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Oregon

July 14, 2023

P18377-001

Hearings Officer Alan Rappleyea  
c/o Multnomah County Land Use Planning Dept.  
1600 SE 190<sup>th</sup> Ave  
Portland, OR 97231  
lup-hearings@multco.us

Re: *File No. T2-2021-14981 (12424 NW Springville Road Hearing)*

Dear Mr. Rappleyea,

Ms. Carol Chesarek entered another letter into the record in the above-captioned case on July 7, 2023, which includes a mix of unfounded allegations. Some of points are obviously irrelevant, such as her opinion that Mr. Reed's Schedule F tax form was not submitted into the record as early as she would have liked. Simply, her opinion that the proof of farm income Mr. Reed does not satisfy her preferences despite satisfying all relevant legal and regulatory requirements is of no avail. However, we would like to once again respond in particular to the issue of an egg handler's license. While it may not be immediately obvious, leading Ms. Chesarek to misunderstand the role of such a license, one is not required here.

Before discussing the merits of this argument, we first note that the issue of Mr. Reed's possession of an egg handler's license, or lack thereof, is beyond the scope of the remand issued by LUBA on this case. The present hearing is not being conducted "de novo," and there is no applicable framework through which any party can raise new issues at this time. The hearing is to resolve only the issues upon which LUBA remanded the case to Multnomah County. It is therefore appropriate to disregard Ms. Chesarek's attempt to raise the issue.

That said, there is no requirement for Mr. Reed, or anyone responsible for or working on his farm, to possess an egg handler's license. Plainly available upon searching the term "Oregon egg handler license" on Google, as the top-listed result in fact, is an Oregon government website that plainly lays out the requirements:

Producer is required to have an egg handler license for the following:

- ❖ Selling or distributing eggs to consumers, retailers, cafes, bakeries, hospitals, schools, boarding houses or institutions.
- ❖ Producer is not required to have an egg handler license when the following applies:
  - ❖ Producer is selling and delivering their own eggs direct to an individual consumer (including farmers' market), but labeling is required.

❖ Producer sells only ungraded eggs to a dealer.

See <https://www.oregon.gov/oda/programs/foodsafety/fslicensing/pages/eggs.aspx> (Exhibit 1).

The website is drawing this information from OAR 603-022-0400, which in turn draws from ORS Chapter 561, ORS Chapter 616 and ORS Chapter 632. Ms. Chesarek found this website, as she included a screenshot of it in her letter.

As previously noted, Mr. Reed only sells and delivers his own eggs directly to individual consumers. He does not sell or distribute eggs to retailers, cafes, bakeries, hospitals, schools, boarding houses, or institutions. Therefore, Mr. Reed does not need an egg handler license.

Even if Mr. Reed was supposed to have an egg handler's license to conduct his farming operations, this would still not constitute a reason to deny the present application. The issue of the license would be under the Oregon Department of Agriculture's jurisdiction, not the Land Use Planning Department for Multnomah County. The apparent reason Ms. Chesarek attempts to raise the issue at all is to attempt to discredit Mr. Reed, as she has made it clear that she isn't satisfied that Mr. Reed's farming operation is substantial enough to meet her personal standards.

Ms. Chesarek's request that Mr. Reed's application should be denied based on the absence of this irrelevant permit is both not permitted under the scope of the remand, and materially moot based on the characteristics of the farm's business.

Thank you for your consideration.

Sincerely,

**VIAL FOTHERINGHAM LLP**

Andrew H. Stamp  
*Attorney*

ASTA\nbro  
Enclosure  
cc : Client

ODA buildings are open to the public during normal business hours, Monday - Friday from 8 a.m. to 5 p.m.

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**Oregon Department of Agriculture (/oda/Pages/default.aspx) / Programs (/oda/programs/Pages/default.aspx) / Food Safety (/oda/programs/FoodSafety/Pages/Default.aspx) / Licensing**

## Eggs Licensing

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### Egg handler license

Producer is required to have an egg handler license for the following:

- Selling or distributing eggs to consumers, retailers, cafes, bakeries, hospitals, schools, boarding houses or institutions.

Producer is not required to have an egg handler license when the following applies:

- Producer is selling and delivering their own eggs direct to an individual consumer (including farmers' market), but labeling is required.
- Producer sells only ungraded eggs to a dealer.

Retailer is required to have an egg handler license in the following situations:

- Retailer grades eggs.
- Retailer packages graded eggs in his own cartons.

Retailer is not required to have an egg handler license in the following situation:

- Retailer sells to the consumer, eggs that have been previously candled and graded by an egg handler in compliance with ORS 632.705 to 632.815.

### Egg breakers license

Required for any person engaging in the commercial breaking of eggs for the purpose of recovering whites, yolks, or whole eggs for human food.

## Resources

Eggs: Laws and Regulations

**State egg laws and regulations**

**(<https://www.oregon.gov/oda/shared/Documents/Publications/FoodSafety/EggsLawsRegs.pdf>)**

Shell Egg Producer Information

Brief summary that will assist egg producers in understanding the rules and regulations for shell eggs.

### **Shell egg producer information**

**(<https://www.oregon.gov/oda/shared/Documents/Publications/FoodSafety/ShellEggProducerRulesRegs.pdf>)**

### **Shell Egg Retail Information**

Brief summary that will assist egg retailers in understanding the rules and regulations for shell eggs.

### **Shell egg retail information**

**(<https://www.oregon.gov/oda/shared/Documents/Publications/FoodSafety/ShellEggRetailerRulesRegs.pdf>)**

## **Next step**

**Get a license application (</oda/programs/FoodSafety/FSLicensing/Pages/Application.aspx>)**

## **Contact**

### **Main Office**

Food Safety

635 Capitol St NE

Salem, OR 97301

Phone: 503-986-4720

## **More info from ODA**

### **Requirements for confined egg-laying hen enclosures**

**(</oda/programs/AnimalHealthFeedsLivestockID/Hens/Pages/AboutHens.aspx>)**

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