C. Type A home occupations pursuant to the definition and restrictions of MCC 11.15.0010;~~

#### **~~11.15.0010 Definitions~~**

~~A. A type A home occupation is one where the residents use their home as a place of work. Type A home occupations may have up to one non-resident employee or customer on the premises at any one time in addition to the resident participant. No new buildings or modifications to existing structures shall be allowed (constructed after March 14, 1998). No deliveries other than those normally associated with a single family dwelling and between the hours of 7 a.m. – 6 p.m. No outdoor storage or displays shall occur (including vehicle parking associated with the Home Occupation). No signage shall be allowed (including temporary signage and those exempted under MCC 11.15.7912 with the exception of those required under MCC 11.05.500-.575); and no noise above 50 dba (decibels adjusted) at the property lines shall be permitted. No repair or assembly of any vehicles or motors can occur as part of a type A home occupation. A type A home occupation may not serve as headquarters or dispatch where employees come to the site. A type A home occupation must have direct access to a public road (no easements). Type A home occupations shall be filed on a form provided by the Planning Director. Type A Home Occupations must be in conformance with all other applicable state codes.~~

### **8.D.8 – Type B Home Occupation**

#### **§ 39.8850 [33.0550]      TYPE B HOME OCCUPATION**

(A) Type B home occupation is a lawful commercial activity that is conducted in a dwelling or accessory building on a parcel by a business operator, is subordinate to the residential use of the premises, and complies with the following:

(1) The on-site business functions of the home occupation shall take place entirely within a dwelling unit or enclosed accessory building on the premises, except for employee and customer parking and allowed signage. No outdoor storage, business activities or displays shall occur outside of an enclosed building.

(2) Type B home occupation shall not exceed 25 percent of the total gross floor area of the dwelling, attached garage and accessory buildings, or 1,000 sq. ft., whichever is less.

(3) The home occupation shall not employ more than one non-resident employee. There shall be no more than two customers on the premises at any one time.

(4) No more than a total of 20 vehicle trips per day by customers of the home occupation,

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delivery service providers serving the home occupation and the employee may be authorized through the review process. No deliveries or pick-ups associated with the home occupation between the hours of 7 p.m. – 7 a.m. are permitted. Deliveries and pick-ups shall occur on the premises only. The road serving the premises may not be used for loading or unloading purposes. No more than two pick-ups or deliveries shall occur on any given day.

(5) In addition to the required residential parking, the premises has on-site parking pursuant to MCC 39.6500 – 39.6600 to accommodate the total number of employees and customers proposed to be on the premises at any one time. The use, parking or storing of any vehicle in excess of a gross vehicle weight of 11,000 pounds is prohibited.

(6) Notwithstanding MCC 39.6700 – 39.6820, only one, non-illuminated, identification sign not to exceed two square feet in area may be attached to a building used for the business.

(7) The use shall not generate noise, vibration, glare, flashing lights, dust, smoke, fumes, or odors detectable at the property line. This standard does not apply to vehicles entering or exiting the premises, but does apply to idling vehicles. All storage, use and disposal of chemicals and materials shall be in conformance with all other applicable state pollution control regulations.

(8) No repair or assembly of any motor or motorized vehicles. A motorized vehicle includes any vehicle or equipment with an engine including automobiles, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, and chain saws.

(9) No building or structure is proposed to be constructed or modified in a manner that would not otherwise be allowed in the base zone. Buildings or structures used as part of the home occupation shall not have or require a building code occupancy rating other than R-3 or U as determined by the building official.

(10) In the CFU and EFU zone base zones, the home occupation will not unreasonably interfere with other uses permitted in the general base zone and the use will:

(a) Not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands;

(b) Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel.

(B) Each approval issued by the approval authority shall be specific for the particular home occupation and reference the business operator, number of employees allowed, the hours of operation, frequency and type of deliveries, the type of business and any other specific information for the particular application.

(C) Notwithstanding the transfer of approval rights in MCC 39.1230, approval of a Type B home occupation does not run with the land and is not transferred with ownership of the land. Approval of a Type B home occupation is personal to the business operator and specific to the authorized premises. Approval of a Type B home occupation terminates automatically, immediately and without notification if the business owner ceases to reside full-time on the authorized premises.

(D) The Type B home occupation may continue for a period of three years from date of the final decision provided it is in compliance with the approved permit. At the end of the three year period, the right to operate the Type B home occupation from the property expires automatically unless the permit is renewed for an additional three year period pursuant to the following:

(1) The Type B home occupation has been conducted in full compliance with the permit for a preponderance of the time since the prior approval.

(2) Each renewal period shall be for a three year period from the last expiration date. The Type B home occupation may be renewed an unlimited number of times.

(3) To obtain a renewal of the Type B home occupation, the business operator shall use the forms provided by the Planning Director and shall submit the application prior to expiration of the permit. Provided the renewal application is submitted on or before the expiration date, the business operator may continue the Type B home occupation pending the County's final decision on the renewal request.

(4) A Type B home occupation renewal shall be processed pursuant to the Type II approval process in MCC 39.1105.

(5) The Planning Director may consider minor modifications to the business activities authorized in (B) above and the conditions of approval if requested by the business operator as part of a Type B home occupation renewal application. A minor modification may be approved if it:

(a) Is consistent with the prior approval;

(b) Is consistent with MCC 39.8850(A); and

(c) Does not increase the intensity of use of the premises.

~~A. Type B home occupation as provided for in MCC 11.15.7455 and provided: [Amended 1998, Ord. 900 § III]~~

~~1. That no sale of merchandise is made from the premise; and [Renumbered 1998, Ord. 900 § III]~~

~~2. That noise, odor, smoke, gases, fallout, vibration, heat or glare resulting from the activity is not detectable at any property line. [Renumbered 1998, Ord. 900 § III]~~

~~A home occupation located on high-value farmland may employ only residents of the home.~~

#### **8.E – Accessory Structures – Condition of Approval**

### **§ 39.8860 [33.0565]      CONDITION OF APPROVAL --ACCESSORY STRUCTURES**

Prior to issuance of any development permit involving an Accessory Building, the property owner shall record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use.

#### **8.F – Farm Stands**

### **§ 39.8870      Purposes**

The purposes of these regulations are to limit the area, location, design, and function of farm stand promotional activities, events and farm gatherings to the extent allowed by law in order to retain a maximum supply of land in production for farm crops or livestock, to ensure public health and safety, to minimize impacts on nearby farming operations, residents, roads, traffic circulation, wildlife and other natural resources, and to maintain the rural character.

### **§ 39.8875      Definitions**

As used in MCC 39.8870 through 39.8885, the following words shall have the following



meaning:

**Farm Crops or Livestock** - Both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. “Processed farm crops and livestock” includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

**Local Agricultural Area** - Oregon or an adjacent county in Washington that borders Multnomah County.

**Prepared Food Items** - Food that has been prepared and is sold for immediate consumption.

**Promotional Activity** – A fee-based activity, gathering or event in conjunction with a farm stand that promotes the contemporaneous sale of farm crops or livestock from the farm stand and whose primary purpose is significantly and directly related to the farming operation. Permissible farm stand promotional activities include harvest festivals, corn mazes, hayrides, farm animal exhibits, small farm-themed gatherings such as birthday parties and picnics, school tours, musical entertainment (but not concerts), farm product food contests and food preparation demonstrations, and similar activities. Fee based activities, such as weddings, corporate retreats, family reunions, anniversary gatherings, concerts, amusement park rides, sporting events and other activities for which the primary focus is the underlying cause for the gathering or activity rather than the farm operation and the sale of farm crops, are prohibited. Farm-to-plate meals can also be a promotional activity if more than 50 percent of the food making up the farm to-plate meal comes from farm crops or livestock grown on the farm.

#### § 39.8880 Farm Stand Permits

(A) A farm stand that occupies one acre or less, inclusive of parking area, ingress and egress driveways, product display area outside the farm stand structure, and has no promotional activities, shall be reviewed as a Type I permit.

(B) A farm stand that occupies more than one acre, inclusive of parking area, ingress and egress driveways, product display area outside the farm stand structure, or has one or more promotional activities, shall be reviewed as a Type II permit.

#### § 39.8885 Standards for Farm Stands

(A) The farm stand is associated with and located on the same lot, parcel or tract as an active farm operation.

(1) Not more than one farm stand permit, whether Type I or Type II, shall be granted per farm tract.

(2) Not more than one Type II farm stand permit shall be granted where any Person has a financial or operational interest in more than one farm operation or in an farm operation occurring on more than one lot, parcel or tract. The prohibition in this paragraph applies, but is not limited, to those instances in which more than one legal entity has a financial or operational interest in the active farm stands described in this paragraph and one or more individuals has a financial or operational interest in such entities.

(B) One or more structures may be approved as part of the farm stand provided that such structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. Whether permanent or temporary, structures for banquets, public gatherings or public entertainment and structures designed or used for occupancy as a residence or for activity other than the sale of farm crops and livestock are prohibited.

(C) The sale of retail incidental items may occur in farm stand structures. Promotional activity shall occur outside of farm stand structures. The farm stand shall be open for retail sales of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, during the hours that promotional activity is offered.

(D) The annual gross revenue derived from the sale of retail incidental items and from fees collected for promotional activity, including sales made and fees collected by third parties, shall not make up more than 25 percent of the total gross annual retail revenue of the farm stand. When taken together, the nature and extent of the farm stand promotional activity shall be reasonable in light of the 25 percent limitation set forth in this subsection in relation to the total gross annual retail revenue of the farm stand. On an annual, calendar-year basis, and prior to July 1 of each year, the farm stand operator shall submit a written statement prepared by a certified public accountant that certifies compliance with the 25 percent limitation set forth in this subsection for the previous tax year. The compliance statement required in this subsection shall be submitted on the form and in the manner directed by the County.

(E) The floor area of the retail area of all farm stand structures shall not exceed 1,500 square feet.

(F) The maximum land area occupied by farm stand structures and associated permanent parking shall be two acres.

(G) As compared to other alternatives, the siting of the farm stand, together with all associated structures, promotional activity areas, parking areas, and vehicular and pedestrian traffic circulation routes, or any part thereof, minimizes the amount of land area removed from the agricultural land base and, secondarily, minimizes interference with agricultural operations on adjacent lands.

(H) The amount of land used for promotional activity, including temporary parking, shall not exceed five percent or five acres of the property on which the farm stand is located, whichever is less, and is the minimum amount necessary to serve the promotional activity.

(I) Temporary parking for promotional activity may occur on high-value soils only if non-high-value soils are unavailable and the final harvest of the area to be used for temporary parking occurs prior to commencement of the temporary parking use or the area to be used for temporary parking was not farmed during the current growing season. The temporary parking area shall not be graveled or otherwise rendered unusable for agriculture in the following growing season and may not be permanently taken out of agricultural production in order to serve as a temporary parking area.

(1) No mud, dirt, rock or other debris from the temporary parking area shall be deposited upon a public road. If these materials are tracked onto a public road, the event operator shall be responsible for its immediate removal.

(J) There shall be no charge or fee collected for the parking of vehicles in either permanent or temporary parking areas. Permanent parking areas are to remain available for public parking during all hours that the farm stand is open to the public and may not be used for promotional activity or occupied by picnic tables, sales displays, or other structures that obstruct the parking use.

(K) No artificial amplification of sound shall occur before 9:00 AM or after 8:00 PM. At no time shall a promotional event generate noise above 60 dB(A) (decibels adjusted) at the property lines. (Note: The sound intensity of 60 decibels is comparable to conversations in a public place like a restaurant.)

(L) Farm stand signage shall comply with the applicable provisions of MCC 39.6700 through 39.6820.

(M) Exterior lighting shall be in compliance with the dark sky lighting standards of MCC 39.6850.

## **8.G – Wineries**

### **§ 39.8900 Purposes**

The purposes of these regulations are to establish standards for siting wineries in accordance with the provisions of ORS 215.452 and to specify the uses and activities that may be conducted as part of a winery. Other purposes are to regulate the area, location, design and function of agri-tourism or other commercial events at wineries to the extent allowed by law in order to retain a maximum supply of land in agricultural production, to ensure public health and safety, to minimize impacts on nearby farming operations, residents, roads, traffic circulation, wildlife and other natural resources and to maintain the rural character.

### **§ 39.8905 Definitions**

As used in MCC 39.8900 through 39.8920:

**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.

**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.

**Winery** - Means an operation with a maximum annual production of:

- (1) Less than 50,000 gallons of wine from grapes 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 of at least three years 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 subsection (1) (a), (b) or (c) of this definition; or
- (2) At least 50,000 gallons of wine from grapes 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 of at least three years 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 subsection (2)(a), (b), (c) or (d) of this definition.

## **§ 39.8910                      Standards for Establishment and Operation of Wineries**

A winery authorized under MCC 39.4225(G) shall comply with the following:

- (A) The applicant shall show that vineyards described in the definition of the term “winery” in MCC 39.8905 have been planted or that the contract has been executed, as applicable.
- (B) For the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:
  - (1) There must be a setback of at least 100 feet from all property lines for the winery and all public gathering places unless an adjustment or variance allowing a setback of less than 100 feet is granted.

(2) The winery shall have direct access onto a public road. Internal vehicle circulation shall avoid conflicts with accepted farming or forest practices on adjacent lands.

(C) In addition to the off-street parking and loading standards of MCC 39.6500 through 39.6600, a winery shall provide minimum required off-street parking spaces for all activities or uses of the lot, parcel or tract on which the winery is established in accordance with the following:

Winery (production, bottling and storage)	One space for each two employee positions on the largest shift.
Areas for use by or for patrons, including tasting room, reception area and retail sales	One space for each 300 square feet of gross floor area.
Agri-tourism or other commercial events	One space per each 2.5 expected attendees. The total area provided for event parking shall be based on a ratio of 300 square feet for every 2.5 persons anticipated.

### **§ 34.6815 Uses and Activities in Conjunction with a Winery**

(A) In addition to producing and distributing wine, a winery authorized under MCC 39.4225(G) may engage in the following uses and activities subject to the standards in MCC 39.8910 and the applicable standards in this section:

- (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.

(a) Items allowed to be marketed and sold under this subsection (A)(3) of this section include food and beverages:

- (i) 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
- (ii) Served in conjunction with an activity authorized by subsection (A)(2), (A)(4), or (A)(5) of this section.

(b) 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 this subsection (A)(3) of this section. Food and beverage services authorized under this subsection (A)(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.

(4) Carry out agritourism or other commercial events on the tract occupied by the winery, subject to the provisions in MCC 39.8920.

(5) Host charitable activities for which the winery does not charge a facility rental fee.

(B) The gross income of the winery from the sale of incidental items or services provided pursuant to subsection (A)(3), (A)(4) and (A)(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. A winery shall submit 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.

(C) When a bed and breakfast facility is sited as a home occupation within a lawfully established dwelling on the same tract as a winery established under MCC 39.4225(G) 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.

### **§ 34.6820            Standards for Agri-tourism or Other Commercial Events at Wineries**

Agri-tourism or other commercial events carried out by a winery as authorized by MCC 39.4225(T) shall be subject to the following:

(A) Events on the first six days of the 18-day limit per calendar year are authorized through the issuance of a renewable multi-year license that:

(1) Has a term of five years; and

(2) Is subject to a Type I administrative review to determine necessary conditions pursuant to subsection (E) of this section.

(B) The 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.

(C) Events on days seven through 18 of the 18-day limit per calendar year are authorized through the issuance of a renewable multi-year permit that:

(1) Has a term of five years;

(2) Is subject to a Type II administrative review to determine necessary conditions pursuant to subsection (E) of this section; and

(3) Is subject to notice as specified in ORS 215.416(11).

(D) The decision on a permit under subsection (C) 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.

(E) As is 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 following standards shall apply to a license or permit issued pursuant to subsection (A) or (C) of this section:

(1) Hours of Operation: Events shall begin no earlier than 8:00 AM and shall conclude no later than 9:00 PM.

(2) Parking and Traffic Management: Events shall comply with the following:

(a) The event will be conducted in compliance with a parking plan approved by the Planning Director. All event parking shall be accommodated on the tract; off-tract parking is prohibited. The amount of land used for parking associated with agri-tourism or other commercial events at wineries shall be the minimum necessary to accomplish the objective of supporting winery operations on the property and retaining farm land in production. The amount of land used for temporary event parking, shall not exceed five percent or five

acres of the tract on which the winery is located, whichever is less.

(b) The event will be conducted in compliance with a traffic control plan providing safe and efficient on-site and off-site traffic management approved by the County Engineer, unless the County Engineer finds that a traffic control plan is unnecessary due to the nature of the event or finds that the characteristics of the tract or any other factor inherently ensures that traffic circulation and management will occur in a safe manner.

(c) Temporary parking for agri-tourism or other commercial events shall use areas on the property that are not high-value soils if available, but if lacking these soils, temporary parking may use farmed areas of the property that have already been harvested or on areas that were not farmed during the current growing season. The temporary parking area shall not be graveled or otherwise rendered less productive for agricultural use in the following growing season.

(3) Noise Management: No artificial amplification of sound shall occur before 9:00 AM or after 8:00 PM. At no time shall the event generate noise above 60 dB(A) (decibels adjusted) at the property lines. (Note: The sound intensity of 60 decibels is comparable to conversations in a public place like a restaurant.)

(4) Sanitation Facilities: Sufficient restroom facilities meeting County health standards for the expected number of attendees shall be provided.

(5) Solid Waste: The event will be conducted in compliance with a solid waste plan that explains how solid waste generated by the event will be collected and disposed of at a Metro designated regional solid waste facility.

(F) If a winery conducts agri-tourism or other commercial events authorized by ORS 215.452(5) and MCC 35.2625(T) the winery may not conduct agri-tourism or other commercial events or activities authorized by ORS 215.283(4).