

Background Information

Comprehensive Plan Update

Oregon Revised Statutes and Administrative Rules Pertaining to Farm Stands, Wineries and Gatherings

FARM STANDS

Farm stands have been listed as a specific permitted use in the EFU zone since 1993. The statutory language allowing farm stands is further expanded by the following OAR to provide definitions not contained in statute.

OAR 660-033-0130 (23)

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(c) As used in this section, "farm crops or livestock" includes 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. As used in this subsection, "processed 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.

(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

WINERIES

State law lists wineries as a specific permitted "non-farm" use in the EFU zone. Major revisions to the statutes were adopted in 2012 to permit wineries to hold a wide range of marketing and private events including celebratory gatherings. Larger wineries are allowed to have restaurants.

ORS 215.283(1)(n)

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

ORS 215.452 and 215.453

(Not included here due to length of the statutes. See the ORS for details.)

OUTDOOR MASS GATHERINGS

The OAR on agricultural lands lists outdoor mass gatherings and other gatherings as allowed uses in the Exclusive Farm Use zone and references the specific statutes that set forth the regulations pertaining to them.

OAR 660-033-0130 (33) and (34)

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of 3,000 or fewer persons that is not anticipated to continue for more than 120 hours in any three-month period is not a "land use decision" as defined in 197.015(10) or subject to review under this division. Agri-tourism and other commercial events or activities may not be permitted as mass gatherings under 215.213(11) and 215.283(4).

(34) Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month planning period is subject to review by a county planning commission under the provisions of ORS 433.763.

REGULATION OF OUTDOOR MASS GATHERINGS

433.735 Definitions for ORS 433.735 to 433.770. As used in ORS 433.735 to 433.770 and 433.990 (7):

(1) "Outdoor mass gathering," unless otherwise defined by county ordinance, means an actual or reasonably anticipated assembly of more than 3,000 persons which continues or can reasonably be expected to continue for more than 24 consecutive hours but less than 120 hours within any three-month period and which is held primarily in open spaces and not in any permanent structure.

(2) "Organizer" includes any person who holds, stages or sponsors an outdoor mass gathering and the owner, lessee or possessor of the real property upon which the outdoor mass gathering is to take place.

(3) "Permanent structure" includes a stadium, an arena, an auditorium, a coliseum, a fairgrounds or other similar established places for assemblies.

(4) "Temporary structure" includes tents, trailers, chemical toilet facilities and other structures customarily erected or sited for temporary use. [1971 c.597 §1a; 1981 c.82 §3; 1985 c.758 §1; 2001 c.104 §157; 2007 c.445 §32]

433.740 Policy. The Legislative Assembly finds that the uncontrolled outdoor gatherings of large groups of persons for extended periods of time have necessitated a need for the establishment of reasonable health and safety rules to regulate such outdoor mass gatherings. [1971 c.597 §1]

433.745 Outdoor mass gathering without permit prohibited. (1) No organizer shall hold, conduct, advertise or otherwise promote an outdoor mass gathering or allow an outdoor mass gathering to be held on real property the organizer owns, leases or possesses unless a permit to hold such outdoor mass gathering has been issued by the county governing body in which the outdoor mass gathering is to take place.

(2) A permit issued under this section does not entitle the organizer to make any permanent physical alterations to or on the real property which is the site of the outdoor mass gathering. [1971 c.597 §2; 1985 c.758 §3]

433.750 Permit application; procedure for issuance of permit; fee. (1) The governing body of a county in which an outdoor mass gathering is to take place shall issue a permit upon application when the organizer demonstrates compliance with or the ability to comply with the health and safety rules governing outdoor mass gatherings to be regulated according to the anticipated crowd and adopted by the Oregon Health Authority. The application shall include all of the following:

(a) Name and address of the applicant.

- (b) Legal description of the place of the proposed gathering.
 - (c) Date of the proposed gathering.
 - (d) Estimated attendance at the proposed gathering.
 - (e) Nature of the proposed gathering.
 - (f) Such other appropriate information as the county governing body may require in order to insure compliance with rules of the authority.
- (2) Notice of the application shall be sent by the county governing body to the county sheriff or county chief law enforcement officer, the county health officer and the chief of the fire district in which the gathering is to be held.
- (3) Each officer receiving notice of the application under subsection (2) of this section who wishes to comment on the application shall submit such comment in writing to the county governing body not later than the hearing date. The comment may include recommendations related to the official functions of the officer as to granting the permit and any recommended conditions that should be imposed.
- (4) The county governing body shall hold a public hearing on the issue of compliance with this section. Notice of the time and place of such hearing including a general explanation of the matter to be considered shall be published at least 10 calendar days before the hearing in a newspaper of general circulation in the county or, if there is none, it shall be posted in at least three public places in the county.
- (5) Any decision of a county governing body on an application for a permit to hold an outdoor mass gathering may be appealed to a circuit court for the county as provided in ORS 34.020 to 34.100.
- (6) A county governing body may charge permit applicants a fee reasonably calculated to reimburse the county for its reasonable and necessary costs in receiving, processing and reviewing applications for permits to hold outdoor mass gatherings. However, a fee authorized by this subsection shall not exceed \$5,000 and shall not be charged when the governing body finds, by a preponderance of the evidence presented to the governing body, that the applicant is unable to reimburse the governing body. [1971 c.597 §3; 1985 c.758 §4; 1993 c.779 §1; 2009 c.595 §681]

433.755 Additional information required before permit issued; liability of permit holder; casualty insurance; county as additional insured. (1) In reviewing an application for a permit to hold an outdoor mass gathering, the county governing body may require such plans, specifications and reports as it may deem necessary for proper review and it may request and shall receive from all public officers, departments and agencies of the state and its political subdivisions such cooperation and assistance as it may deem necessary. If the county governing body determines upon examination of the permit application that the outdoor mass gathering creates a potential for injury to persons or property, the county governing body may require organizers to obtain an insurance policy in an amount commensurate with the risk, but not exceeding \$1 million. The policy of casualty insurance shall provide coverage against liability for death, injury or disability of any human or for damage to property arising out of the outdoor mass gathering. The county shall be named as an additional insured under the policy.

(2) In the event of failure to remove all debris or residue and repair any damage to personal or real property arising out of the outdoor mass gathering within 72 hours after its termination and to remove any temporary structures used at the outdoor mass gathering within three weeks after its termination, the county governing body may file suit against the organizer for financial settlement as is needed to remove debris, residue or temporary structures and to repair such damage to real or personal property of persons not attending the outdoor mass gathering. The organizer shall be wholly responsible for payment of any fines imposed under ORS 433.990 (7). [1971 c.597 §4; 1985 c.758 §5; 1993 c.779 §2; 2001 c.104 §158; 2007 c.445 §33]

433.760 Rulemaking authority. Notwithstanding any other provisions of law, the Oregon Health Authority shall, in accordance with the provisions of ORS chapter 183, make rules regulated according to anticipated crowds with respect to health and safety at outdoor mass gatherings which provide for:

- (1) Adequate water supply, drainage and sewerage facilities;
- (2) Adequate toilet facilities;
- (3) Adequate refuse storage and disposal facilities;
- (4) Adequate food and sanitary food service, if supplied;
- (5) Adequate emergency medical facilities and communication systems;
- (6) Adequate fire protection; and

(7) Adequate security personnel and traffic control. [1971 c.597 §5; 1981 c.82 §4; 1985 c.758 §8; 2009 c.595 §682]

433.763 Compliance with land use regulations required; criteria for approval. (1) Any gathering of more than 3,000 persons which continues or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces shall be allowed by a county planning commission if all of the following occur:

- (a) The organizer makes application for a permit to the county planning commission.
- (b) The applicant demonstrates to the county planning commission that the applicant has complied or can comply with the requirements for an outdoor mass gathering permit set out in ORS 433.750.
- (c) The county planning commission shall make findings that:
 - (A) Any permits required by the applicable land use regulations have been granted; and
 - (B) The proposed gathering:
 - (i) Is compatible with existing land uses; and
 - (ii) Does not materially alter the stability of the overall land use pattern of the area.
- (2) The provisions of ORS 433.755 apply to any gatherings reviewed or approved under this section.
- (3) A decision granting or denying a permit under this section may be appealed to the county governing body as provided in ORS 215.402 to 215.438.
- (4) If a county has not created a planning commission as provided in ORS 215.030, the county governing body, or such other person as the governing body designates shall receive the application and make the findings and decision required by this section. [1985 c.758 §7]

433.765 Effect on county ordinances or regulations adopted under county charter. Ordinances or regulations of a county enacted under a county charter adopted pursuant to section 10, Article VI, Oregon Constitution, and not inconsistent with ORS 433.735 to 433.770 and 433.990 (7) or any rules adopted under ORS 433.735 to 433.770 and 433.990 (7), are not superseded by ORS 433.735 to 433.770 and 433.990 (7) or such rules. Nothing in ORS 433.735 to 433.770 and 433.990 (7) or any rules adopted under ORS 433.735 to 433.770 and 433.990 (7) precludes the right of a county to enact ordinances or regulations under a county charter if such ordinances or regulations are not inconsistent with ORS 433.735 to 433.770 and 433.990 (7) or any rules adopted under ORS 433.735 to 433.770 and 433.990 (7). [1971 c.597 §6; 2001 c.104 §159; 2007 c.445 §34]

433.767 Application to gatherings defined by county ordinance. ORS 433.735 to 433.770 and 433.990 (7) apply to outdoor mass gatherings defined by county ordinance as well as to those defined by ORS 433.735 (1). [1981 c.82 §2; 2001 c.104 §160; 2007 c.445 §35]

433.770 Enforcement. (1) In addition to and not in lieu of the maintenance of other actions for any violation of ORS 433.745, the district attorney for the county in which an outdoor mass gathering is to be held may maintain an action in any court of general equitable jurisdiction to prevent, restrain or enjoin any violation of ORS 433.745.

(2) Cases filed under the provisions of this section or an appeal therefrom shall be given preference on the docket over all other civil cases except those given equal preference by statute. [1971 c.597 §6a; 1979 c.284 §143]