

ZOR Work Group REQUESTS TO Planning Commission -- 2-25-23 Work Session

SECTION Identify the section in the ordinance.	ISSUE Concisely and clearly identify your concern(s) and demonstrate how that concern would specifically and negatively impact Loudoun residents and businesses.	RECOMMENDATION Concisely and clearly state your recommended amendment or change in the ordinance.
DEFINITIONS		
13.AA	<p>DEFINITIONS OVERVIEW New definitions are required to clarify uses and use-specific standards: "Farm," "agricultural operations," "tasting room/tap room," "agriculture products," "agricultural production" and "agricultural manufacturing."</p>	These terms are used in the draft text without clear definitions. Example: Code of Virginia requires limited breweries (and farm wineries) to be "located on a farm in the Commonwealth on land zoning agricultural."
13.F	<p>Definition of "FARM" The Zoning Ordinance must include a definition of "farm" to define the uses that per Code of VA are to be "located on a farm."</p> <p>The current Staff Definition of "Farm" was inadequately edited from the original August 2022 definition. ["One or more adjacent or contiguous parcels of land, having a minimum of 5 acres and operated under the same ownership or stewardship, used for agriculture or animal husbandry uses."]</p> <p>Staff's Original definition of "FARM" was, <i>"An agricultural use of one or more parcels of land, whether abutting or not, having a minimum of 5 acres and operated under the same ownership or stewardship, used for the production, cultivation, growing, harvesting or processing of agricultural or horticultural products or for animal husbandry purposes. Also reference "Agriculture, Bona Fide."</i></p> <p>The only recommended CHANGE from the original staff draft text was to this definition was to <u>remove "processing,"</u> as this by itself does not define a farm. "Agricultural processing" is a separate definition and therefore does not need to be included in the definition of "farm."</p>	<p>The Code of Virginia includes for the definition of farm the actual farming activities, not just a broad statement of "agriculture." The Loudoun definition should be made consistent. The definition of "FARM" should also be consistent with the Code of Virginia.</p> <p><u>Language for consistency</u> Code of VA § 46.2-698. C. As used in this section, the term "farm" means one or more areas of land used for the production, cultivation, growing, or harvesting of agricultural products, but does not include a tree farm that is not also a nursery or Christmas tree farm, unless it is part of what otherwise is a farm. As used in this section, the term "agricultural products" means any nursery plants; Christmas trees; horticultural, viticultural, and other cultivated plants and crops; aquaculture; dairy; livestock; poultry; bee; or other farm products.</p> <p>"A farm is defined as the parcel or parcels used by an owner or lessee for the agricultural cultivation, growing, and harvesting of crops and/or animal husbandry."</p>
13.A	<p>Current definition of "Agriculture" states, <i>"A use and category characterized by general active and ongoing agricultural activities, including agronomy, aquaculture, biotechnical agriculture (including education parks for biotechnical agriculture, or a demonstration farm), forestry, fisheries, honey production, silviculture, and <u>similar uses.</u>"</i></p>	<p>Agriculture definition should delete reference to "biotechnical agriculture" as there is no associated definition.</p> <p>Forestry and Silviculture, while similar to agriculture are generally seen to be their own separate uses.</p> <p>"Similar uses" should be further defined to avoid confusion on intent, applicability and approvals.</p>

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13.AM	For ease of use of the Zoning Ordinance, a definition for " Agricultural Manufacturing " should be included in Chapter 13.	<p>Agricultural Manufacturing definitions should be consistent with the Code of Virginia</p> <p><u>Language:</u> Code of VA 23VAC10-500-520. Manufacturing.</p> <p>B. The Code of Virginia does not define the term "manufacturer" for purposes of the local business license tax. The courts, however, have developed a liberally applied test involving three essential elements in determining when a person is a manufacturer: 1. The original material; 2. A process whereby the original material is changed; and 3. A resulting product which, by reason of being subjected to processing, is different from the original material.</p> <p>C. "Manufacturer" means one engaged in activity that transforms materials into an article or product of substantially different character. (See the Virginia Supreme Court's discussion in County of Chesterfield v. BBC Brown Boveri, 238 Va. 64 (1989) of the term "manufacturer" for purposes of the BPOL law.)</p>
13.AO	The only location where " Agricultural Operations " is referenced is in Chapter 7.05 (Light, Noise and Vibration, Purpose and Applicability), without providing a definition or specific citing or reference to Code of VA.	<p>For ease of use of the Zoning Ordinance, the definition should be included in Chapter 13.</p> <p><u>Insert actual language</u> Code of VA § 3.2-300. Definitions.</p> <p>"Agricultural operation" means any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of all kinds, meat, dairy, and poultry products, nuts, tobacco, nursery, and floral products and the production and harvest of products from silviculture activity.</p> <p>"Agricultural operation" also includes any operation devoted to the housing of livestock as defined in § 3.2-6500.</p>
13.AP	The definition of Agricultural Processing should be part of the definition of: Agriculture, Horticulture, Animal Husbandry, Feedlot, Farm Co-ops to recognize that agricultural processing is an intrinsic activity in those uses.	The definition of "farm" should remain defined such that processing by itself does not define a farm.

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13.AP	The terms " Agricultural products " and " Agricultural production " should be defined and included in Chapter 13.	For ease of use of the Zoning Ordinance, definitions for "Agricultural products" and "Agricultural production" should be included in Chapter 13. <u>Language to insert:</u> Code of VA § 15.2-4302. Definitions. "Agricultural products" means crops, livestock and livestock products, including but not limited to: field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, for bearing animals, milk, eggs and furs. "Agricultural production" means the production for commercial purposes of crops, livestock and livestock products, and includes the processing or retail sales by the producer of crops, livestock or livestock products which are produced on the parcel or in the district.
13.T	Add definition of Tasting room / Tap room. As an accessory use to agricultural uses, these definitions should be included in the Definitions	Suggested language: TASTING ROOM - <i>"Any place or premise licensed by Virginia Alcohol Beverage Control and operated by an alcohol beverage manufacturer where in alcoholic drinks are provided to customers to sample onsite. Such facilities may or may not include an option for customers to purchase containers of alcohol for off-site consumption."</i>
13.0	Agricultural Structure There needs to be a clear distinction between an "Agricultural Structure" and a "Farm Structure" in terms of Uniform Building Code compliance. · "An Agricultural Structure is not a place used by the public or a place of human habitation or employment where agricultural products are processed, treated, or packaged." (FEMA) · A Farm Building or Structure may "sample or sell" products, which thereby implies human habitation or employment. The primary purpose of this definition is to delineate a "true" ag structure from a "farm structure." The former is not for human habitation or employment; the latter may be a tasting/tap room or farm event venue.	A Farm Building or Structure may "sample or sell" products, but are considered "exempt" from building and fire codes per VA Code § 36-99. 2018 Virginia Agritourism & Building Codes Review <ul style="list-style-type: none"> • Any building that is used as a place of assembly on a farm that is not determined (per VA State Code and Attorney General opinion) to be an agriculture structure must comply with USBC. • When a farm building or structure falls outside the exemption, either because it's no longer used for one of the specified purposes, or is no longer located on the property where a farming operation takes place, or because it is used for residential purposes, the strictures of 13 VA ADMIN. Code 5-63-30 would require the owner to obtain a new occupancy permit. • "Occupant loads of 50 or more (which defines a public assembly) should not be exempt from the USBC and the SFPC." • "When the building is only used for events located on the farm as its primary purpose, the building may not be exempt."
ENFORCEMENT		

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11.1	<p>Public comments changes to enforcement procedures include requests for proactive enforcement actions, penalties for willful misstatements on permits, and requiring land violations to be returned to original conditions.</p> <p>To make these changes possible in the Zoning Ordinance requires a Board of Supervisor change in POLICY, with corresponding changes in the County budget for increased Enforcement Department staffing.</p>	<p>Staff acknowledges that changing to more proactive enforcement would <u>require Board direction, stating</u>, "The Board is also able to change policy to require active enforcement should it desire to do so."</p> <p>To initiate the policy change, the Planning Commission should include the request for a policy change/review in their ZOR recommendations.</p> <p>Additional notes: Section 11.14 provides tools that the Zoning Administrator may take in conformance with Code of Virginia provisions and Board policy. Changing the text will reduce the Zoning Administrator's flexibility in appropriately dealing with violators and potential violators. Penalty amounts and time intervals between violations are in accordance with Code of Virginia and are already the most severe authorized.</p>
USES		
3.0	Slaughterhouse is a defined use that is not allowed in any zoning district. A better description would be "Animal Processing Facility."	Slaughterhouse ("Animal Processing Facility") should be added to use tables for AR-1, AR-2, and Transition. Minor special exception with use standards could also alleviate concerns, along with state law requirements.
4.0	<p>Agricultural Processing ZOR Work Group and REDC request new use-specific standards under Ch. 4 Agriculture for the current Agricultural Processing use.</p> <p>The Draft ZOR Text does not allow Agricultural Processing either 1) in the definition of Agriculture OR 2) in the rural use table under Agriculture; it is a separate use under the "Industrial/Production" section. The only mention of "Agricultural Processing" in the draft text is as a principal use which would only be allowed by Special Exception, which is cost prohibitive to small ag operations.</p>	<p>Small scale processing of agricultural products grown within Loudoun should be allowed on farms in AR-1 and AR-2. Small producers often have multiple small parcels that may not be contiguous. The requirements should be amended to allow processing of products from multiple parcels in Loudoun County owned by the same individual on one parcel that is also used for production, instead of, as currently written, to require individual processing centers on each parcel</p> <p>Remove requirement for 51% of product to be "derived from the agricultural use on site" and replace with "51% shall be derived from agricultural production from within Loudoun County"</p> <p>(Concern about livestock processing is covered by state law that only allows on farm processing of a certain number of poultry without VDACS inspection and permits as a slaughter facility)</p>
4.02.01	Accessory Dwellings. B. Maximum Size: Disagree with approach to sizing accessory dwellings based on principal dwelling size and zoning district. If the purpose of accessory dwellings is affordable housing opportunities, then the size should be small regardless of zoning district; larger units invite abuse of the use for other purposes.	Adjust the section to focus on appropriate size for affordability, not based on zoning district or in comparison to the principal dwelling size. B. Maximum Size: Accessory Dwellings must not exceed 1,200 square feet in gross floor area.

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4.06.02	<p>Data Center Use-Specific Standards required to mitigate noise and health impacts to adjacent/nearby residential.</p> <p>Use of native plants, lighting requirements and LPAT standards require review, and additional environmental protections.</p>	<p>Clarify whether the use of native plants will be required with the additional specific landscape standards. LPAT connections to the RSCR may fall on data center property; how will this be addressed? SPECIFIC TEXT SUGGESTIONS: A. Environmental Standards applicable in all zoning districts: Provide emergency back-up power system data on projected emissions and efficiency ratings. B.3.a.2. Screening and Location of Mechanical Equipment --Separation from Residential Uses. Mechanical equipment must be screened from adjacent residential by the data center building or enclosed in a structure so that any current or future residential development is screened (aside from any rooftop machinery) by the required setback plus the building structure or equipment enclosure. 5. Exterior Lighting Any exterior lighting must be fully shielded, directing light downward and into the interior of the property, and away from adjacent existing or planned roads and adjacent properties. 7. Standards for Data Centers Adjacent to Residential.b.Minimum Setback for Structures. Structures must be set back at least 500 feet (<i>to be ideal, but no less than 250 ft.</i>) NOTE:c & d Change in building height and step-back should be maintained but distances increased to 250 ft. ADD new e. Noise attenuation: A noise and vibration impact analysis must be submitted to: i. measure the existing background noise anticipated during operating hours ii. compute potential noise impacts iii. develop noise mitigation techniques including but not limited to acoustic louvers, acoustic mufflers, low-speed fans, enclosures, containers, barriers, silencers for emergency generators and HVAC equipment. f. Generator testing. To occur only during those times of day with the loudest background noise based on the noise analysis.</p>
4.08.05	<p>Brewery, Limited and Farm Wineries size of Operation. Use-specific standards should apply three or four "Levels" or "tiers" for various size operations, as is done for a number of other rural economy uses and use-specific standards. This would accommodate small to large operations while managing impacts.</p> <p>Brewery, Limited. Attendance. How is capacity considered for outdoor (licensed) space and vehicular traffic to comply with sketch plan (Chapter 7), parking, and road access standards (5.09.01)? Should a site visit be required for all new establishments?</p>	<p>To be consistent with other Rural Economy Businesses that have zoning intensity scale intensity regulations, Brewery Limited, and Farm Wineries should have similar intensity scale regulations.</p> <p>This would permit smaller operations to be permitted with little impacts, while larger operations would be in line with similar higher intensity operations.</p> <p>This is consistent with 2019 Comp Plan Policy 3, Strategy 3.1: <i>Ensure compatibility of rural economy uses through the evaluation of the scale, use, intensity, and design (site and building) of development proposals in comparison with the dominant rural character and adjacent uses.</i></p> <p><i>Action A: Evaluate and revise zoning regulations and development standards for rural economy uses. Such regulations and standards will address traffic capacity, safe and adequate road access, number of employees, site design standards (e.g., land disturbance, buffering, use intensity, siting, and architectural features), and public health, safety and welfare.</i></p>

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4.08.05	<p>Brewery, Limited. Hours of operation. For Limited Breweries and Farm Wineries, REDC, ZOR Work Groups and much public input commented with regard to Hours of Operation that current guidelines from Code of Virginia and Virginia ABC allow on-premises locations to sell alcohol between the hours of 6am and 2 am Monday through Sunday.</p>	<p>Scalability levels should be applied to all high-intensity uses based on acreage, traffic, noise, setback requirements) as has been implemented for other uses.</p> <p>Entertainment and/or educational component activities regulations (including noise, light, outdoor music, events) should be applied for more consistent hours as other rural business uses of similar intensity to better reflect the rural ecosystem</p>
4.02.08	<p>Seasonal Labor Dormitory Use Specific Standard requires Special Exception to have these in the rural area. This is too expensive for farmers.</p> <p>The current text still requires 200 sq ft. instead of the REDC-recommended OSHA regulations that require a minimum of 100 sq ft. per laborer.</p> <p>1. Farmers face higher employment hurdles than other businesses, esp here in LOCO. Providing small, affordable tiny homes, trailers, yurts, cabins, temporary/movable dwellings can help tremendously. Low cost, low impact houses are appropriate and welcomed by many farm workers. They are less costly for farmers to provide, and provide instant accommodations in an area where living quarters are otherwise COMPLETELY UNATTAINABLE for typical farm workers.</p> <p>2. This is SEASONAL LABOR DORMITORY. Smaller, 100 sq ft living spaces are fine for seasonal situations. They require less cost to heat and cool, they are easy to keep clean, and provide enough room for sleeping, sitting, and changing- all issues important to seasonal farm workers.</p>	<p>Recommend that a formula be established that could be implemented with oversight by extension or soil and water to determine appropriate amount of dormitory space per farm to house seasonal labor required to work that specific farm. This should not be part of the Special Exception process in AR1 & AR2.</p> <p>Reconsider and accept ZOC/REDC recommendation of 100 sq ft min seasonal dormitory size will bolster farmers' ability to recruit and retain seasonal farm labor. This is essential for the future of the small farms that are increasingly defining agriculture in Loudoun's rural west.</p> <p>Loudoun County standards should conform to OSHA regulations requiring a minimum of 100sq ft. versus 200 sq.ft minimum in draft text.</p> <p>Recommendation would be to base the number of allowed seasonal labor dwellings on the number of verifiably payrolled laborers required to farm the acreage, and the availability of adequate sewer, water and electricity to support required housing.</p>
4.02.11	<p>Tenant Dwellings The number of tenant dwellings per farm is currently limited to a maximum of 4 per 85 acres and more. Most Loco fruit and vegetable operators are working 10 or less acres and typically employ more than 5 people to do that. (Small acreage farming like we have here in Loudoun is manual labor dependent.) Legally housing these necessary workers is crucial to the success of small farmers. Increasing at least the temporary, seasonal housing numbers allowed on a farm of any size would enable that success.</p>	<p>Staff did not address this issue.</p> <p>Staff should work closely with REDC/Farm Bureau contacts with expertise to revise Seasonal Labor Dormitory and Tenant Dwelling calculations to reflect the actual needs of real Loudoun County farmers. Loudoun process.</p>

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4.04.14	<p>Farm markets are typically located on or near a farm as its definition requires the majority of its sales come from products made/grown on a farm. Farms are often (mostly) located off dirt/gravel roads, yet site specific standards prohibit a farm market location off a gravel road.</p> <p>Farm Markets. If the definition of farm market is for the majority of product to be made on that farm, then these should be allowed on gravel roads, where most farms are located. However, this seems to closely resemble the wayside stand definition.</p> <p>Farm Market (Off-site) Currently prohibited in Urban and Suburban Use Table. REDC recommends this be a by-right use to encourage establishment of off-site farm markets to create demand for Loudoun-grown products</p>	<p>As currently proposed the definition of "Farm Market (Off Site)" is well written for how we currently operate farmers markets. Wouldn't it be more strait forward to adjust the use tables to allow "Farm Market (off Site)" in the appropriate regions. Expanding to allow them in the RC, as well as the Urban and Suburban districts.</p> <p>Clarification is needed >Are farm markets considered retail stores in Urban and Suburban? >Use standards should be the same as for farm market in rural. > Use name should remain Farm Market to reduce confusion in ZO</p>
4.05.01	<p>Amphitheater. Original input in July 2022 indicated this use allowed by Special Exception in the Rural Policy Area, and should require hours of operation.</p> <p>With up to 2000 seats Road Access standards should require being on a paved road, and intensity should consider location in terms of adjacent properties and other road conditions.</p>	<p>The Use Definition for Amphitheater should also differentiate it in size and intensity to a band stand, as is common at many other high-intensity use locations offering "performances" and "concerts" with or without tickets (such as limited breweries and farm wineries).</p> <p>Amphitheater. International Dark Sky Association performance standards should be included as part of any SPEX process in MODs, and may preclude appropriateness of any amphitheaters in MODs.</p>
4.06.09	<p>Sawmills. With regard to Rural Use Specific Standards: Nurseries, ag processing, sawmills (with three levels), and slaughterhouses all require a special exception.</p>	<p>The special exception requirement is excessive to someone looking to offer small scale grain cleaning/milling or animal processing services on their farm or saw milling services and should be further considered.</p>

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4.08.03	<p>Agriculture Support Uses. Equine Event Facility and Stable livery should both be under Agriculture / animal husbandry rather than Ag. Support Uses.</p> <p>There are too many restrictions for this agricultural activity under Agricultural support, especially in relation to more intense uses that have less restrictions.</p>	<p>Recommendations for further Staff review:</p> <ul style="list-style-type: none"> > 25 acres is excessive for an equine livery. 10 acres should be a minimum. Pasture stocking rates will dictate how many animals can be housed and many existing operations are on 15 acres doing best practices. >Traffic and noise impacts of liveries are much less than for other rural uses allowed on less land. >For hours of operation on equestrian events (6am to 9pm and 6am to 10pm), this should not include deliveries or preparation and care of animals during an event outside of those times. >Size of structure. Stable Livery and Stable Event uses as well as many Stable Private uses require indoor riding arenas to be viable businesses or to simply keep animals in work. Indoor training facilities allow for daily training and instruction. Common size is 100' x 200' which is a larger footprint than allowed for all combined structures on less than 25 acres and within 4,000 sq.ft. for all parcels 25-50 acres, leaving little area left for other necessary structures. REDC and LCEA members can assist Staff understand the requirements. The best solution is to move equestrian uses out of Ag support and to specify that all related buildings are agricultural buildings without SF limitations. >without these changes, most existing equestrian facilities will need to be grandfathered in and future businesses will need to meet unrealistic zoning requirements.
4.08.08	<p>Wayside stands. What percent of products can be sold that are not made on-site? Defining this percentage either by gross product sales or allotted floor space will be necessary for operators to know how to comply with the zoning rules.</p>	<p>Recommend that a 25% of gross sales be the maximum allowable non-site produced product sold at a wayside stand. The off site percentage should not apply to other Loudoun Grown product sales.</p> <p>This insures the spirit of the Wayside Stand definition and allows/encourages farmer operators to support other Loudoun growers by selling their product.</p>
3.04 3.04.D	<p>3.04 Temporary Uses - Special Events 3.04.D - Special Events Event management regulations need to be consistent throughout the zoning ordinance, primarily for high-intensity uses to ensure compliance with 2019 Comp Plan Policy 3.1. Event permits should be less cumbersome for off-site farm market events.</p> <p>The Maximum number of Non-Exempt special Events does not contemplate agricultural operations that limit events to certain seasons through the year to have events on site that are outside or showcase agricultural operations during unique times of the year (harvest, calving, leaves changing, spring growth etc.).</p>	<p>Farms should be allowed, without the special exception process, to hold events at a higher frequency than 14 days based on scale/parcel size to allow for operations to utilize the unique seasons related to their industry. Suggest adding language to exempt farms from the frequency period but still hold them to the 10 events.</p> <p>Draft text for Event management for high-intensity uses was considered and removed by the former DPZ Director. This text should be reinserted, reviewed and considered by Staff, Planning Commission and BOS.</p>