LINN COUNTY OREGON
Commissioners' Journal
CJ2015-00108
03/25/2015 11:00:00 AM

2015-00108

I Steve Druckenmiller County Clerk for Linn County Oregon certify that the instrument identified herein was recorded in the Clerk records
Steve Druckenmiller - County Clerk

FILED
MAR 25 2015
STEVE DRUCKENMILLER, CLERK
By _____ Clerk

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR LINN COUNTY OREGON

IN THE MATTER OF AMENDING THE LINN COUNTY LAND DEVELOPMENT CODE [LCC CHAPTER 920 AND LCC CHAPTER 929]	**RESOLUTION & ORDER NO. 2015-086 (Planning and Building Department) (BC15-0002) (Findings and Conclusions)**

WHEREAS, The Board of County Commissioners for Linn County (Board) conducted a duly advertised public hearing on March 18, 2015, for the purpose of considering the matter of proposed Land Development Code (Code) text amendments to be codified at Title 9, Chapter 920.100 – Development Code Definitions; and Chapter 929.830 – UD-II Uses Permitted Through a Type IIA Conditional Use Review;

WHEREAS, The proposed Code text amendments had been previously considered by the Linn County Planning Commission at a duly advertised meeting on March 10, 2015, and who voted 5-0 to recommend approval to the Board;

WHEREAS, The Board opened the meeting for public comment and after hearing such comments reached a consensus to direct that the proposed text, as set forth in Exhibit 1, attached hereto, be placed in ordinance format for formal adoption;

WHEREAS, The findings in support of the proposed Code text amendments are attached hereto as Exhibit 2 (BC15-0002 Decision Criteria, Findings and Conclusions); and now, therefore, be it

RESOLVED, That the Board of County Commissioners for Linn County approves the Code text as set forth in Exhibit 1, and the Findings and Conclusions as set forth in Exhibit 2; and

ORDERED, That the text set forth in Exhibit 1 be placed in ordinance format for formal adoption in compliance with ORS Chapter 215 by the Board of County Commissioners for Linn County.

Resolved this 25th, day of March, 2015.

BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY

Roger Nequist, Chairman

John K. Lindsey, Co-Chairman

William C. Tucker, Commissioner

APPROVED AS TO CONTENT:

Robert Wheeldon
Director, Linn County Planning and Building

APPROVED AS TO FORM:

Deputy/County Attorney for Linn County

EXHIBIT 1

RESOLUTION AND ORDER NO. 2015-086

(Planning and Building Department)
(BC15-0002)

LINN COUNTY LAND DEVELOPMENT CODE TEXT AMENDMENTS

LCC 920.100

LCC 929.830

TITLE 9

COMMUNITY DEVELOPMENT

Subtitle 2 — Land Development Code
Division 1 — Administrative Provisions

CHAPTER 920

DEVELOPMENT CODE; GENERAL PROVISIONS

TABLE OF CONTENTS

Section Title

920.010 Title; short titles
920.030 Development Code organization
920.040 Purpose
920.050 Interpretation
920.100 Definitions
920.200 Terms having legal meaning for purposes of administering the Land Development Code but which may not be used in the Code
920.300 Interpretations of zoning map boundaries
920.400 Expired practices, interpretations, and policies
920.500 Current practices, interpretations, and policies
920.600 New uses and existing uses

Statutory References and Other Authorities

Legislative History of Chapter 920

Appendix 1 to Chapter 920 - Figures 1 to 8

Appendix 2 to Chapter 920 — Authorized Units of Land

920.010 Title; short titles

(A) LCC 920.010 to 939.999 shall be known as the "Linn County Land Development Code." LCC 920.010 to 939.999 may also be referred to and cited as the "Land Development Code" or the "Development Code."

(B) The Development Code consists of text and map(s), entitled the "Linn County Zoning Map," or "Zoning Map." The Zoning Map is found in Appendix 1 following this Development Code. If a conflict arises between the Zoning Map and the text of the Development Code, the text shall govern.

(C) Wherever the term "Linn County Land Development Code," "Land Development Code" or "Development Code" is used, the term includes all amendments to the Development Code.

[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98]

920.030 Development Code organization

(A) Organization of chapters within the Land Development Code shall be as follows:

(1) Chapters may be divided into sections.

(2) Sections may be divided into subsections.

(3) Subsections may be divided into paragraphs.

(4) Paragraphs may be divided into subparagraphs.

(5) Subparagraphs may be divided into sub-subparagraphs.

(6) Sub-paragraphs may be divided into sub-sub-paragraphs.

(B) Citations to the organization required in subsection (A) shall be as follows:

LCC NNN.nnn (SS) (P) (SP) (SSP) (SSSP)
An example is: LCC 924.134 (B) (1) (a) (i) (II)

where those abbreviations have the meanings of:

(1) LCC ..... Linn County Code
(2) NNN ..... Chapter
(3) nnn ..... Section
(4) SS ..... Subsection
(5) P ..... Paragraph
(6) SP ..... Subparagraph
(7) SSP ..... Sub-subparagraph
(8) SSSP ..... Sub-sub-subparagraph

(C) A long chapter, or more that one chapter, that treats a variety of subjects may be divided into subchapters. A subchapter usually has an

uppercase title preceded by an uppercase roman numeral. A subchapter may be referred to in the text by its title.
[Adopted 98-002 §3 eff 3/4/98; amd 98-432 §2 eff 10/21/98]

920.040 Purpose

(A) The text and zoning map(s) in this Land Development Code shall prescribe procedures and standards for the use and development of land in the unincorporated areas of Linn County.

(B) The Development Code shall implement the *Comprehensive Plan* and shall protect and promote the public health, safety, and welfare; provide the economic and social advantages which result from an orderly, planned use of land; and regulate the partitioning and subdividing of land. The provisions of this Development Code are designed:

(1) To ensure the protection, conservation and proper use of land in Linn County by providing uniform procedures and standards for land use, division and development in unincorporated areas of the county;

(2) To aid in the implementation of the *Comprehensive Plan* for Linn County;

(3) To provide for desirable, appropriately-located residential areas for a variety of dwelling types at suitable population densities with adequate provisions for usable open space;

(4) To protect agriculture, timber, residential, commercial, industrial and publicly-owned areas from the intrusions of incompatible uses and to provide opportunities for compatible establishments to concentrate for efficient operation in mutually-beneficial relationship to each other and share services;

(5) To ensure preservation of adequate space for agricultural, forest, commercial, industrial and other activities necessary for a healthy economy;

(6) To preserve and enhance the use of agricultural and forest resource lands through the adoption of development limitations and to provide for the orderly and efficient transition of such resource lands to other land uses based on a showing of public need;

(7) To promote safe, fast and efficient movement of people and goods without sacrificing the quality of Linn County's environment or undermining the public investment in roads; and to provide off-road parking;

(8) To pursue excellence and originality of design in all future developments and to preserve the natural beauty of Linn County;

(9) To stabilize expectations regarding future development of Linn County, thereby providing a basis for wise decisions with respect to such development;

(10) To preserve and enhance the quality of Linn County's environment;

(11) To emphasize the conservation of energy and the use of renewable energy resources;

(12) To ensure that lots and parcels are created at sufficient size and shape to prevent congestion and overcrowding;

(13) To establish reasonable standards for lot and parcel design to further the orderly development and use of land and to ensure that proper descriptions and monumentation of land divisions occur;

(14) To ensure the establishment and protection of adequate provisions for water supply, waste disposal, surface drainage, access, utilities and other public facilities and services needed for public health, safety and convenience;

(15) To minimize, through property design and layout, the dangers to life and property generated by the hazards of fire, floods, landslides, soil erosion and other natural dangers; and

(16) To provide for an adequate road system designed to handle anticipated usage and to minimize safety hazards and adverse impacts on the neighboring areas and the environment.
[Adopted 98-002 §3 eff 3/4/98

920.050 Interpretation

(A) For the purpose of this Development Code, words used in the present tense include the future; masculine gender includes the feminine; the word "shall" is mandatory; the word "may" is permissive; the words "may not" are prohibitory.

(B) For purposes of the Land Development Code, use of the term "a dwelling" is a limitation meaning only one dwelling of the kind being proposed or authorized.

(C) The word "to" means "to and including"

(1) when used in a reference to a

(a) series of

(i) Code chapters, sections, subsections, paragraphs, subparagraphs, or sub-subparagraphs, or

(ii) any such similar series in the Oregon Revised Statutes, or

(b) range of numbers are letters.

(2) For example,

(a) LCC 921.100 to 921.325 includes both LCC 921.100 and LCC 921.325 and all intervening sections, and

(b) 10 to 12, or A to G includes both 10 and A, respectively, and 12 and G, respectively, and all intervening numbers or letters.

(D) When a provision of this Development Code is less restrictive or is superseded by provisions established under other laws, rules, ordinances or regulations, the more restrictive laws, rules, ordinances or regulations shall apply.
[Adopted 98-002 §3 eff 3/4/98]

920.100 Definitions

(A) A term not defined in this Development Code shall have its ordinary accepted meaning within the context in which it has been used. The most current edition of *Webster's New Collegiate Dictionary* shall be considered the source of accepted meanings.

(B) As used in 920.010 to 939.999:

(1) "**Abut**" means to border another unit of land for greater than point contact.

(2) "**Accepted farming practice**" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money and customarily utilized in conjunction with farm use.

(3) "**Accepted forest practice**"

(a) Means cultivation, management, protection and harvest of forest crops including activities such as growing, spraying, thinning, pruning, protecting, harvesting through cutting, and transporting of deciduous and coniferous trees.

(b) The term also includes the development of forest access roads and the extraction and processing of aggregate resources necessary for construction and maintenance of such roads, and include facilities necessary for protection of the forest resource from wildfire.

(4) "**Access**" means the place, means or way by which pedestrians or vehicles shall have adequate and usable ingress and egress to a property, a use of land, or a parking space (see **access roads**).

(5) "**Accessory buildings** means any building, the use of which is incidental, appropriate, and subordinate to that of a principal building or use.

(6) "**Accessory farm dwelling**" means a dwelling that meets the requirements of OAR 660-033-0130 (24).

(7) "**Accessory structure**" means any structure, the use of which is incidental, appropriate and subordinate to that of the principal buildings or uses.

(8) "**Accessory transportation improvements**" means transportation improvements that are incidental to a land use to provide safe and efficient access to that use (see **transportation improvements**).

(9) "**Accessory use**" means a use incidental and subordinate to either:

(a) the principal use of the authorized unit of land; or

(b) to a building located on the same authorized unit of land.

(10) "**Access roads,**" as that term is defined and used in OAR 660-012-0065, means low volume public roads that principally provide access to property or as specified in the *Comprehensive Plan* (see **access**).

(11) "**Administrative unit of land**"

(a) means a unit of land established for the purpose of governmental administration such as taxing, security, and interment:

(b) The term includes such units as:

(47) "**Commercial**" means any use or activity conducted, made, done or operated primarily for obtaining a profit in money.

(48) "**Commercial activities in conjunction with a farm use**"

(a) Means any commercial activities that

(i) provide products and services, particularly processing services,

(ii) are essential to agriculture as practiced in the region, and

(iii) are not defined as a farm use.

(b) The principal distinction between commercial farm uses reviewed as conditional uses and farm uses allowed outright, relate to whether or not the farm product or service is grown or provided by the farmer on land owned or operated by the producer (see **farm use**).

(c) Examples of commercial activities in conjunction with a farm use include but are not limited to:

(i) Hop, nut, and fruit drying, for crops not wholly grown on land owned or operated by the dryer;

(ii) Feed mixing and storage facilities, when the component grains are not wholly grown on land owned or operated by the mixer;

(iii) Hullers, when the crop is not wholly grown on land owned or operated by the huller;

(iv) Structures for the storage or packing of agricultural products, when the products are not wholly grown on land owned or operated by the owner of the structures;

(v) Seed processing, packing, shipping and storage, for crops not wholly grown on land owned or operated by the seed processor;

(vi) Mint distilleries, for mint not wholly grown on land owned or operated by the distiller;

(vii) Alcohol distilleries, for grains and other agricultural products not wholly grown on land owned or operated by the distiller;

(viii) Feedlots for livestock, when the livestock is not wholly grown on land owned or operated by the feedlot operator; or

(ix) Any other similar processing or allied commercial farm activities associated with regional farm uses.

(d) The term does not include the propagation, cultivation, maintenance, harvesting, preparation, storage, processing, or disposal by marketing or otherwise, of marijuana.

(49) "**Commercial agriculture**" means farm units that either contribute in a substantial way to the existing agricultural economy and help maintain agricultural processors and established farm markets or diversify agricultural processing and create farm markets through the production of agricultural goods currently not part of the agricultural economy. While the propagation or harvesting of a forest product is allowed in a farm zone, only trees defined by ORS 215.203 qualify as a farm use for producing farm income.

(50) "**Commercial dairy farm**" means a dairy operation that owns a sufficient number of producing dairy animals capable of earning the gross annual income required by OAR 660-033-0135 (3) (a) or (4) (a), whichever is applicable, from the sale of fluid milk.

(51) "**Commercial forestry**" consists of forest operations which will contribute in a substantial way to the area's existing forest economy and help maintain forest processors and established forest markets.

(52) "**Commercial tree species**" means trees recognized under rules adopted under ORS 527.715 for commercial production (see ORS 215.720 (2).

(53) "**Commission**" means the Linn County Planning Commission.

(54) "***Comprehensive plan***" or "***Plan***"

(a) when in italics, means the plan adopted by the Board to serve as a guide to the orderly growth, development and improvement of Linn County consistent with the statewide planning goals.

(b) The term includes the written text with goals and policies, the diagrammatic

(102) "**Farm-relative dwelling**" means a dwelling on real property that is described in ORS 215.283 (1) (e).

(103) "**Farm unit**" means the contiguous and noncontiguous tracts in common ownership used by the farm operator for farm use as defined in ORS 215.203.

(104) "**Farm use**"

(a) Means:

(i) the on-site establishment or maintenance of farming equipment and facilities, and

(ii) the current employment of land for the primary purpose of obtaining a profit in money by:

(I) raising, harvesting and selling crops;

(II) feeding, breeding, managing, selling, or producing livestock, poultry, rattites (emu, ostrich, kiwi, moa), psittacines (parrots), fur-bearing animals or honeybees;

(III) dairying and selling dairy products;

(IV) any other agricultural or horticultural uses;

(V) animal husbandry;

(VI) animal grazing; or

(VII) any combination of (I) to (V) (see **currently employed for farm use** or **current employment of land)**

(b) The term includes:

(i) The preparation, storage and disposal by marketing or otherwise of the products or by-products raised or produced for human or animal use on land owned or operated by the producer.

(ii) The current employment of land for the primary purpose of obtaining a profit in money by stabling, breeding or training equines including but not limited to providing riding lessons, training clinics and schooling shows.

(iii) The propagation, cultivation, maintenance and harvest of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission.

(iv) The production of hardwood timber, including but not limited to hybrid cottonwood subject to ORS 321.267 (1) (e) or 321.415 (5).

(v) The on-site construction and maintenance of equipment and facilities used for the activities described in subparagraphs (a) and (b) of this paragraph.

(vi) Farm use as defined in OAR 660-033-0020.

(c) The term does not include the use of land for growing trees that is subject to the taxation requirements of ORS Chapter 321, except for the use of land to grow cultured

(i) Christmas trees as defined in ORS 215.203 (3);

(ii) trees described in ORS 321.267 (1) (e) or 321.415 (5).

(d) The term does not include the propagation, cultivation, maintenance, harvesting, preparation, storage, processing, or disposal by marketing or otherwise, of marijuana.

(105) "**Farmworker**" means any person who, for an agreed remuneration or rate of pay, performs temporary or permanent labor for another in the production of farm products or in the planting, cultivating or harvesting of seasonal agricultural crops or in the forestation or reforestation of lands, including but not limited to the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.

(106) "**Farmworker housing**" means housing:

(a) Limited to occupancy by farmworkers and their immediate families; and

(b) No dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing.

(107) "**Farm-zoned property**" means a unit of land located in an EFU or F/F zoning district that is farmed. The term may include farmed property.

(108) "**Final decision**" or "**final determination**" means a written action of the

nantly of a combination of type-1 high-value soils and the following soils. In Linn County, these soils include:

Awbrig (7)	Bashaw (8)
Bellpine (9D)	Bellpine (9E)
Chehalem (20C)	Concord (27)
Conser (28)	Courtney (29)
Dayton (33)	Jory (51D)
Jory (51E)	Nekia (72D)
Salkum (88C)	Whiteson (100)
Willakenzie (101D)	Willakenzie (101E)

(144) "**Historic property**" or **historic resource**" means property

(a) currently listed in the *National Register of Historic Places* or if the *National Register* ceases accepting nominations, the property is approved for listing on an Oregon register of historic places (see ORS 358.480); or

(b) listed on the *Linn County Register of Historic Resources* and therefore subject to the historic resource alteration or demolition review provisions of this Development Code.

(145) "**Holiday**" includes the legal holidays listed in ORS 187.010 and Saturday.

(146) "**Home occupation**" means a small-scale business activity operated in conjunction with a residence subject to the home occupation decision criteria and performance standards contained in this Development Code. "Home Occupation" does not include the propagation, cultivation, maintenance, harvesting, preparation, storage, processing, or disposal by marketing or otherwise, of marijuana.

(147) "**Industrial road**"means a road designed to carry large volumes of truck traffic and to provide truck access to abutting commercial or industrial properties.

(148) "**Initiate,**" in reference to development or an authorized use, means at a minimum:

(a) Purchasing a permit from the Linn County Environmental Health Program, installing an approved septic system and receiving a certificate of satisfactory completion. The purchase and installation must be completed and the certificate obtained before the expiration of the land use permit; or

(b) Purchasing a permit from the Linn County Environmental Health Program for an approved septic system and purchasing a permit for and satisfactorily completing at least the foundation of the authorized principal use; or

(c) When neither a new septic permit nor a construction permit is required for the authorized use, the use shall be deemed to have been initiated when the use has actually commenced. For example, a conditional use permit to operate a home occupation has been initiated when the authorized business is operating within the allowed limits at the approved location; or

(d) as may be otherwise determined by the Director or hearing authority.

(149) "**Insect species**" shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture.

(150) "**Instrument airport**" means an airport which has an approach using electronic aids designed for the purpose of conducting aircraft operations in instrument meteorological conditions.

(151) "**Interior**" (property), in reference to a unit of land, means a property with frontage on only one road.

(152) "**Intervisible turnout**" means an area alongside a road designed to allow vehicles to pass and so spaced to provide visibility between the turnouts to users of the road.

(153) "**Irrigated**" means watered by an artificial or controlled means, such as sprinklers, furrows, ditches, or spreader dikes. An area or tract is "irrigated" if it is currently watered, or has established rights to use water for irrigation, including such tracts that receive water for irrigation from a water or irrigation district or other provider. For purposes of LCC 928.300 to 928.636, an area of tract within a water irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract.

rector (see **developable unit of land** and **authorized unit of land**).

(166) "**Lawfully established dwelling**" means a dwelling that was established prior to any building codes that would apply to the establishment of the dwelling or a dwelling that was established pursuant to then existing building codes and land use regulations.

(167) "**Legislative land use decision**" means

(a) a land use decision adopted as an ordinance by the Board which

(i) creates policy and which has broad application to an entire community or class of individuals, and

(ii) prescribes criteria and standards by which cases arising under the policy will be decided.

(b) Examples include the adoption of or amendment to the *Comprehensive Plan* or Land Development Code; simply put, legislative land use decisions make law.

(168) "**Limited farm use**" includes:

(a) the cultivation and harvesting of

(i) Vines, shrubs, berries, vegetables, nursery stock, hay, grains, seed or similar food or fiber products; or

(ii)Trees, including those that qualify as farm use or the propagation or harvest of forest products.

(b) the marketing of farm products grown under the limited farm use provisions is limited to those farm products grown on-site.

(c) The following animal husbandry:

(i) On a property of any size, the hatching and raising of poultry, rabbits, fowl, rattites (emu, ostrich, kiwi, moa), psittacines (parrots) and similar small animals.

(ii) On a property of any size, one farm animal which is pastured, bred, fed, or raised for competition purposes.

(iii) On a property one acre or larger,

(I) the raising of honey bees, and

(II) the pasturing, feeding, breeding, or raising of equines, sheep, cattle, goats or llamas.

(d) The term does not include on-site processing of farm products, except as otherwise provided by the Land Development Code.

(e) The term does not include the propagation, cultivation, maintenance, harvesting, preparation, storage, processing, or disposal by marketing or otherwise, of marijuana.

(169) "**Livestock**" means

(a) equine (horse, pony, mule, donkey or hinny),

(b) cattle, llama, sheep, goat, and

(c) swine,

(d) domestic fowl, rattite (emu, ostrich, kiwi, moa), psittacine (parrot), and

(e) any fur-bearing animal bred and maintained, commercially or otherwise, within pens, cages or hutches.

(170) "**Living history museum**" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events.

(171) "**Local access road**" means a public road that is not a county road, state highway or federal road. Local access roads are dedicated to the public, the ownership of which is formally accepted by Linn County for access purposes only, without any responsibility, obligation or agreement for improvement or maintenance by the County except as otherwise specified in the formal acceptance by the County.

(172) "**Local distribution line**" means that portion of the distribution of a service (such as electricity, telephone, natural gas, oil, or geothermal resources) that makes available that service from the common transmission or distribution line to the end user. The term includes tap lines and service hookups.

TITLE 9

COMMUNITY DEVELOPMENT

Subtitle 2 — Land Development Code
Division 3 — Zoning Districts

CHAPTER 929

RURAL DEVELOPMENT ZONE CODE

TABLE OF CONTENTS

Section Title

929.005 Title; short title
929.010 Compliance requirements

I. AGRIBUSINESS (AB) ZONING DISTRICT
929.010 Statement of purpose
929.020 AB uses allowed outright
929.030 AB uses permitted through a Type IIA conditional use review

II. FREEWAY INTERCHANGE COMMERCIAL (FIC) ZONING DISTRICT
929.110 Statement of purpose
929.120 FIC uses allowed outright
929.130 FIC uses permitted through conditional use review

III. HEAVY INDUSTRIAL (HI) ZONING DISTRICT
929.210 Statement of purpose
929.220 HI uses allowed outright
929.230 HI uses permitted through a Type IIA conditional use review
929.240 HI uses permitted through an urban exception

IV. LIMITED INDUSTRIAL (LI) ZONING DISTRICT
929.310 Statement of purpose
929.320 LI uses allowed outright
929.330 LI uses permitted through a Type IIA conditional use review
929.340 LI uses permitted outright through an urban exception

V. RURAL COMMERCIAL (RCM) ZONING DISTRICT
929.410 Statement of purpose
929.420 RCM uses allowed outright
929.430 RCM uses permitted through a Type IIA conditional use review

VI. RURAL CENTER (RCT) ZONING DISTRICT
929.510 Statement of purpose
929.520 RCT uses allowed outright
929.530 RCT uses permitted through a Type IIA conditional use review

VII. RURAL RESIDENTIAL (RR) ZONING DISTRICT
929.610 Statement of purpose
929.620 RR uses allowed outright
929.630 RR uses permitted through a Type IIA conditional use review

VIII. URBAN DEVELOPMENT (UD–I) ZONING DISTRICT
929.710 Statement of purpose
929.720 UD–I uses allowed outright
929.730 UD–I uses permitted through a Type IIA conditional use review

IX. URBAN DEVELOPMENT (UD–II) ZONING DISTRICT
929.810 Statement of purpose
929.820 UD–II uses allowed outright
929.830 UD–II uses permitted through a Type IIA conditional use review

X. NON-RESOURCE (NR) ZONING DISTRICT
929.910 Statement of purpose
929.920 Non-resource uses allowed outright
929.930 Non-resource uses permitted through a Type IIA conditional use review

Statutory References and Authorities

Legislative History of Chapter 929

929.005 Title; short title

This Chapter, LCC 929.005 to 929.999, shall be known and cited as the "Linn County Rural Development Zone Code." This Chapter may also

(a) Construction or contractor equipment storage yard.

(b) Welding, sheet metal or machine shop.

(c) Cabinet shop.

(d) Sign painting, sale, repair or manufacture.

(e) Equipment repair.

(4) Transportation, storage and distribution uses such as:

(a) Fuel distribution and storage.

(b) Self-service storage facility.

(5) Sales, service and repair of manufactured dwellings, recreational vehicles, campers, trailers and boats.

(6) Automobile and truck services such as:

(a) Repair.

(b) Painting.

(7) Commercial retail sales and services integral to a use allowed in this section.

(8) Utility facility necessary for public service.

(9) Alteration, expansion or replacement of a lawfully established dwelling on a authorized unit of land prior to the establishment of the UD–II zoning district.

(10) Garden shop, retail nursery.

(11) Limited farm use.

(12) Transportation improvements.

[Adopted 98-002 §3 eff 3/4/98; amd 99-121 §10 eff 6/30/99]

929.830 UD–II uses permitted through a Type IIA conditional use review

(A) All principle uses set forth in subsection (B) of this section and uses accessory to those principle uses are permitted in the UD–II zoning district through a Type IIA procedure and the decision criteria in LCC 933.200 and 933.220.

(B) *Uses permitted through conditional use review.*

(1) One caretaker residence for a use permitted in LCC 929.820, subject to LCC 932.800 to 932.815.

(2) Accessory structures for uses permitted conditionally.

(3) Public and semi-public buildings and uses.

(4) Staging area, subject to LCC 932.700 to 932.770.

(5) Alteration, restoration, or replacement of a lawfully established dwelling requiring that the Director make a decision based on a review of information not limited to the development permit application.

(6) Marijuana production, processing and distribution.

[Adopted 98-002 §3 eff 3/4/98; amd 99-121 §10 eff 6/30/99]

X. NON-RESOURCE (NR) ZONING DISTRICT

929.910 Statement of purpose

(A) The purpose of the Non-resource (NR) zoning district shall be:

(1) To implement the Non-resource Plan designation.

(2) To permit low-density residential development in suitable locations while reducing potential conflicts with agriculture and forestry.

(B) The NR zoning district is composed of two zoning districts which are distinguished only by minimum property size standards.

(C) One non-resource zoning district is not interchangeable with another non-resource zoning district without approval through the procedural processes described in LCC 921.800 to 921.840 and the non-resource land policies in the *Comprehensive Plan.*

[Adopted04-043 §2 eff 4/28/04]

929.920 Non-resource uses allowed outright

(A) All principle uses set forth in subsection (B) of this section, excluding manufactured dwellings used as storage buildings, and uses accessory to those principle uses are allowed outright in the NR zoning district.

(B) *Uses allowed outright*

(1) One single-family dwelling or one manufactured dwelling per authorized unit of land.

(2) Family day care provider.

(3) Residential home.

(4) Farm use.

EXHIBIT 2

RESOLUTION AND ORDER NO. 2015-086

(BC15-0002)

DECISION CRITERIA, FINDINGS, AND CONCLUSIONS

I. APPLICATION, HEARING PROCESS, AND DECISION CRITERIA

The Code text amendment application was submitted at the request of the Linn County Board of Commissioners. The amendments regulate the time, place, and manner of the propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana, for the purpose of protecting the public health, safety and welfare; and establish appropriate locations where such activity can occur. It concludes that such activities, being industrial in nature and impact, shall be limited to Industrial land. It further concludes that the Urban Development II (UD-II) zoning district provides an appropriate level of suitability, safety, and compatibility with surrounding land uses.

The Linn County Code (LCC) text amendments:

(1) Amend Linn County Code (LCC) 920.100(B)(48), LCC 920.100(B)(104), and LCC 920.100(B)(167), to except the propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana from the definition of 'farm use', 'limited farm use', and 'commercial activity in conjunction with farm use';

(2) Amend LCC 920.100(B)(146) to except the propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana from the definition of "Home Occupation"; and

(3) Amend LCC 929.830(B) to permit marijuana production, processing and distribution as conditional uses in the Urban Development II (UD-II) zone.

The Code text amendment application is classified as a Type IIIA Legislative application. The public notice, evidentiary, and legislative hearing processes were conducted as set forth in *LCC 921.130: Type IIIA Legislative Procedure*. The "hearing authority" in a Legislative Code text amendment is the Board of County Commissioners for Linn County (Board).

The Linn County Planning Commission (Commission) conducted a public meeting on this matter at 7:00 p.m., March 10, 2015. After closing the matter to the floor, the Commission discussed issues relating to the production, processing and distribution of marijuana under a "Home Occupation" permit. The Commission found that conducting marijuana-related businesses as a Home Occupation is not compatible with residential uses, and if allowed would negate any regulations intended to restrict the use from certain zones. The Commission proposed language in LCC 920.100(B)(146) that would add the following language to the definition of "Home Occupation":

"Home Occupation" does not include the propagation, cultivation, maintenance, harvesting, preparation, storage, processing, or disposal by marketing or otherwise, of marijuana.

The Planning Commission approved a motion to recommend that the Linn County Board of Commissioners (Board) adopt the proposed text amendments, as presented, and that the Board also amend the definition of "Home Occupation" to exclude the propagation, cultivation, maintenance, harvesting, preparation, storage, processing, or disposal by marketing or otherwise, of marijuana from the definition of a Home Occupation. The motion passed by a vote of 5-0.

The Board of County Commissioners for Linn County (Board) conducted a duly advertised public hearing on the proposed Code amendments, to be codified at Title 9, Chapter 920.100 and Chapter 929.830, on March 18, 2015. After the close of the public hearing, the Board directed County staff to prepare Ordinance documents for adoption of the proposed Code text amendments, including the restriction excepting the propagation, cultivation, maintenance, harvesting, preparation, storage, processing, or disposal by marketing or otherwise of marijuana from the definition of a "home occupation".

II. DECISION FINDINGS

A. Criteria

Linn County Code (LCC) 921.824(A) contains the applicable decision criteria for Legislative Code text amendments. The applicable decision criteria state:

> LCC 921.824(A): A Land Development Code text amendment may be granted if on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that:
>
> (1) The amendment is consistent with the intent and purpose statement of the affected Chapter or subchapter of the Land Development Code; and
>
> (2) The amendment is consistent with the intent of the policies within the applicable section (s) of the Comprehensive Plan.

B. Protection of Farm and Forest Land Uses

Land uses permitted by the Land Development Code must be consistent with the Comprehensive Plan (Plan). The Agricultural Resource Lands element of the Plan is contained in LCC 905.100 to 905.120. The Farm/Forest Lands element of the Plan is contained in LCC 905.300 to 905.330.

The Agricultural Resource Land Plan Policy at LCC 905.120(A) requires that Linn County protect and maintain the farm orientation of the Agricultural Resource areas. Plan Policy 905.120(B) establishes that Linn County will use the land use planning process to minimize conflicts between agriculture uses and other non-resource land uses, and that proposed development in the Exclusive Farm Use (EFU) zone will be assessed and mitigated to minimize potential conflicts.

The Farm/Forest Land Policy at LCC 905.330(A) states: "Linn County establishes policies, standards and regulations to maintain the resource orientation and capacity of Farm/Forest lands." Policy 905.330(C) provides that proposed development will not force a significant

change in or significantly increase the cost of farm or forest practices on nearby lands. Policy 905.330(F) states that parcels that are predominately in farm use shall be reviewed under farm land use criteria.

The Exclusive Farm Use (EFU) zoning district statement of purpose is in LCC 928.300. The purpose of the EFU zoning district includes the preservation of land suitable for agricultural production, whether in large or small blocks, for agricultural use, and to allow only those uses consistent with agricultural practices.

The Oregon Agricultural Land Use Policy (ORS 215.243) provides that the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources; and that the expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community service, conflicts between farm and urban activities and the loss of open space.

The Farm/Forest (F/F) zoning district statement of purpose is in LCC 928.600. The statement of purpose includes the preservation of land suitable for agricultural and forest uses; the establishment of uses consistent with the predominant use of land for agricultural and forest use; and to provide for the protection of open space, wildlife habitat, air, water, and land resource quality.

The Code text amendments to except the propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana from the definition of "farm use", "limited farm use", and "commercial activity in conjunction with farm use", on rural resource land in Linn County are intended to preserve and protect Agricultural Resource and Farm/Forest land from conflicting uses.

The Code text amendment is consistent with the intent of the Agricultural Resource and Farm/Forest Plan policies, and is consistent with the EFU and F/F purpose statements. Permitting the propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana on protected farm and forest land would create unnecessary and untenable conflicts with normal and accepted farm and forest practices on adjacent land devoted to farm and forest use.

It is well documented and codified in Oregon Land Use Policy, Oregon Revised Statute, and Oregon Administrative Rule, that unrestrained residential development poses significant conflict with normal farm and forest practices. Oregon land use regulations, adopted in Linn County Code, permit the establishment of a primary or secondary dwelling on any property classified as predominately "high-value farmland", when gross farm income is at least $80,000 per year for two years; and on "non-high-value farmland" when gross farm income is at least $40,000 per year for two years. (ORS 215.283; OAR 660 Div. 33) Such dwellings are permitted in both the EFU and F/F zoning districts.

There are currently more than 5,500 Exclusive Farm Use (EFU) tax lots in Linn County, and more than 2,500 Farm/Forest zoned tax lots. Approximately 3,200 of these existing lots are between five and 20 acres in size. Additionally, all tax lots greater than 160 acres in size are able to be partitioned to create additional parcels.

Marijuana production and processing is an intensive use characterized by large amounts of labor, capital, equipment, and inputs relative to land area. Due to the intensive cultivation practices and extremely high-value nature of marijuana, if the County were to permit the propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana as a "farm use", virtually every one of the more than 8,000 Farm and Farm/Forest zoned tax lots in Linn County could, within two years of establishing a marijuana production or processing operation, be developed with a new dwelling.

Because of the intensive, high-value nature of marijuana production and processing, and due to the income criteria for a dwelling on farm land, there is a high likelihood that hundreds or thousands of smaller farm and forest parcels in Linn County would be removed from farm or forest use within a short period of time. Once a new dwelling were cited on these properties, there is nothing in State or County land use regulations to require any form of ongoing farming activity on those properties, or ongoing compatibility between the residential use of the land and surrounding farm and forest practices.

The likelihood of rampant land speculation for the purpose of establishing dwellings on protected farm and forest land is great. With unrestrained residential development in close proximity to farm and forest uses, conflicts between residential land use and farm and forest practices is unavoidable. Therefore, the propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana in the Farm and Farm/Forest zones of Linn County would create conflicts with established and customary farm and forest practices, and may alter or increase the costs of established and customary farm and forest practices on farm and forest lands in Linn County.

Such activity therefore does not satisfy the intent of the Plan Policies for Agricultural Land or Farm/Forest Land, and is not consistent with the Statement of Purpose or the intent of the Exclusive Farm Use (EFU) or Farm/Forest (F/F) zones in Linn County.

C. Conflicts with Rural Residential and Rural Commercial Uses

Properties in the Rural Residential (RR), Rural Center (RCT) and the Rural Commercial (AB, RCM, and FIC) zoning districts of Linn County provide for "farm use", "limited farm use", and "commercial activities in conjunction with farm use". The Code text amendments to except the propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana from the definition of "farm use", "limited farm use", and "commercial activity in conjunction with farm use", is intended to preserve the rural residential and rural commercial nature of Linn County's Rural Residential exception areas, Rural Commercial exception areas, and unincorporated rural communities, and to protect rural residents, rural landowners, and rural businesses from conflicts associated with the propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana within close proximity to rural residents and rural businesses.

The Code text amendments are consistent with the Rural Residential Plan Policies in LCC 905.420. The Rural Residential Plan Policies are primarily concerned with establishing parcel sizes, ensuring suitability for rural development, and preventing the establishment of

urban uses and facilities within Rural Residential zoning districts. Ground water availability is identified in Plan Policy 905.420(B)(13) as a limiting factor to rural development. Many rural areas of Linn County have shallow or poorly producing wells. It is reported that the cultivation of marijuana uses up to six gallons of water per day per mature-sized plant. In areas where ground water supplies are not unlimited, it is likely that intensive marijuana production and processing could negatively impact other nearby residential ground water users and making these properties unsuitable for rural development.

The Code text amendments are consistent with the Rural Center Plan Policies in LCC 905.470. Linn County's eight Rural Centers are small, unincorporated rural communities. They are similar to small towns in that they have residential areas, businesses, churches, schools and post offices. The Rural Center Plan Policies are similar in nature and intent to those identified in the Rural Residential exception areas. The Plan Policy in LCC 905.470(B)(10) provides that commercial land uses in Rural Centers shall be primarily for the purpose of providing goods and services to residents and businesses in its vicinity. The propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana is anticipated to be primarily for market outside of the immediate vicinity of these small Rural Centers, and is not consistent with Plan Policy 905.470(B)(10).

The Code text amendments are consistent with the Rural Commercial Plan Policies in LCC 905.520. Rural Commercial Lands in Linn County are designated with two zoning districts: Freeway Interchange Commercial (FIC) and Rural Commercial (RCM). The FIC zone is established to provide for tourist and Interstate 5 transportation needs. The RCM zone is intended to provide for a restricted scale of commercial development for rural residents and highway motorists. The propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana is not consistent with the intent and purpose of the Plan policies for Rural Commercial land.

The Rural Residential (RR) zoning district statement of purpose is in LCC 929.610. The purpose of the RR zoning district is to provide areas suitable for rural residential development, to provide for limited agricultural and forest uses where appropriate, and to preserve and maintain the rural character of areas designated for rural home sites.

The RR zones permit "limited farm use" [LCC 920.100(B)(168)]. Limited farm uses are low-impact farm uses that are considered to be compatible with and not conflict with adjacent rural residential and rural commercial land uses. Limited farm use does not include the processing of farm products.

The Agribusiness (AB) zone statement of purpose is in LCC 929.010. The purpose of the AB zone is to provide limited facilities or establishments necessary for and directly serving agricultural or forestry uses, consistent with agricultural practices.

The Freeway Interchange Commercial (FIC) zone statement of purpose is in LCC 929.110. The purpose of the FIC zone is to permit the use of FIC property to fill the immediate needs of motorists and commerce. The uses in the FIC zone are intended to serve the rural and traveling population.

The Rural Commercial (RCM) zone statement of purpose is in LCC 929.410. The purpose of the RCM zone is to provide for a restricted scale of rural commercial development, and to provide a convenient location for rural residents to obtain household commodities or operate small-scale service businesses. It is the intent of the RCM zone to limit commercial activities to those which will be used primarily by rural residents. The propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana does not provide goods or services intended primarily for nearby rural residents and are not consistent with the intent and purpose of the Rural Commercial zoning districts.

The propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana creates significant conflicts with established and permitted land uses within the Rural Residential, Rural Center, and Rural Commercial zones. Marijuana production and processing is typically characterized as a high-intensity, industrial form of cultivation which does not meet the nature or intent of the definition of "limited farm use".

External impacts of marijuana production and processing that render the use incompatible with Rural Residential, Rural Commercial and Rural Center land uses include, but may not be limited to:

Odor: Marijuana plants emit an odor which is very strong and detectable from long distances, and which many people find to be extremely unpleasant or unhealthy. These odors pose a great risk to overwhelm a Rural Residential, Rural Commercial, or Rural Center area.

Noise: Marijuana growing operations are intensive uses characterized by large amounts of labor, capital, and other inputs relative to land area. Indoor grow operations use artificial lighting, large fans, water pumps, heat exchangers, and other mechanical systems to ensure controlled lighting, air flow, temperature, humidity, and controlled supplies of water and nutrients. These systems run 24 hours per day, every day of production. The noise impacts of marijuana production and processing are like those of other industrial type uses and are incompatible with Rural Residential, Rural Center, and Rural Commercial lands.

Ground Water: Marijuana production and processing consumes a significant amount of water (up to six gallons per day per plant). Large grow operations pose a great risk to rural residential and rural commercial water users in areas which do not have unlimited supplies of ground water.

Marijuana Processing: Marijuana is processed into a variety of products, including oils, edibles, and smoke-able products. Marijuana production, processing and manufacturing are intensive uses of an industrial nature, which would subject area properties to unreasonable levels of odors, equipment noise, traffic, and materials storage. These impacts would occur 24 hours per day, every day of production and processing. Industrial impacts of this nature are not compatible with and should not be permitted in or near any zone designated primarily for residential or small-scale commercial uses.

Security: Marijuana is a high-value commodity. It is classified as a "Schedule 1 Controlled Substance" in Federal law. There are two issues related to security at a facility engaged in the production, processing, storage and distribution of marijuana: (1) security of the facility; and (2) security of the nearby property owners. Such a high-value facility is likely to require 24 hour surveillance, possibly by a watchman or "caretaker", alarms, and/or engage the use of guard dogs. Each of these pose conflicts with neighboring rural land uses: Traffic and human activity on the site 24 hours per day; alarms going off at any time of day or night; and security dogs getting lose and menacing or harming area livestock or residents. Such a facility poses what can be called an "attractive nuisance", raising fear among local residents that the facility, and by extension their neighborhood, may suffer a higher risk of crime.

Neighborhood Values and Proximity to Children: Marijuana is a high-value commodity. It is illegal under the Federal Controlled Substances Act (CSA) of 1970, and is classified as a "Schedule 1 Controlled Substance" in Federal law. Marijuana production, processing, storage and distribution are subject to regulations affecting the time, place and manner of such activity. To protect the public health, safety and welfare, marijuana production, processing, storage and distribution should not occur within close proximity to children or schools, and therefore should not be permitted in the Rural Residential, Rural Center, and Rural Commercial zones in Linn County.

D. Industrial Land

The Industrial Land element of the Linn County Comprehensive Plan (Plan) is in LCC 905.550 to 905.570. The 29 Policies for Industrial Land are listed in LCC 905.570. Industrial land in Linn County is zoned Heavy Industrial (HI) (LCC 929.210 to 929.240); Limited Industrial (LCC 929.310 to 929.340); Urban Development I (UD-I) (LCC 929.710 to 929.730); and Urban Development II (UD-II) (LCC 929.740 to 929.830).

This Code text amendment application proposes to regulate the time, place and manner of the propagation, cultivation, harvesting, preparation, storage, processing or disposal by marketing of marijuana for the purpose of protecting the public health, safety and welfare, and to establish appropriate locations where such activity can occur. It proposes that such activities, being industrial in nature and impact, shall be limited to Industrial land. It further proposes that the Urban Development II (UD-II) zoning district provides the only appropriate level of suitability, safety, and compatibility with surrounding land uses.

The purpose of the HI zone (LCC 929.210) and the LI zone (LCC 929.310) is to permit the continuation and expansion of existing industrial land uses, and to provide for new, resource-related and rural-scale industrial uses. The HI and LI zones are intended for manufacturing activities which are dependent upon close proximity to natural resources; or which need a relatively isolated location because of operational characteristics or conflicts with other uses. Many HI and LI properties are located within close proximity to Rural Residential, Rural Center, and Rural Commercial areas.

The purpose of the UD-I zoning district (LCC 929.710) and the UD-II zoning district (LCC 929.810) is to recognize sites which are developed with urban commercial and industrial

uses. It is the intent of the UD-I and UD-II districts to permit the continuation and expansion of existing uses, and their replacement with similar uses.

The UD-I and UD-II zoning districts are not interchangeable. The respective zones are applied to specific properties set forth in the Comprehensive Plan, for which the County has already taken an urban exception. The UD-I zone is limited to a single cluster of tax lots, in close proximity to other businesses and rural residential property, which is already intensively developed with light commercial and light industrial uses. This location is also documented to experience a high volume of highway traffic along its limited access points.

The UD-II zone is applied to larger developed and committed areas along Highway 34, between Riverside Drive and Oakville Road, which are developed with several urban uses [LCC 929.810(C)]. In contrast to the UD-I zone, the UD-II zone provides larger property sizes, larger building sizes, better access, and isolation from other rural residential and rural commercial uses.

Marijuana production, processing, manufacturing and distribution are intensive uses of an industrial nature, which would subject nearby rural residential and rural commercial properties to unreasonable levels of odors, equipment noise, and traffic. These impacts would occur 24 hours per day, every day of production and processing.

Industrial impacts of this nature are not compatible with and should not be permitted in or near any zone designated primarily for residential or small-scale commercial uses. The UD-II zone is not a residential zone, is not adjacent to any residential zoning district, and provides a more isolated location from potentially conflicting land uses than any other Linn County zoning district. The wholesale and retail distribution of marijuana and marijuana products could occur at this location away from homes, children, schools, and small-scale rural commercial businesses.

E. Home Occupations

The Linn County Planning Commission (Commission) conducted a public meeting on this matter at 7:00 p.m., March 10, 2015. After closing the matter to the floor, the Commission discussed issues relating to the production, processing and distribution of marijuana under a "Home Occupation" permit. The Commission found that conducting marijuana-related businesses as a Home Occupation is not compatible with residential uses and, if allowed, would negate any regulations intended to restrict the use from certain zones. The Commission recommended that the Board adopt language in LCC 920.100(B)(146) that would add the following language to the definition of "Home Occupation":

> *"Home Occupation" does not include the propagation, cultivation, maintenance, harvesting, preparation, storage, processing, or disposal by marketing or otherwise, of marijuana.*

The Board concurs. For all of the reasons identified in the findings stated above relating to conflicts between marijuana production, processing and distribution, and residential uses, the Board finds that permitting such uses as a "home occupation" would be detrimental to the public health, safety and welfare.

III. Conclusion

Based on the record of the hearing before the Board of County Commissioners for Linn County (Board), and the Decision Findings identified above, the Board Concludes the adopted Code text amendments satisfy the applicable decision criteria in LCC 921.824. The Code text amendments identified in Resolution and Order No. 2015-086 and in Ordinance No. 2015-087 are approved.