



Board of County Commissioners Agenda Request

Date of Meeting: November 12, 2019

Date Submitted: November 5, 2019

To: Honorable Chairman and Members of the Board

From: Margaret Emblidge, AICP, Planning & Community Development Director

Agenda Location: Public Hearing – **Adoption of Ordinance**

Subject: Amendment to Hendry County Code of Ordinances –
Chapter 1-53 Zoning, Specifically, Section 1-53-2.1A, Section 1-53-3.1, Table of
Use Regulations; Table 53-1, Table of Use Regulations; Section 1-53-6.7,
Agriculture in nonagriculturally zoned districts

Statement of Issue:

This is a County initiated amendment to the Land Development Code to address the concerns of the residents of Montura regarding commercial agricultural uses, including fish farms. The First Reading was held at the October 22, 2019 Board meeting. This agenda item is a Public Hearing for the adoption of the proposed LDC amendments.

The sections in the LDC to be amended include:

- Chapter 1-53, Zoning, specifically, Section 1-53-2.1A, RR-F district;
- Section 1-53-3.1, Table of Use Regulations; Table 53-1;
- Section 1-53-3.7 Agricultural in nonagriculturally zoned districts. Subsection 1-53-6.7(g)(1)- (3);

Background

The proposed amendment is based on a request from Central County Water Control District (CCWCD) regarding fish farms in Montura Ranch Estates. CCWCD requested the Hendry County Board of County Commissioners (BCC) consider imposing a temporary zoning moratorium related to the locations and proximity of fish farm and residential uses within the District.

Staff presented a different approach to discuss with the community that would address the fish farms/commercial agriculture issue. The RR-F zoning would not be changed to a new zoning district and the unlimited number of household farm animals would not change with this amendment.

The community has been notified of the public hearings and the final proposed amendments have been emailed and posted on the County website.

Analysis

1-53-2.1A. RR-F district. – Delete this section as it is inconsistent with Section 1-53-6.7 relating to the RR and RR-F zoning districts allowing the same uses except as provided in subsection 1-53-6.7(g). With the revision to prohibit commercial agriculture in the RR-F zoning district this would no longer be consistent since commercial agriculture can be permitted through a special permit in the RR zoning district if they have a minimum five acre parcel.

Section 1-53-3.1 Table of Use Regulations Table 53-1

Delete the P/1 in the table for agriculture uses permitted in the RR-F zoning district and add the footnote – “6” – “Limited agricultural activities are allowed in accordance with section 1-53-6.7.” Note that the RR-F was supposed to be P that permitted all agriculture but was inadvertently change to P/1 during the Wheeler Estes amendments.

Section 1-53-6.7 Agriculture in nonagriculturally zoned districts. Subsection 1-53-6.7(g)(1)(3)

Revise the language describing what animals are permitted in RR-F as follows:

- (1) ~~There shall be no limit on the number of animals regardless of lot size~~ Domestic farm animals for household use are allowed without numeric limit, except:
 - a. ~~All~~The animals shall be properly enclosed on the possessor's property.
 - b. ~~All~~The animals shall be fed, watered, and cared for in a humane and proper manner.
 - c. The keeping of the animals under this subsection shall not be done in a manner which creates a common law nuisance.
 - d. Animal waste shall not be allowed to remain on the premises in amounts which cause a health or environmental hazard.
 - e. The animals may not be bred for sale and animal products may not be sold.
- (2) ~~Commercial agricultural activities are permitted.~~
- ~~(3)~~ Barbed wire fences are allowed in this zoning district.

Fiscal Impact

N/A

Options

Option 1: Conduct a public hearing and adopt the attached Ordinance.

Option 2: Board direction.

Recommendation

Option 1

Attachments:

1. Proposed Ordinance

COUNTY OF HENDRY, STATE OF FLORIDA

ORDINANCE NO. 2019 - _____

RECORDED IN ORDINANCE BOOK _____, PAGE _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF HENDRY COUNTY, FLORIDA, AMENDING THE HENDRY COUNTY CODE OF ORDINANCES, CHAPTER 1-53, ZONING, SPECIFICALLY, SECTION 1-53-2.1A; SECTION 1-53-3.1, TABLE OF USE REGULATIONS; TABLE 53-1, TABLE OF USE REGULATIONS; SECTION 1-53-6.7, AGRICULTURE IN NONAGRICULTURALLY ZONED DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS OF LAW; PROVIDING FOR CODIFICATION, INCLUSION IN CODE, AND SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Hendry County has adopted the Hendry County Land Development Code pursuant to the authority granted by the Florida Constitution, Florida Statutes, and Laws of Florida; and

WHEREAS, the purpose of the Code is to provide for orderly growth, to encourage the appropriate use of land, to discourage incompatible uses of adjacent properties, and to implement goals and objectives to the Hendry County Comprehensive Plan; and

WHEREAS, the County has determined there is a need to amend Section 1-53.2.1A; Section 1-53-3.1, Table of Use Regulations; Table 53-1, Table of Use Regulations; and Section 1-53-6.7, Agriculture in nonagriculturally zoned districts; and

WHEREAS, the Hendry County Local Planning Agency has considered the proposed amendments to the Code of Ordinances, conducted a public hearing to receive public input and recommended that the Board of County Commissioners adopt the proposed amendments.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Hendry County, Florida, that:

SECTION ONE. Sections 1-53.2.1A, 1-53-3.1, Table 53-1, and Section 1-53.6.7 are hereby amended in accordance with Exhibit "A" incorporated by reference herein.

SECTION TWO. SEVERABILITY

If any section, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION THREE. CONFLICTS OF LAW

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted Hendry County Ordinance or Florida Statutes, the more restrictive shall apply.

**SECTION FOUR. CODIFICATION, INCLUSION IN CODE AND
SCRIVENER’S ERRORS**

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Hendry County Code; and that sections of this ordinance may be renumbered or re-lettered and that the word “ordinance” may be changed to “section”, “article”, or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the County Administrator, or the County Administrator’s designee, without need of public hearing, by filing a corrected or re-codified copy of same with the Clerk of Circuit Court.

SECTION FIVE. EFFECTIVE DATE

This Ordinance shall take effect immediately upon filing with the Secretary of State.

Duly passed and adopted in Regular Session of the Board of County Commissioners of Hendry County, Florida this 12th day of November 2019.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF HENDRY COUNTY, FLORIDA

_____, Deputy Clerk

Mitchell Wills, Chair

(b)	<i>Residential uses.</i>																	
(1)	Boardinghouse and roominghouse	—	—	—	—	—	—	—	—	—	S	—	S	—	—	—	—	—
(2)	Community residential home, major	—	—	—	—	—	—	—	—	—	P	—	P	—	—	—	—	—
(3)	Community residential home, minor	P/3	P/3	P/3	P/3	P/3	P/3	P/3	P/3	P/3	P/3	P/3	P/3	—	—	—	—	—
(4)	Manufactured Home	P	P	—	P	P	—	P	—	P	—	P	—	S	—	—	—	—
(5)	Mobile home park	—	—	—	—	—	—	—	—	—	S/2	—	—	—	—	—	—	—
(6)	Modular Home	P	P	P	P	P	P	P	P	P	P	P	P	P	—	—	—	—
(7)	Multifamily dwelling	—	—	—	—	—	—	—	—	—	—	—	P	—	—	—	—	—
(8)	Single-family dwelling	P	P	P	P	P	P	P	P	P	P	P	P	P	—	—	—	—
(9)	Townhouse dwelling	—	—	—	—	—	—	—	—	—	—	—	P	—	—	—	—	—
(10)	Two-family dwelling	—	—	—	—	—	—	—	—	—	—	—	P	—	—	—	—	—
(11)	Mixed use development	—	—	—	—	—	—	—	—	—	P/2	P/2	P/2	P/2	P/2	P/2	—	—
(12)	Nursing home/ACLF	—	—	—	—	—	—	—	—	—	S	—	S	—	—	—	—	—

—	Use not permitted in this district.
P	Use permitted by right in this district.
S	Use permitted by special exception in this district.
P/1	Use permitted subject to provisions of section 1-53-6.7.
P/2	Use permitted by planned unit development in this district subject to provisions of section 1-53-5.
S/2	Mobile home park by special exception in RG-3M district only.
P/3	A minor community residential home must have a minimum separation of 1,000 feet from another minor community residential home and shall provide the planning and community development department with a list and location of all licensed facilities in the county to ensure the 1,000 feet separation is met.
P/4	Agricultural uses in the RR-WE district are permitted in accordance with section 1-53-3.7.1.e.
5	Use allowed by planned unit development in the RR-WE district subject to the provisions of section 1-53-3.7.
6	<u>Limited agricultural activities are allowed in accordance with section 1-53-6.7.</u>

1-53-6.7. *Agriculture in nonagriculturally zoned districts.*

- (a) Whenever property is rezoned by this chapter or any amendment hereto, agricultural uses existing on the property at the time of rezoning may be continued.
- (b) For any parcel of land in the county, regardless of zoning, which is at least five acres in size, agricultural uses may be recommenced after discontinuance within three years after discontinuance.
- (c) In accordance with table 53-1, new agricultural uses may be initiated on parcels zoned residential/rural development (rr) which are at least five acres in size, upon the issuance of a special permit. The application for a special permit must be accompanied by a fee as established by the board of county commissioners.
 - (1) *Notification procedures.*
 - a. The community development director, upon receipt of an application and fee, shall provide notification of the application as follows:
 - 1. To the building official, county administrator, the county engineer, county attorney, and the county commissioner in whose district the subject property is situated.
 - 2. To persons owning land within 750 feet of the subject property by first class mail.
 - 3. By posting a conspicuous notice on the subject property.

- b. The notice shall clearly and conspicuously state that, unless an objection is filed with the community development director within 15 days from the date of the postmark of the letter received from the county, the director may issue a special permit in accordance with this section.
 - c. If a written objection is received, the matter shall be presented to the county commission for final decision at a public hearing. Notice of the public hearing shall be sent to each person who has previously received written notice by first class mail no less than ten days prior to the hearing, and notice shall be published in a newspaper of general circulation within the county no less than five days prior to the hearing.
- (2) *Criteria for granting or denial of permit.* The county shall consider the following criteria in reviewing the application:
- a. The allowance of the proposed agricultural use does not create a common law nuisance in respect to odor, noise and health or environmental hazards.
 - b. The proposed use is compatible with surrounding uses.
 - c. The proposed use can meet all applicable setback requirements contained in the Land Development Code.
 - d. The proposed use will not deny any landowner who received notification of the ability to use their land in accordance with the rules, criteria, and regulations contained in the Land Development Code.
- (3) *Appeal to board of county commissioners.*
- a. In the event the community development director denies a permit after an application is made hereunder, the applicant may, within 15 days, appeal the denial to the board of county commissioners by completing a form provided by the community development director.
 - b. An appeal filed under this section shall be decided by the board of county commissioners after a public hearing in which notice has been sent to each person who has previously received written notice by first class mail no less than ten days prior to the hearing, and such notice has been published in a newspaper of general circulation within the county no less than five days prior to the hearing.
 - c. At or after such public hearing, the board of county commissioners may grant a permit to the applicant, grant a permit with conditions or deny the application.
- (d) There shall be no restriction or incidental gardening or horticultural activities accessory to residential use.
- (e) Domestic animals for household use only may be kept on parcels of any size in the residential/rural development (RR) zoning district, provided that the number of animals on a parcel may not exceed the number set forth herein:

		On parcels not exceeding two acres:	Allowed per additional acre or fraction thereof:
(1)	Horses and cows	1 (total)	1 (total)
(2)	Hogs	2	2
(3)	Goats and/or sheep	5	3

(4)	Poultry	6	5
(5)	Llamas	2	2
(6)	Caged animals	10	5
(7)	Animals not listed above shall be subject to the restrictions for the most similar animal listed above.		

- (f) Except as allowed by this section, no animals, other than common household pets for personal, noncommercial use by the occupants of a residence, may be kept on premises in any residential zoning district within the county.
- (g) Notwithstanding any other part of this chapter, the following shall apply to the RR-F zoning district:
- (1) ~~There shall be no limit on the number of animals regardless of lot size~~ Domestic farm animals for household use are allowed without numeric limit, except:
- a. ~~All~~ The animals shall be properly enclosed on the possessor's property.
 - b. ~~All~~ The animals shall be fed, watered, and cared for in a humane and proper manner.
 - c. The keeping of the animals under this subsection shall not be done in a manner which creates a common law nuisance.
 - d. Animal waste shall not be allowed to remain on the premises in amounts which cause a health or environmental hazard.
 - e. The animals may not be bred for sale and animal products may not be sold.
- (2) ~~Commercial agricultural activities are permitted.~~
- ~~(3)~~ Barbed wire fences are allowed in this zoning district.