

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

## Policy Session Worksheet

**Presentation Date:** 9/27/16      **Approx Start Time:** 1:30 pm      **Approx Length:** 45 min

**Presentation Title:** Marijuana Land Use Regulation Amendments

**Department:** Dept. of Transportation and Development, Planning and Zoning Division

**Presenters:** Mike McCallister, Planning Director; and Jennifer Hughes, Principal Planner

**Other Invitees:** Barb Cartmill, Dan Johnson, Nathan Boderman

**WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?** We are requesting direction on what type of amendments, if any, the Board would like to consider to the Zoning and Development Ordinance regulations that apply to marijuana-related land uses.

### **EXECUTIVE SUMMARY:**

In December, 2015, the Board adopted new Zoning and Development Ordinance (ZDO) regulations to apply to marijuana-related land uses (production, processing, wholesaling and retailing). These regulations took effect on January 4, 2016, for medical marijuana retailing and all categories of recreational marijuana land use and on March 1, 2016, for medical marijuana production and processing. The Board-approved Long Range Land Use Planning work program for the current fiscal year includes a project to “consider whether there is a need for refinements” to these regulations.

To date, the county has received approximately 154 applications for marijuana-related land uses, the vast majority of which are for production. Approximately 25 percent of these applications are for land in commercial or industrial districts with the remainder being in rural residential or natural resource areas. Because the standards for approval are clear and objective (i.e. applicants typically know ahead of time whether they can meet the standards and submit an application consistent with those standards), only one denial has been issued (for a recreational retailer located too close to a public park). Staff has not encountered any significant issues with administering the current regulations. However, many county-approved uses have not yet received state licenses or begun operation, so the impact of full implementation of the county’s standards remains unknown.

Some amendments to state statutes and administrative rules dealing with marijuana land uses have been made since the county adopted its regulations. At this point, staff has not identified any required amendments to the county’s standards as a result of the state changes; however, if the Board decides to initiate amendments to the ZDO, staff will review the state changes in more detail to confirm our initial findings.

In discussions with individual commissioners, three specific suggestions have been made for possible ZDO amendments:

- **Adopt fencing standards for marijuana land uses.** Staff understands this to be consideration of design standards for proposed fences to avoid marijuana land uses having an industrial or institutional appearance, rather than consideration of a requirement that these uses be fenced. So, for example, razor wire fencing could be prohibited on properties developed with marijuana land uses.
- **Allow the processing of marijuana concentrates and extracts in the EFU and AG/F zones.** Currently only topicals and edibles may be processed in these zones and only to the extent permitted by state law. Staff and the Planning Commission had recommended that all processing be permitted in these zones to the extent allowed by state law, but the Board voted to prohibit the processing of concentrates and edibles. It appears there may now be some interest in allowing this type of processing with limits (e.g., setbacks, lot size, fire-fighting water supply).
- **Increase the required property line setback for buildings used for indoor marijuana production and processing in the EFU, TBR and AG/F zones.** Currently the minimum setbacks are the same as for buildings used for other types of agricultural uses (10 feet from side and rear property lines, 30 feet from front property lines); however, unlike other farm buildings, buildings used for recreational indoor marijuana production and processing must comply with noise and odor control standards. Greenhouses/hoop houses for outdoor marijuana production have a minimum setback of 100 feet. Indoor medical marijuana growing and processing may either meet the noise and odor control standards or comply with the 100-foot setback standard. This amendment would require individual notice to all owners of EFU, TBR and AG/F land.

Staff has identified one amendment for consideration:

- **Prohibit marijuana production in the RRFF-5, FF-10, EFU, TBR and AG/F zones inside the Portland Metropolitan Urban Growth Boundary (PMUGB) and prohibit marijuana processing in the EFU and AG/F zones inside the PMUGB (processing is already prohibited in RRFF-5, FF-10 and TBR countywide).** This suggestion arose following discussions with City of Happy Valley staff. With the disincorporation of Damascus, a large area of rural zoning inside the PMUGB is now under county jurisdiction. However, at least some of this area is likely to be annexed by Happy Valley in the coming years, and the city is concerned about conflicts between urban development and existing marijuana operations. The county's ZDO prohibits marijuana production and processing in all urban and future urban residential zones. Because land inside the PMUGB is anticipated for urban development over the next 20 years, it may make sense to adopt the same prohibitions on marijuana land uses in these areas. This amendment would require individual notice to all owners of RRFF-5, FF-10, EFU, TBR and AG/F land inside the PMUGB.

County Administrator Don Krupp and Planning and Zoning Division staff held two meetings with a group of citizens led by Shirley Morgan of Citizens for Public Safety, Quality of Life and Property Values. As the Board is aware, Ms. Morgan has been actively involved in the county's adoption and implementation of marijuana land use regulations, advocating for prohibition of marijuana-related land uses and greater restrictions on these uses if allowed.

The citizen group has submitted a written request for changes to the county's current regulations. The request identifies eight specific changes, in priority order:

- Require approved marijuana land uses to submit annual compliance reports to the county and consent to county inspection of the premises
- Require an OLCC license prior to issuing any land use or building permits
- Limit marijuana canopy size on a sliding scale based on parcel size
- Require buffers between marijuana production sites and sensitive uses (e.g., schools)
- Adopt a more restrictive minimum lot size standard for production in the RRFF-5 and FF-10 zones
- Adopt a fencing requirement, fencing design standards and a tree screening requirement
- Require carbon filters to be changed quarterly rather than annually
- Prohibit overnight guest accommodations and facilities for large group gatherings on land with approved marijuana land uses (e.g., bed and breakfasts, private parks, event venues)

At a minimum, the canopy size, buffer, minimum lot size and prohibited uses suggestions would require some property owners to be individually notified.

**FINANCIAL IMPLICATIONS (current year and ongoing):**

**Is this item in your current budget?**      X YES       NO

**What is the cost?**    The cost is in staff time and mailing of public notice. The exact amount will depend on the scope of the amendments the Board wishes to consider and the amount of public interest that results.

**What is the funding source?**      General Fund

**STRATEGIC PLAN ALIGNMENT:**

- **How does this item align with your Department's Strategic Business Plan goals?** This item aligns with the Long Range Planning Program's purpose statement to provide plan development (updates to the Comprehensive Plan, Transportation System Plan and Zoning & Development Ordinance), analysis, coordination and public engagement services to residents; businesses; local, regional and state partners, and County decision-makers so they can plan and invest based on a coordinated set of goals and policies that guide future development.
- **How does this item align with the County's Performance Clackamas goals?** This item aligns with the county's Performance Clackamas goal to *grow a vibrant economy* because the marijuana industry has the potential to create family wage jobs. This item also aligns with the county's goal to *ensure safe, healthy and secure communities* by regulating an industry that may have negative effects on public health safety.

**LEGAL/POLICY REQUIREMENTS:** Because the County has not placed an “opt-out” measure on the ballot, state law requires that all categories of marijuana land use (production, processing wholesaling and retailing) be allowed somewhere in the County, and production must be allowed in the Exclusive Farm Use zone. In addition, state law permits the County to adopt “reasonable” regulations for most marijuana-related land uses.

**PUBLIC/GOVERNMENTAL PARTICIPATION:** Amendments to land use regulations require various types of public notice (e.g., newspaper, Oregon Department of Land Conservation and Development, community planning organizations, cities in the county). Individual mailed property owner notice is required if the proposal includes the restriction or prohibition of a use of land. The degree to which property owner notice is required will depend upon the scope of the amendments the Board wishes to consider.

**OPTIONS:**

1. Direct staff not to begin work on proposed amendments to the county’s marijuana-related land use regulations.
2. Direct staff to do additional research and/or drafting of possible amendments identified by the Board and return for an additional policy session to determine whether to proceed to public notice and hearings.
3. Initiate amendments to the county’s marijuana-related land use regulations, identify the scope of the amendments the Board wishes to consider, and direct staff to begin the process of research, drafting, public notice and hearings.

**RECOMMENDATION:**

Staff recommends Option 3 and further recommends that the Board limit the scope of the proposed amendments to:

- Fence design standards
- Allow the processing of extracts and concentrates (topicals and edibles are permitted currently) in the EFU and AG/F zones outside the PMUGB, subject to certain standards (e.g., setbacks, lot size)
- Prohibiting marijuana production in the RRFF-5, FF-10, EFU, TBR and AG/F zones inside the Portland Metropolitan Urban Growth Boundary (PMUGB) and prohibiting marijuana processing in the EFU and AG/F zones inside the PMUGB (processing is already prohibited in RRFF-5, FF-10 and TBR countywide)
- Any amendments needed to conform to changes in state law/regulations
- Minor edits to increase clarity of existing regulations

The process of crafting and adopting the current regulations was complex and controversial, requiring a significant commitment of staff resources and several large public hearings. Public opinion on the issues was passionate on both sides. Considering amendments with a larger scope than recommended by staff is beyond what was contemplated in this year’s work program and, in staff’s opinion, is likely to require a process similar to what the county undertook last year. The current standards essentially represent a compromise between the concerns of marijuana advocates and opponents, and staff believes this compromise was reasonable given the diversity of opinion.

**ATTACHMENTS:**

- Clackamas County Marijuana Land Use Regulations Approved by Board of County Commissioners, dated December 3, 2015 (staff-drafted summary of the current regulations)
- Current and Proposed Discretionary Amendments and Rules, dated 9/12/16 (submitted by Shirley Morgan, Rachel McCart, Dr. Ken Evans and Rocky Roberts)

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_

Department Director/Head Approval \_\_\_\_\_

County Administrator Approval \_\_\_\_\_

For information on this issue or copies of attachments, please contact Jennifer Hughes @ 503-742-4518



## Clackamas County Marijuana Land Use Regulations Approved by Board of County Commissioners\*

UPDATED: December 3, 2015

\*Board action on the final ordinance is expected on Dec. 17, 2015.

After months of study, research, public input, Planning Commission hearings and Board of County Commission hearings, the Clackamas County Board of Commissioners approved marijuana land use regulations by voice vote at the end of a land use hearing on Dec. 2, 2015. The Board is scheduled to take action on the final ordinance at its business meeting at 6 p.m., Thursday, Dec 17. This document provides a brief overview of the regulations, including where marijuana businesses will be allowed in unincorporated Clackamas County and some of the major conditions that will apply. This document is for informational purposes only and is not intended as legal guidance. In addition to new marijuana land use regulations, marijuana businesses will have to comply with the same building, fire and other codes that apply to businesses in Clackamas County, as well as to Oregon Liquor Control Commission (OLCC) requirements for recreational marijuana and Oregon Health Authority (OHA) requirements for medical marijuana. The final regulations will be available at [www.clackamas.us/planning/marijuana.html](http://www.clackamas.us/planning/marijuana.html) after December 17.

### The marijuana land use regulations approved by the Board of County Commissioners on December 2 ...

- ... Apply only to unincorporated Clackamas County, and set limits on where and how various marijuana businesses can operate;
- ... Do *not* apply to: Noncommercial growing or processing of recreational marijuana, as allowed by state law without a license from OLCC
  - Growing medical marijuana by a medical marijuana cardholder at the cardholder’s residence as long as no more than 12 mature plants are grown at that address (up to 6 mature plants per cardholder are permitted by state law)
  - Processing of medical cannabinoid products or concentrates by a medical marijuana cardholder, or a designated primary caregiver for a cardholder
- ... Do apply to: Recreational marijuana businesses (growing, processing, wholesaling or retailing) licensed by the OLCC
  - Growing medical marijuana for a medical marijuana cardholder at an address other than the address where the cardholder resides or at an address where more than 12 mature marijuana plants are produced
  - Processing of medical marijuana *except* for processing of medical cannabinoid products or concentrates by a medical marijuana cardholder, or a designated primary caregiver for a cardholder
  - Retailing medical marijuana

**The regulations allow recreational and medical marijuana facilities – production/grow, processing, wholesaling and retailing -- in zones shown below.**

ZONING DISTRICT	MARIJUANA BUSINESS			
	Production/Grow	Processing	Wholesaling	Retailing
<b>URBAN ZONES</b>				
Business Park (BP), Light Industrial (LI), General Industrial (GI)	Primary use <sup>## ++</sup>	Primary use <sup>## ++</sup>	Primary use <sup>## ++</sup>	<i>PROHIBITED</i>
Village Office (VO)	<i>PROHIBITED</i>	Primary use <sup>##</sup> ; extract and concentrate processing prohibited	<i>PROHIBITED</i>	<i>PROHIBITED</i>
Corridor Commercial (CC), General Commercial (C-3), Station Community Mixed Use (SCMU), Office Commercial (OC)	<i>PROHIBITED</i>	Primary use <sup>##</sup> ; extract and concentrate processing prohibited	<i>PROHIBITED</i>	Primary use <sup>***</sup>
Neighborhood Commercial (NC), Community Commercial (C-2), Regional Center Commercial (RCC), Retail Commercial (RTL), Planned Mixed Use (PMU), Regional Center Office (RCO)	<i>PROHIBITED</i>	<i>PROHIBITED</i>	<i>PROHIBITED</i>	Primary use <sup>***</sup>
<b>RURAL ZONES</b>				
Exclusive Farm Use (EFU), Ag/Forest (AG/F)	Primary use <sup>* ***</sup>	Primary use <sup>* ***</sup> ; extract and concentrate processing prohibited	<i>PROHIBITED</i>	<i>PROHIBITED</i>
Timber (TBR)	Primary use <sup>* ***</sup>	<i>PROHIBITED</i>	<i>PROHIBITED</i>	<i>PROHIBITED</i>
Rural Residential Farm Forest 5 Acre (RRFF5), Farm Forest 10 acre (FF10)	Primary use <sup>**</sup>	<i>PROHIBITED</i>	<i>PROHIBITED</i>	<i>PROHIBITED</i>
Rural Commercial (RC), Rural Tourist Commercial (RTC)	<i>PROHIBITED</i>	<i>PROHIBITED</i>	Primary use <sup>## +</sup>	Primary use <sup>***</sup>
Rural Industrial (RI)	Primary use <sup>## ++</sup>	Primary use <sup>## ++</sup>	Primary use <sup>## ++</sup>	<i>PROHIBITED</i>

*\*Conditions for production and processing are set for minimum lot size, minimum set-back from lot line, indoor processing only, access, odor, noise, lighting, security cameras, water and waste management. Some standards may not apply to medical marijuana production and processing, but in that case indoor production and processing must maintain a larger lot line setback than would otherwise apply. \*\*Conditions for production in rural residential zones include those mentioned above, as well as requirements that the owner or licensee/registrant lives on the property, the business be in completely enclosed buildings and building size limits. Some of the standards may not apply to medical marijuana production, but in that case indoor production must maintain a larger lot line setback than would otherwise apply (details in ZDO Section 841). \*\*\*Conditions for retailing include operating hours, odor, window service (not allowed), waste management, minors (not allowed on premises unless allowed by state law), no co-location of related activities and uses, and minimum separation distances. \*\*Use must be confined to completely enclosed buildings. +4,000 sq. ft. total building space limit/property. ++20,000 sq. ft. total building space limit/property for all marijuana-related land uses on the property. \*\*\*It's not clear whether state law permits medical marijuana production in EFU, AG/F and TBR or medical marijuana processing in EFU and AG/F. Resolution may require state legislative action or a court decision.*



**The regulations do not permit any recreational or medical marijuana businesses – production, processing, wholesaling or retailing – in the following zoning districts:**

**Urban Residential Districts**

- Future Urban 10-Acre (FU-10)
- High Density Residential (HDR)
- Medium Density Residential (MR-1)
- Medium High Density Residential (MR-2)
- Planned Medium Density Residential (PMD)
- Regional Center High Density Residential (RCHDR)
- Special High Density Residential (SHD)
- Urban Low Density Residential (R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, R-30)

- Village Standard Lot Residential (VR-5/7)
- Village Small Lot Residential (VR-4/5)
- Village Townhouse (VTH)
- Village Apartment (VA)

**Rural Residential Districts**

- Hoodland Residential (HR)
- Mountain Recreational Resort (MRR)
- Recreational Residential (RR)
- Rural Area Residential 1-Acre (RA-1)
- Rural Area Residential 2-Acre (RA-2)

**Urban Commercial Districts**

- Office Apartment (OA)
- Village Community Service (VCS)

**Urban Industrial Districts**

- Campus Industrial (CI)

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**Requirements for marijuana businesses may include the following depending on the zoning and the type of use. For a complete list, including minimum lot size, maximum building size and minimum setback requirements, go to [www.clackamas.us/planning/marijuana.html](http://www.clackamas.us/planning/marijuana.html).**

**PRODUCTION AND PROCESSING:**

- Access off a private road or easement requires agreement from others property owners with access rights
- Lights: inside lights not visible outside a building and outdoor grow lights not used, 7 p.m.-7 a.m.; other exterior fixtures designed to direct light downward and so it does not spill onto adjacent lots
- Noise: HVAC equipment and generators may not produce noise exceeding 50 dB(A) at lot line
- Odor: Many requirements, including use of an activated charcoal filtration system, negative air pressure maintained inside the building, filtration system designed and stamped by a licensed mechanical engineer
- Security cameras: If used, may only be directed to subject property and public rights-of-way, except as required otherwise by the state
- Waste management: Waste stored in secure receptacle in possession of licensee
- Water: Must submit proof of water right or statement water is supplied from a public or private system, or statement from state that water right is not required

**RETAIL:**

- Hours: 10 a.m. – 9 p.m.
- Odor: Many requirements, including use of an activated charcoal filtration system, negative air pressure maintained inside the building, filtration system designed and stamped by a licensed mechanical engineer
- Waste management: Waste stored in secure receptacle in possession of licensee
- No smoking, ingesting or consuming in retail building; no retail on same lot as marijuana smoking or social club
- Minimum separation distances:
  - 100 feet from residentially-zoned property except if street frontage on principal interstate, expressway, etc.
  - 2,000 feet from elementary or secondary schools, including property and parking lots
  - 1,500 feet from public parks, playgrounds, libraries; government-owned recreational use, licensed treatment center, light rail transit station or multi-family dwelling owned by a public housing authority
  - 500 feet from a licensed daycare facility or preschool, including associated property and parking lot
  - 1,000 feet for other marijuana retailer of the same type (e.g., recreational or medical)

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**FOR MORE AND UPDATED INFORMATION:**

- Marijuana Land Use Laws and Regulations ([www.clackamas.us/planning/marijuana.html](http://www.clackamas.us/planning/marijuana.html))
- Contact Planning and Zoning Division staff at [zoninginfo@clackamas.us](mailto:zoninginfo@clackamas.us) or 503-742-4500

The Commission plans to have new regulations in place by January 2016, when the Oregon Liquor Control Commission (OLCC) is required to begin accepting applications for licenses related to marijuana businesses.

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**STATE BACKGROUND:** In November 2014, Oregon voters approved Measure 91, legalizing the use of marijuana for personal recreational use. In 2015, the State Legislature approved five bills that amend and provide regulations related to recreational and medical marijuana. State law gives the county the authority to adopt “reasonable regulations” regarding recreational and medical marijuana. The law defines four types of marijuana business:

- **Production:** manufacture, planting, cultivation, growing or harvesting of marijuana in Oregon
- **Processing:** processing, compounding or conversion of marijuana into cannabinoid products, concentrates, or extracts; excluding packaging or labeling
- **Wholesaling:** purchasing marijuana items in Oregon for resale to a person other than a consumer in Oregon
- **Retailing:** selling marijuana items to a consumer in Oregon

# CURRENT AND PROPOSED DISCRETIONARY AMENDMENTS AND RULES

**BASED ON CASE STUDIES AND CITIZEN INPUT, WE  
REQUEST THE FOLLOWING AMENDMENTS INTO  
ZD0841 COUNTY CODE IN ORDER OF PRIORITY  
IN ALL ZONES THAT ALLOW MARIJUANA Medical and  
Commercial Production, Processing,  
Wholesaling and Retailing**

TOPIC	CURRENT	PROPOSED	RATIONALE
ANNUAL COMPLIANCE REPORTING REQUIREMENT	Not required	Submit annual report of compliance with all county requirements, including consent for county to inspect premises for compliance and annual fee sufficient to fund inspection costs	<p>Encourage and enforce compliance with county ordinances.</p> <p>Encourage proactive compliance with county ordinances vs. current complaint-driven system that rewards “do it now and ask for forgiveness later” approach.</p> <p>Eliminate the need to obtain administrative warrant before conducting unscheduled site visit.</p> <p>Annual fee would pay for cost of inspection and administration.</p> <p>*Deschutes County has implemented an annual compliance reporting requirement</p>
REQUIRE OLCC LICENSE PRIOR TO ISSUING ANY LAND USE BUILDING PERMITS	Building permits can be issued at any time	Require OLCC license prior to issuing any land use building permits	<p>Encourage industry participants to comply with state law prior to doing business in the county.</p> <p>Reduce number of operations operating without an OLCC license (and OLCC oversight).</p>
LIMIT CANOPY SIZE	EFU-AGF-TBR Indoor production: 5,000-10,000 sf	Limit canopy size in all zones to:  Parcels of 10 acres or less:	Eliminate “license stacking” - current state law limits canopy size per OLCC license, not per property, so multiple OLCC license holders can grow on same



	Outdoor production: 20,000-40,000 sf	2,500 sf Parcels of 10-20 acres: 5,000 sf, may be increased to 10,000 sf Parcels of 20-40 acres: 10,000 sf Parcels of 40-60 acres: 20,000 sf	property, resulting in huge canopy sizes Reduce small parcel grow operations' disproportionate impact on their neighbors.
<b>PRODUCTION SITES: 1000' SETBACK FROM SCHOOLS, DAYCARES AND PARKS</b>	Not required	Require a 1000' setback on all production sites from schools, daycares, preschools or any other professional academic school or parochial schools, public parks or areas where children locate	Reduce overall impact on county youth and avoid "normalizing" marijuana use by minors.
<b>MINIMUM LOT SIZE IN FF-10 AND RRF-5</b>	Five acres unless "majority of abutting properties" are two or more acres, and then it is two acres	Five acres unless <u>all</u> abutting properties are two or more acres	Reduce small parcel grow operations' disproportionate impact on their neighbors.
<b>FENCING REQUIREMENTS</b>	No requirements	Fencing in muted earth tone not constructed w/temporary materials Razor wire obscured from view or colored earth tone Tree cover screening	Reduce visual impact of "prison-like" fencing in rural areas.
<b>ODOR CONTROL</b>	Carbon filters changed once per year	Carbon filters changed every three months which is a federal safety standard	Reduce odor impact on neighbors.
<b>GUEST ACCOMMODATIONS</b>	No requirements specific to marijuana operations	Prohibit overnight guest accommodations and facilities for	Reduce overall impact on neighbors and preserve peace and quiet in rural areas.

		<p>large group gatherings on land with county-permitted marijuana operations.</p> <p>Examples: Guest lodges, dude ranches, bed and breakfasts, private parks and event venues.</p>	
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