

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

92-804

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of the Adoption)
of an Ordinance Protecting)
Accepted Resource Uses, and) ORDINANCE 541
Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in special session on November 4, 1992, Commissioners Ted Lopuszynski, Debi Owens, and Dennis Goecks being present.

WHEREAS, upon the suggestion of the Yamhill County Farm Bureau, the Board initiated an ordinance to protect resource uses in the county by limiting the availability of remedies based on actions and complaints against farming and other resource-based activities over which Yamhill County has jurisdiction; and

WHEREAS, a properly noticed hearing was held before the Yamhill County Planning Commission on September 17, 1992, and the Commission voted to the adoption of the ordinance in substantially the form as set forth hereinbelow; and

WHEREAS on October 21, 1992 a properly noticed hearing was held before the Board and the Board determined that it is in the public interest to adopt the following ordinance to protect resource-based economically productive activities of the county to assure the continued health, safety and prosperity of its residents; NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS as follows:

Section 1. SHORT TITLE. This ordinance may be cited as the Yamhill County Resource Use Protection Ordinance.

Section 2. PURPOSE.

(1) It is the purpose of this Ordinance to protect resource-based economically productive activities of Yamhill County in order to assure the continued health, safety and prosperity of its residents. Resource uses sometimes offend, annoy, interfere with or otherwise affect others located on or near resource lands. Yamhill County has concluded that persons located on or near resource lands must accept the conditions commonly associated with accepted resource uses.

(2) This ordinance is intended to limit the availability of remedies based on nuisance or trespass, complaint procedures,

rights of action and claims for relief over which Yamhill County has jurisdiction, which otherwise would either have an adverse impact on resource uses Yamhill County seeks to protect, or would impair full use of the resource base within Yamhill County.

Section 3. DEFINITIONS. As used in this ordinance:

(1) "Facility" means any real or personal property, including appurtenances thereof and fixtures thereto, associated with a given use.

(2) "Farming practice" means the cultivation, growing, harvesting, processing or selling of plants or animals of any kind, and their byproducts, which lawfully may be grown, possessed and sold, including but not limited to fish, livestock, poultry, grapes, Christmas trees and nursery stock.

(3) "Forest practice" has the meaning given that term by ORS 527.620.

(4) "Nonresource use" means any facility, activity or other use of land which does not constitute a resource use, including but not limited to residential use, and also including any aggregate mining use which is not conducted in accordance with a program complying with Goal 5.

(5) "Resource use" means any current or future generally accepted aggregate mining, farming, ranching or forest practice or facility conducted in compliance with applicable Yamhill County Ordinances.

(6) "Generally accepted" means either:

(a) A practice or facility which is conducted or used in compliance with applicable federal and state laws; or

(b) If there is no applicable federal or state law, a practice or facility which an average person in Yamhill County regularly involved in the same type of resource use would reasonably expect to occur or exist [*in a truly rural setting*]. The Yamhill County Board of Commissioners may, as it deems necessary, establish resource user peer review boards consisting of five persons each, three of whom regularly are involved in a resource use within the county, to advise the Commission as to generally accepted practices or facilities with respect to that resource use.

(7) "Resource use" does not include:

(a) The willful growing of unlawful, infested, infected or diseased plants or animals.

(b) Trespass which involves actual physical intrusion onto the property of another by a person [*or by a person's animals*].

Section 4. PROTECTING RESOURCE USES OUTSIDE UGB.

(1) No resource use occurring outside an urban growth boundary (UGB) shall be declared to be a public or private nuisance or trespass, or to support any complaint procedure, or to give rise to a claim for relief in favor of, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such right, proceeding or claim would arise under an ordinance or the inherent authority of Yamhill County.

(2) This section applies regardless of:

(a) The location of the purportedly affected nonresource use.

(b) Whether the nonresource use purportedly affected existed before or after the occurrence of the resource use.

(c) Whether the resource use or nonresource use has undergone any change or interruption.

(d) Whether the resource use or nonresource use is located inside or outside an area designated as secondary resource lands.

Section 5. PROTECTING RESOURCE USES WITHIN UGB.

(1) No resource use occurring within an urban growth boundary (UGB) shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor of, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such right, proceeding or claim would arise under an ordinance or the inherent authority of Yamhill County.

(2) This section applies:

(a) Regardless of the location of the purportedly affected nonresource use.

(b) Only if the resource use predated the purportedly affected nonresource.

(c) Only if the resource use has not significantly increased in size or intensity after (A) the effective date of this Ordinance, or (B) the date on which the applicable urban growth boundary is changed to include the subject resource use within its limits, whichever date is later. However, if the change is mandated by law, this section shall apply.

Section 6. CHANGE IN UGB. To the extent permissible under State law, if an urban growth boundary (UGB) is changed in such a way as to place a resource use either inside or outside such

boundary, Section 4 of this ordinance applies with respect to any conflict between a resource use and nonresource use.

Section 7. LAND USE DECISIONS. The fact that Yamhill County's comprehensive plan, zoning ordinances and land use decisions may allow the siting, development or support of any particular use does not negate the provisions of this ordinance intended to protect a resource use.

Section 8. COMPLAINTS BY NONRESOURCE USERS. Any persons engaged in a nonresource use are deemed on notice that Yamhill County will not act on complaints involving a resource use protected under this ordinance, wherever located, so long as such resource use complies with applicable provisions of federal and state laws and this ordinance.

Section 9. SEVERABILITY CLAUSE. If any portion of this ordinance is held invalid by a court of competent jurisdiction, such decision shall apply only with respect to the specific portion held invalid by the decision. It is the intent of Yamhill County that the remaining portions of this ordinance continue in full force and effect.

Section 10. EMERGENCY CLAUSE. This ordinance being immediately necessary for the preservation of the public well-being, an emergency is declared to exist and this ordinance takes effect upon its second reading and final adoption.

DONE this 4th day of November, 1992 at McMinnville, Oregon.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

~~CHARLES STERN~~
County Clerk

(Not Available for Signature)
Chairman TED LOPUSZYNSKI

By: [Signature]
JAMES MITCHELL
County Clerk

[Signature]
Commissioner DEBI OWENS

APPROVED AS TO FORM:

[Signature]
JOHN C. PINKSTAFF
Assistant County Counsel

[Signature]
Commissioner DENNIS L. GOECKS

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Accepted by Yamhill County
Board of Commissioners on
11-4-92 by Board Order
92-804