



Oregon

Tina Kotek, Governor

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April 5, 2023

TO: The Honorable Kate Lieber, Chair
The Honorable Tim Knopp, Vice-Chair
Senate Committee on Rules

FROM: Alexis Biddle, Legislative and Policy Coordinator
Hillary Foote,

RE: Senate Bill 1087



Dear Chair Lieber, Vice-Chair Knopp, and Members of the Committee:

DLCD writes to offer our comments on SB 1087, but does not take a position on the bill.

Current Law

Food service in exclusive farm use zones is limited to agri-tourism events, home occupations and at wineries, cideries and breweries. Cafes are not currently permitted as a stand-alone use in ORS 215.213(2).

SB 1078

SB 1087 would allow farm cafes as a new "type-2" use (a conditional use subject to a public hearing and findings) in exclusive farm use zones and mixed farm-forest zones in Lane County subject to a demonstration of compliance with the farm impacts test (ORS 215.296) and the following standards:

- A minimum tract size of 20 acres
- A minimum of 15 acres in active farm use
- The café is owned by the owner of the farm tract who does not have any interest in any other farm café
- The land is at least 1 mile distant from any other farm café
- Is limited to 5,000 square feet of seating area (space for ~250-300 people) and 25 parking spaces
- Is accessed from a state highway or county road
- Promotes farm products produced in the local vicinity
- Sells food items, beverages or meals featuring products produced in the local vicinity
- Is incidental and subordinate to an existing farm use on the tract

The bill also requires Oregon Health Authority (OHA) to obtain a land use compatibility statement from the County prior to issuing a café license and allows OHA to revoke a license if informed by the County of a land use enforcement action against the café.

Allowing non-farm uses in exclusive farm use zones

The bill would add yet another permissible nonfarm use in exclusive farm use zones. Nonfarm uses, particularly hospitality or tourism related nonfarm uses, tend to be controversial due to the potential to impact neighboring commercial farm operations (noise, trespass, traffic, etc).

Inconsistent standard

Limiting this use to Lane County creates an unequal standard across the state complicating implementation and potential rulemaking. A current critique of agri-tourism related uses in general is the lack of standardization across the state. It would be challenging to justify why this policy should be adopted for Lane County and not others.

‘Incidental and subordinate’ to farm use

SB 1078 requires that permitted cafes must be ‘incidental and subordinate’ to the farm use of the property it’s located on. Where the ‘incidental and subordinate’ standard has been used elsewhere in chapter 215, it has been subject to interpretation and the subject of several appeals. This standard is very difficult to enforce over time. In addressing ongoing compliance with an ‘incidental and accessory’ standard for guest ranches authorized under ORS 215.461, the Legislature has also required an operator to report annually to the county on the size of the operation, the income obtained from the guest ranch activities and the income obtained from farm operations.

Vagueness of ‘Local Vicinity’

It is unclear what is meant by ‘local vicinity’ in the bills requirement that the café promotes the sale of farm products from the “local vicinity”. Statutory language addressing farm stands employs the term ‘local agricultural area’. Agency rule clarifies that for farm stands ‘local agricultural area’ means Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

Please let us know if we can provide any further information to this important policy discussion.

Best,

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