

ORDINANCE NO. 956

AN ORDINANCE ESTABLISHING PROTECTION OF AGRICULTURALLY BASED ECONOMICALLY PRODUCTIVE ACTIVITIES IN CANBY, TO ASSURE THE CONTINUED HEALTH, SAFETY, AND PROSPERITY OF ITS RESIDENTS.

Whereas, the City Council has determined that it is important to protect agriculturally based, economically productive activities of Canby, to assure the continued health, safety, and prosperity of its residents.

THE CANBY CITY COUNCIL HEREBY ORDAINS:

Section 1. Short Title.

This Ordinance may be cited as the Canby Agricultural Use Protection Ordinance.

Section 2. Purpose.

1. It is the purpose of this Ordinance to protect agriculturally based, economically productive activities of Canby in order to assure the continued health, safety, and prosperity of its residents. Agricultural uses sometimes offend, annoy, interfere with, or otherwise affect others located on or near agricultural lands. Canby has concluded that persons located on or near agricultural land must accept the conditions commonly associated with accepted agricultural 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 Canby has jurisdiction, when they otherwise would either have an adverse impact on agricultural uses which Canby seeks to protect, or would impair full use of the agricultural base within Canby.
3. This Ordinance is to provide a basis for intergovernmental agreements with Clackamas County regarding agricultural uses abutting the City's Urban Growth Boundary.

Section 3. Definitions. (as used in this Ordinance)

1. "Facility" means any real or personal property, including appurtenances thereto, and fixtures thereon, associated with a given use.
2. "Farming practice" means the cultivation, growing, harvesting, processing, or selling of plants of any kind which lawfully may be grown, possessed, and sold, including, but not limited to Christmas trees and nursery stock. Other commonly accepted agricultural practices currently in operation within the Urban Growth Boundary (UGB), as of the effective date of this Ordinance, would be grandfathered in.
3. "Forest practice" has the meaning given that term by ORS 527.620.
4. "Non-agricultural use" means any facility, activity, or other use of land which does not constitute an agricultural use, including, but not limited to residential use.
5. "Agricultural use" means any current or future generally accepted farming, ranching, nursery, or forest practice or facility conducted in compliance with applicable Canby land use 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 Canby who is a grower or producer regularly involved in the same type of agricultural use would reasonably expect to occur or exist in a truly rural setting. The Canby City Council may, as it deems necessary, establish agricultural user peer review boards consisting of five (5) persons who regularly are involved in an agricultural use within the County, three of whom regularly are involved in the same type of agricultural use in question, to advise the Council as to generally accepted practices of facilities with respect to that agricultural use.
7. "Agricultural use" does not include:

- a. Knowingly growing 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 Agricultural Uses Within the UGB.

1. No agricultural 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, non-agricultural 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 Canby.
2. This section applies:
 - a. Regardless of the location of the purportedly affected non-agricultural use.
 - b. Only if the agricultural use predated the purportedly affected non-agricultural use.
 - c. Only if the agricultural 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 UGB is changed to include the subject agricultural use within its limits, whichever date is later. However, if the change is mandated by law, this section shall apply.
3. Approved non-agricultural uses that antedate and abut agricultural uses in the UGB would be responsible for adequate, six-foot high, cyclone fencing to prohibit trespass.

Section 5. Protecting Agricultural Uses Outside the UGB.

1. While realizing only the County has jurisdiction on agricultural uses outside the City UGB, long range planning dictates that the City of Canby and Clackamas County develop intergovernmental agreements to protect agricultural uses where City and County interests meet. The City of Canby is interested in protecting County agricultural uses from

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, non-agricultural 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 Canby.

8. This section applies when:

- a. The location of the purportedly affected non-agricultural use abuts County land.
- b. Only if the agricultural use predated the purportedly affected non-agricultural use.
- c. Whether the agricultural use or non-agricultural use has undergone any change or interruption.

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 an agricultural use either inside or outside such boundary, Section 5 of this Ordinance applies with respect to any conflict between an agricultural use and non-agricultural use.

Section 7. Land Use Decisions.

The fact that Canby'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 an agricultural use.

Section 8. Complaints by Non-Agricultural Users.

Any persons engaged in a non-agricultural use are deemed on notice that Canby will not act on complaints involving an agricultural use protected under this Ordinance, wherever located, so long as such agricultural 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 portions held invalid by the decision. It is the intent of the City of Canby that the remaining portions of this Ordinance continue in full force and effect.

Section 10. Effective Date Clause.

This Ordinance will take effect 30 days after its second reading and final adoption.

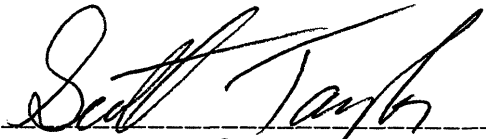
SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 2, 1996, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, October 16, 1996, commencing at the hour of 7:30 p.m., in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.



Marilyn K. Perkett, City Recorder

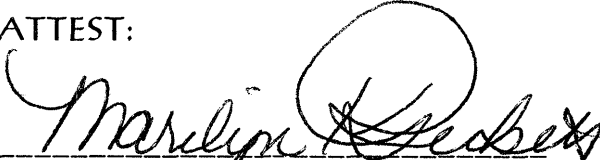
PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 16th day of October, 1996, by the following vote:

YEAS 6 NAYS 0



Scott Taylor, Mayor
City of Canby

ATTEST:



Marilyn K. Perkett
City Recorder