
OAM2023-000944

Forestry Recreation (FR)/Foothill Agriculture (FA) ORDINANCE AMENDMENT

Public Body: Salt Lake County Council

Meeting Dates: February 6, 2024

Request: Update to the FR and FA zoning districts to address horses and other animals

Planner: Brian Tucker, Planning Manager

Legal Counsel: Zach Shaw

Planning Staff Recommendation: Approval

HISTORY OF ORDINANCE UPDATE

This ordinance was first proposed in 2021 as part of a multi-part response to water quality issues found in many of the streams that make up the Jordan River watershed. These water quality issues resulted in a mandate from the State of Utah that Salt Lake County implement regulatory best management practices to improve water quality. These regulatory best management practices have an implementation deadline of February 2024; this deadline is for adoption of regulations, not elimination of impaired status.

An earlier draft was presented to the Salt Lake County and Mountainous Planning District Planning Commissions in 2021. Public hearings were held by the Mountainous Planning District and Salt Lake County Planning Commissions as part of the recommendation process. Abundant public input was given during those hearings, resulting in significant revisions to the draft ordinance being made in response to that public input. Notwithstanding these revisions, public opposition persisted.

The epicenter of that opposition was in the Rose Canyon area, an area of the County where most residents live in the Hi-Country I and Hi-Country II neighborhoods. Recognizing that these citizens had only been engaged via the contentious public hearing process, Salt Lake County and MSD Planning staffs reached out to members of the Hi-Country I and II HOA boards in an attempt to better understand from a smaller, more manageable group of concerned citizens their precise concerns about the proposed ordinance update. It was hoped that because these board members are residents in an area where public opposition was centered, they could give the staff feedback on their concerns and also act as a conduit to reach out to other concerned residents in the hope that they too could help the staff understand their precise concerns. A group consisting of concerned citizens from both Hi Country I and II met with staff on two occasions. Some of these citizens were HOA board members but the views they represented were their own, not those of either board.

The first meeting consisted of the staff listening to the residents' concerns for 3 hours. After better understanding those concerns, Salt Lake County and MSD Planning staff made significant additional revisions to the proposed ordinance update in an attempt to address each concern. The revised draft ordinance was then sent to the residents from the first meeting and a second meeting was held to listen to and discuss the revised draft. These revisions are shown in Appendix B.

As a result of the 2021 public hearings, the 2023 meetings held with concerned citizens, and a collaborative drafting and editing process between the Salt Lake County and MSD staff members, this proposed ordinance has been extensively vetted and revised.

DESCRIPTION OF THE PROBLEMS

A common question throughout the public comment process for the proposed ordinance amendment has been whether a problem exists that needs solving. The problems with the current FR and FA ordinances have been manifest in the Hi Country Estates area (a zoning map of this area can be found at the following link: <https://gslmsd.maps.arcgis.com/apps/webappviewer/index.html?id=fe15827707de44b3b92becce08529cb3>, but they involve ordinances that affect other areas of Unincorporated Salt Lake County.

The primary problem driving the need for this update is water quality mandates from the State of Utah. As explained in Appendix A to this staff report, the State of Utah has set a deadline for February 2024 by which Salt Lake County must implement non-structural (i.e., regulatory) Best Management Practices to protect waters from E. coli pollution, or face the prospect of penalties similar to what Salt Lake County was required to pay in 2016 (a \$280,000 fine). Attached as Appendix A to this Staff Report is a thorough summary of this problem completed by Salt Lake County Public Works. Appendix A also refutes the misconception that horse manure does not contain E. coli, and clarifies that the State of Utah does not distinguish between pathogenic and non-pathogenic E. coli in requiring Best Management Practices.

In addition to the water quality issue that is the primary problem, there is confusion about what permits are required (if any) in the southwest portions of the County to have horses and other animals, what the process is to obtain such permits, and why the process is different depending on what zone a property owner is in. It appears that the understanding among Hi Country Estates property owners is that all properties are "horse" properties. However, in the FR zone, where horses are a conditional use, few properties with horses have conditional use permits; in the FA zone, horses are a permitted use, so only 1 or 2 permits have been issued (for structures that house animals). This confusion has been complicated by the fact that exemptions to permitting requirements for agricultural buildings have been built into Utah code. Unfortunately, Code Enforcement staff is placed in a situation that puts the County at risk of selective enforcement claims and creates the potential of hostility between neighbors when some property owners are following County ordinance, while others are not. The proposed ordinance provides a clearer, streamlined process for property owners to obtain a permit in a way that addresses concerns about water quality and nuisances to neighbors who have complained to Code Enforcement staff for years.

Third, there has been a history of complaints to Code Enforcement staff by neighbors of horse owners, regarding nuisances caused by horse owners. The proposed ordinance requires a manure management plan and other measures to address these concerns.

Finally, it should be noted that many complaints to Code Enforcement staff have focused on commercial uses related to horses, such as boarding and trail riding. After receiving significant public input on this issue, and further engaging with residents in the Hi Country area, the proposed ordinance update also clarifies this issue.

In summary, if the County does nothing to update its FR/FA ordinances, the following will likely occur:

1. Salt Lake County will be subject to enforcement actions by the State of Utah for failure to implement regulatory Best Management Practices to protect waters from E. coli. Salt Lake County was previously required to pay a \$280,000 fine for failure to adequately address clean water problems in its stormwater regulation programs. The State's mandate to implement regulatory Best Management Practices to protect waters from E. coli is a follow-up to its enforcement actions that resulted in the \$280,000 fine.
2. Property owners in the FR Zone will have to go through a more expensive, time-consuming conditional use process to obtain a permit than property owners in the nearby FA Zone. The expensive, time-consuming conditional use process becomes an incentive to not come into compliance, resulting in some property owners who are compliant and others that are not, and further contributing to neighbor disputes. This situation also places the County at risk for accusations of selective enforcement;
3. Continued complaints will be made to Code Enforcement and MSD Planning staff regarding animal nuisances and commercial uses involving animals in the FR and FA zones.

DESCRIPTION OF THE PROPOSED ORDINANCE UPDATE

The draft ordinance attached as Appendix C to this Staff Report is the latest draft of the proposed ordinance. The draft ordinance provides for the following:

It modifies the current **FR ordinance** as follows:

1. Horse/animal use is modified to be a permitted (not conditional) use, which is a more streamlined process than the current conditional use process.
2. More objective criteria are added to the current ordinance. For example, property owners are allowed 2 horses per acre unless there is a stream present, in which case a maximum of 4 total horses is allowed. The horses per acre calculation excludes from acreage areas with steep slopes.
3. If streams are present on or adjoining a property, a 100' setback for perennial streams and a 50' setback for ephemeral streams is required between streams and areas that house animals. **The stream setbacks in the proposed ordinance will only apply to new structures.** Stream setbacks (ephemeral or perennial) could be further reduced by 25% if property owners established a vegetated riparian corridor. The riparian corridor is not mandatory unless the property owner wants a reduced setback.
4. A manure management plan is required with each application, which addresses mitigation of stormwater runoff, odor, and flies.
5. All property owners who have or wish to have animals will be required to obtain a land use permit. In most cases, this will be an inexpensive streamlined process, and not the conditional use process that is currently required in the FR zone. Permits will run with the land, so subsequent property owners need not obtain another permit. Current permits are recognized notwithstanding ordinance changes.
6. Commercial boarding of horses is permitted so long as the other requirements of the ordinance are met. Trail riding businesses are not allowed.

The drafted ordinance keeps the current **FA ordinance** as is (including a streamlined permitted use process and 4 horse limit for personal use), with the following additions:

1. A 100' setback (for perennial streams) and 50' setback (for ephemeral streams) is required **for new structures** if a stream is present per #3 above;
2. Applicants must submit a Manure Management Plan per #4 above;
3. All property owners who have or wish to have animals will be required to obtain a land use permit per #5 above, which will run with the land. Current permits are recognized per #5 above.

CLARIFICATION ON PUBLIC MISCONCEPTIONS

Proposed stream setbacks have little or no impact on existing structures (fences, corrals, barns, etc.):

- Proposed stream setbacks only apply to new structures, so existing structures are not impacted by the proposed ordinance.

Proposed animal limits have little or no impact on existing animals:

- In Hi Country II, primarily zoned FA, the current limit of 4 horses per lot will not change. The keeping of up to 4 horses per lot will remain a permitted use. If residents currently have more than 4 horses in FA zone, that is unlawful under current ordinance; the proposed ordinance does not change that.
- The 4 horse limit in FR zoned property with streams will have little impact in Hi Country II because most of that area is zoned FA, which already has a 4 horse limit. The 4 horse limit in FR zoned property with streams will have little to no impact in Hi Country I because that area does not appear to have streams.
- In Hi Country I, primarily zoned FR, properties with a current conditional use permit will be subject to the limits in that permit, so the number limits in the proposed ordinance will not impact those properties. Properties without a current conditional use permit will no longer be required to obtain a costly conditional use permit, but must only obtain a simple administrative permit that is subject to a limit of 2 horses per ½ net developable acre, which is based on the standard in nearby Herriman.
- Where a property owner currently has other animals in either zone, the County already regulates those animals as “Family Food Production”. The proposed ordinance does not change the existing “Family Food Production” definition or regulations. If the animals a property owner has under the current code are legal, they will remain legal if the proposed ordinance is adopted. If the animals a property owner has under the current code are unlawful, they will remain unlawful if the proposed ordinance is adopted.

PLANNING COMMISSION RECOMMENDATIONS

The Salt Lake County Planning Commission held a public hearing on the proposed ordinance on October 11, 2023 and took public comment on the ordinance during their public meeting on December 13, 2023. The Salt Lake County Planning Commission recommended that the Salt Lake County Council approve the ordinance amending Title 19.

The Mountainous Planning District Planning Commission held a public hearing on the proposed ordinance on October 19, 2023 and took public comment on the ordinance during their public meeting on December 21, 2023. The Mountainous Planning District Planning Commission recommended that the Salt Lake County Council approve the ordinance amending Title 19.

The following cleanup of the proposed ordinance has taken place as a result of planning commission recommendations and to provide clarification on questions that came up during the planning commission review. These changes are reflected in the final draft ordinance, which is attached hereto as Appendix C.

1. Manure management plan need only address clean-up and deposit of manure during warm weather seasons (because manure freezes during the winter). See sections 19.12.020(F)(6)(a), 19.12.030(G)(4)(a), 19.54.020(C)(6)(a)(cold weather language eliminated).
2. Clarification that a permit is required even if a property owner has existing animals that are a legal nonconforming use. See sections 19.12.020(F)(9), 19.54.020(C)(8)(reference to section 19.88.080 added).
3. Elimination of water authority approval as a condition of permit approval; instead require simple notification of water authority. See sections 19.12.020(F)(8), 19.12.030(G)(5), 19.54.020(C)(7).
4. Clarification that the proposed ordinance applies to areas that are not in a protected watershed (County Health Department regulations apply to animals in a protected watershed). See section 19.12.030(G)(1)(addition of the word “protected”).

STAFF RECOMMENDATION

Staff wishes to emphasize this staff report’s (including Appendix A’s) outline of water quality concerns and the risks to Salt Lake County for failure to address those concerns in an ordinance update. That, combined with ongoing enforcement problems, compels Staff to recommend approval of the draft ordinance update. Appendix C is a clean blackline draft of the proposed ordinance, showing how the final proposed ordinance differs from the current Salt Lake County Code. Staff has reviewed the proposed ordinance and finds that it:

1. Complies with applicable State Code;
2. Serves to protect the public health, safety, or welfare; and
3. Upholds the vision of the adopted West General Plan, which among other things calls for private property rights on the West Bench (including Hi Country) to be balanced with regional goals of conserving critical lands, water, and open space, and integrating water resource planning and land use decisions.
4. Has been recommended for approval by the Salt Lake County Planning Commission.
5. Has been recommended for approval by the Mountainous Planning District Planning Commission

Appendices

Appendix A: Salt Lake County Public Works’ Analysis of Clean Water Problem

Appendix B: Proposed Ordinance’s redline revisions resulting from meetings with Hi-Country HOA Boards

Appendix C: Proposed Ordinance blackline revisions showing changes from current Salt Lake County Code