

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an appeal of an administrative decision) **FINAL ORDER**
approving a cannabinoid concentrate processing)
facility in the AG/F zone at 32500 SE Rainbow) **Z0079-23-M**
Road in unincorporated Clackamas County, Oregon) **(Mr. Babalu Processing Facility)**

A. SUMMARY

1. On March 2, 2023, Edward Christensen filed an application for approval of a marijuana concentrate processing facility (File No. Z0079-23-M) on 12.27 acre parcel located at 32500 SE Rainbow Road; also known as Tax Lot 00500, Section 28, Township 3 South, Range 5 East of the Willamette Meridian, Clackamas County, Oregon (the “site”).

a. The applicant proposes to operate the concentrate processing facility within a 4,000 square foot portion of a proposed 12,000 square foot building. The applicant will use the remainder of the building for indoor marijuana production. The County previously approved the marijuana production facility through File Z0080-23 MJ.

b. The site and abutting properties to the south and west are zoned AG/F (Agriculture/Forest). Properties to the north and east are zoned TBR (Timber).

2. On June 27, 2023, the planning director (the “director”) issued a written decision approving the application subject to conditions. (Exhibit 1).

3. On July 10, 2023, attorney Andrew Stamp filed an appeal of the director’s decision on behalf of: William & Joscelyn Johnston, Larry Russell, Kerry D. Jackson, and Keith & Wendy James (the “appellants”). (Exhibit 25)

4. County Hearings Officer Joe Turner (the "hearings officer") conducted an online public hearing regarding the appeal. County staff recommended that the hearings officer deny the appeal and affirm the director’s decision. Representatives of the applicant testified in support of the application. Mr. Stamp, two of the appellants, and one other area resident testified orally in support of the appeal. Other persons testified in writing. Principal contested issues in the case include the following:

a. Whether the proposed marijuana concentrate processing facility is allowed in the AG/F zone;

b. Whether the applicant can obtain licenses necessary to operate the proposed processing facility;

c. Whether the proposed extraction process constitutes “cannabinoid extract” as defined by ZDO 202;

d. Whether the “cannabinoid concentrate” process as defined by ZDO 202 prohibits the use of pressure;

e. Whether the proposed building can comply with the setback requirements of ZDO 841.02(C);

f. Whether it is feasible to comply with the odor control requirements of ZDO 841.02(G);

g. Whether it is feasible to comply with the noise limitations of ZDO 841.02(H);

h. Whether the applicant submitted proof of a legal source of water for the production facility, ZDO 841.02(J);

i. Whether it is feasible to comply with the waste storage and management requirements of ZDO 841.02(K); and

j. Whether potential adverse impacts of traffic, chemicals, electrical use, fire hazards, property values, oversupply of marijuana products, increased crime, character of the area, and employees working on the site are relevant to the applicable approval criteria.

5. The hearings officer concludes the applicant sustained the burden of proof that the proposed use does or can comply with the applicable approval criteria of the ZDO subject to conditions of approval needed to ensure such compliance occurs in fact. The appellants did not rebut the substantial evidence in the record in support of the application. Therefore the hearings officer denies the appeals and upholds the planning director’s decision, based on the findings and conclusions adopted or incorporated herein and subject to the conditions of approval at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about the appeal on August 31, 2023. All exhibits and records of testimony have been filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the statement required by ORS 197.763 and disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of selected testimony offered at the public hearing.

2. County planner Lizbeth Dance summarized the director’s decision (Exhibit 1) and her PowerPoint presentation (Exhibit 28) and responded to the appeal.

a. She noted that the appeal is limited to the marijuana concentrate processing facility proposed in a 4,000 square foot portion of a 12,000 square foot building. The County previously approved a marijuana growing operation in the

remainder of the proposed building and that decision was not appealed. A large hallway will separate the processing and production areas within the building.

b. The production and processing building is proposed on the western portion of the site. No development is proposed in the eastern portion of the site.

c. The applicant proposed to process marijuana into concentrates. The applicant is not proposing to process cannabinoid extracts, as defined in section 202. Processing of cannabinoid extracts is prohibited in the AG/F zone.

d. She argued that the odor and noise standards set out in ZDO 841.03(G) and (F) are clear and objective, as they involve the application of numerical standards. In addition, the applicant submitted a noise analysis and an odor control plan prior to the hearing.

e. She requested the hearings officer delete the phrase “non-irrigation season” from page 14 of the Staff Report. That phrase was accidentally carried over from a different application.

f. The Oregon Liquor Control Commission (the “OLCC”) has exclusive authority to issue marijuana licenses. The OLCC requires that a marijuana processor obtain County approval of a proposed processing facility before it will issue a license.

g. The applicant proposed to collect and store waste within the proposed building, consistent with applicable OLCC regulations.

3. Trey Burns, Edward Christensen, and Jay Flint appeared on behalf of the applicant.

a. Mr. Christensen noted that marijuana concentrate processing is a permitted use in the AG/F zone. He argued that the County building department is responsible for ensuring compliance with the noise and odor requirements of the Code, as this review involves technical engineering issues.

b. Mr. Burns noted that the applicant submitted a noise analysis and an odor control plan for the proposed facility. Those submittals demonstrate that the proposed facility will meet or exceed all applicable standards.

i. The proposed processing facility will not use any groundwater. The applicant will collect and store rainwater from the roofs of buildings for use in growing and processing marijuana on the site. The applicant will collect, treat, and reuse excess water from these activities. If necessary, the applicant will import water to the site from an existing municipal water supplier. The restrooms and employee kitchen will utilize groundwater from the existing well on the site, consistent with the residential use limitations of state law.

ii. The applicant will use a low-pressure vacuum oven to remove moisture from the marijuana plants.

c. Mr. Flint testified that the operator has current producer and processor licenses from the OLCC for another location. Once this facility is approved and established, the operator will request transfer of the licenses to this facility.

4. Attorney Andrew Stamp appeared on behalf of the appellants and summarized his letter dated August 30, 2023 (Exhibit 27).

a. He argued that the noise standards of the Code are not clear and objective. Noise analyses are inherently discretionary, requiring assumptions about how and where to measure noise. ZDO 841.02(J) imposes an L_{\max} standard that prohibits any noise in excess of 50 dB(A) at any time.

b. The odor standards of the Code are also discretionary as the Code does not define the terms “negative pressure,” “filter system,” or “working order.”

c. He requested the hearings officer hold the record open to allow an opportunity to review and respond to the applicant’s noise and odor analyses.

5. Michael Morgan expressed concerns with potential noise and odor impacts from the proposed use. He argued that the proposed use is inconsistent with the character of the area as it is more of a factory than a farm. The site is located in a rural area where there are no other similar industrial type facilities or businesses. This facility will make the area less desirable for residential uses.

6. William Jackson argued that the County has “skewed” the definition of the terms “concentrate” and “extraction.” The internet defines “extraction” as any process using liquids and extraction is prohibited in the AG/F zone. As defined by ZDO 202, the marijuana concentrate process prohibits the use of high heat or pressure. However, the applicant’s plans include a vacuum oven, which will utilize heat and pressure. Alcohol used in the concentrate process is flammable and therefore will pose a fire hazard. The site is located on a dead end road which limits emergency access and evacuation in the event of a fire.

7. At the conclusion of the hearing the hearings officer held the record open subject to the following schedule:

a. For three weeks, until 4:00 p.m. on September 21, 2023, to allow all parties an opportunity to submit additional written testimony and evidence;

b. For a fourth week, until 4:00 p.m. on September 28, 2023, to allow all parties an opportunity to respond to anything submitted during the first open record period; and

c. For a fifth week, until 4:00 p.m. on October 5, 2023, to allow the applicant an opportunity to submit a final written argument. The record in this case closed at 4:00 p.m. on October 5, 2023.

8. The following exhibits were submitted during the open record period:

a. An August 31, 2023 email from Mr. Burns extending the 150 day clock until October 26, 2023 (Exhibit 31);

b. Public comments submitted on May 24, 2023 that were not previously included in the record (Exhibits 32-42);

c. A September 21, 2023 email from Sonya Jackson (Exhibit 43);

d. An updated odor control plan from Mr. Burns (Exhibit 44);

e. A September 21, 2023 memo from County Planning Manager Lindsey Nesbitt (Exhibits 45 and 47); and

f. A September 21, 2023 email from Kerry Jackson (Exhibit 46).

C. DISCUSSION

1. ZDO 1305.02.D(2) authorizes the hearings officer to hear appeals of planning director decisions. Pursuant to ORS 215.416(11)(a), appeals of administrative decisions must be reviewed as a *de novo* matter. The hearings officer is required to conduct an independent review of the record. He is not bound by the prior decision of the planning director and does not defer to that decision in any way. New evidence may be introduced in an appeal, and new issues may be raised. The hearings officer must decide whether the applicant carried the burden of proof that the application complies with all applicable approval criteria in light of all relevant substantial evidence in the whole record, including any new evidence.

2. Several persons argued that the proposed processing facility is an industrial use that should be located in the urban area. However, the proposed processing facility is permitted as a Type II use in the AG/F zone, subject to the approval criteria in ZDO 401.05(B)(1) & (2) and ZDO 841.03. See ZDO Table 407-1. This is consistent with ORS 475C.489(1)(a), which provides that marijuana is a ‘crop’ for the purposes of ‘farm use’ as defined in ORS 215.203 and ORS 215.255(1)(B)(a), which allows facilities for the processing of farm crops on land zoned for agriculture, provide at least one-quarter of the farm crops come from the farm operation containing the facility.

3. The proposed facility can comply with the criteria in ZDO 401.05(B)(1) & (2).

a. ZDO 401.05(B)(1)(a) limits processing areas to less than 10,000 square feet if the facility complies with all applicable siting standards. The applicant proposes to

devote 4,000 square feet of floor area to the processing facility and the facility complies with all applicable siting standards, based on the findings below. This criterion is met.

b. ZDO 401.05(B)(1)(b) allows facilities with less than 2,500 square feet of processing area without compliance with applicable siting standards. As noted above, the applicant proposes to devote 4,000 square feet of floor area to the processing facility and the facility complies with all applicable siting standards. This criterion is inapplicable.

c. ZDO 401.05(B)(1)(c) requires that at least one-quarter of the farm crop inputs to the processing facility come from the farm operation containing the facility. The County previously approved a marijuana production facility on this site. Therefore, it is feasible to comply with this condition. Condition of approval IV(2) requires the applicant demonstrate compliance with this standard by submitting to the County annual reports prepared by a certified public accountant. This criterion is met as conditioned.

4. Footnote 1 of ZDO Table 407-1 prohibits the processing compounding, or conversion of marijuana into cannabinoid extract.

a. ZDO 202 provides the following relevant definitions:

CANNABINOID: Any of the chemical compounds that are the active constituents of marijuana.

CANNABINOID CONCENTRATE: A substance obtained by separating cannabinoids from marijuana by a mechanical extraction process; a chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol, or ethanol; a chemical extraction process using the solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or any other process identified by the Oregon Liquor Control Commission, in consultation with the Oregon Health Authority, by rule.

CANNABINOID EXTRACT: A substance obtained by separating cannabinoids from marijuana by a chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane; a chemical extraction process using the solvent carbon dioxide, if the process uses high heat or pressure; or any other process identified by the Oregon Liquor Control Commission, in consultation with the Oregon Health Authority, by rule.

b. The applicant is proposing marijuana concentrate processing. No extraction is proposed. The processing floor as proposed includes vacuum ovens, washing

machines, freeze dryers, ice, water, freezers and compression equipment associated with concentrate processing and a kitchen area as allowed defined in ZDO 202 Definitions Cannabinoid Concentrate. The prohibition of “high heat or pressure” extraction only applies to extraction processes that use carbon dioxide as a solvent, which is not proposed in this case. In addition, condition of approval IV(1) prohibits processing of cannabinoid extracts. This criterion is met as proposed and conditioned.

c. Opponents’ citations to internet definitions of concentrate and extraction and assertions that the concentrate and extraction processes both result in the same product are irrelevant. The hearings officer must apply the definitions in the ZDO, which are consistent with OLCC regulations. The County and the OLCC define “concentrate” and “extraction” based on the process of extraction, not the resulting product.

d. The hearings officer has no jurisdiction to address opponents’ assertion that the County and OLCC definition of extraction is different from the definition included in Ballot Measure 91, Section 5, number 13. (Exhibit 46). The hearings officer’s authority is limited to application of the Code as adopted by the Board of County Commissioners.

5. The proposed facility can comply with the standards and requirements for reviewing the processing of marijuana in ZDO 841.

a. This application for marijuana concentrate processing was reviewed as a Type II application pursuant to the procedures in ZDO 1307 as required by ZDO 841.01. This criterion is met.

b. ZDO 841.03(A) allows one OLCC licensed marijuana processor on the subject lot of record. The applicant has an existing OLCC processor license which they intend to transfer to the site. It is feasible for the applicant to apply for OLCC approval of this license transfer. The applicant will be the only licensed marijuana processor on the site and condition of approval II limits this site to a single licensed marijuana processor. This criterion is met as proposed and conditioned.

c. ZDO 841.03(B) requires that marijuana processing facilities be located on a parcel with a minimum lot size of 10 acres. The 12.27-acre site exceeds this standard. This criterion is met.

d. ZDO 841.03(C) requires that all structures used for marijuana processing be setback at least 100 feet from all property lines. Based on the applicant’s site plans (Exhibit 2d) the proposed “cultivation and extraction building” will be setback 100 feet or more from all property lines. Condition of approval III(2) requires compliance with setback standards. This criterion is met as proposed and conditioned. The “future” buildings shown on the site plan do not comply with setback requirements. However, these buildings are not proposed as part of this application.

e. ZDO 841.03(D) requires that marijuana processing shall be located entirely within one or more completely enclosed buildings. Based on the applicant’s site

plans (Exhibit 2d) the proposed processing facility will be located entirely within a completely enclosed building. A large hallway will separate the processing and production areas within the building. Condition of approval IV(3) requires that processing activities occur within a completely enclosed building. This criterion is met as proposed and conditioned.

f. The subject tract has frontage on, and direct access from, S Rainbow Road, a constructed county road. The private driveway providing access to the processing facility from S Rainbow Road does not cross or serve any other lot. Therefore, the application complies with ZDO 841.03(E).

g. ZDO 841.03(F)(1) prohibits “Light cast by light fixtures inside any building used for marijuana processing ... visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.” The hearings officer finds that the plain language of this criterion imposes an absolute prohibition on lighting visible from outside the building. The applicant proposed to conduct marijuana processing within a fully enclosed building with no windows. With one exception, all doors leading to the processing areas access interior portions of the building. The proposed door on the north side of the building provides direct access between the processing room and the outside of the building. (See Sheet A201 of Exhibit 2d). Lights in the processing room may be visible when this door is opened. However, this criterion can be met if this door remain closed from 7:00 p.m. to 7:00 a.m. the following day. Condition of approval VI should be modified to that effect. This criterion is met as conditioned.

h. ZDO 841.03(F)(2) prohibits light cast by exterior light fixtures other than marijuana grow lights (e.g., security lights, driveway lights) from being directed skyward and requires that such lights be directed within the boundaries of the site. The applicant’s lighting plan, Sheet E001 of Exhibit 2d demonstrates compliance with this criterion and condition VI(2) requires compliance with this restriction. This criterion is met as proposed and conditioned.

i. The applicant submitted an odor control plan prepared by a licensed engineer demonstrating that it is feasible to comply with the odor control requirements of ZDO 841.03(G). (Exhibits 29 and 44). Condition VII requires the applicant install a filtration system in compliance with the requirements of this section. ZDO 841.03(G)(3) requires that the filtration system “[b]e maintained in working order and shall be in use.” As opponents noted, this area is subject to frequent power outages, which absent a backup power source for the filtration system, would preclude compliance with this requirement. Therefore, the hearings officer finds that the applicant should be required to provide evidence of a generator or other backup power source sufficient to support the ongoing operation of the filtration system. A condition of approval is warranted to that effect. This criterion is met as proposed and conditioned.

i. The applicant’s odor control plan notes potential “challenges” with the use of roof-mounted vents. However, the applicant’s engineer testified that it is feasible to design a ventilation and filtration system that complies with the Code. There is no evidence in the record to the contrary.

j. The applicant submitted a noise study by an acoustic engineer licensed in the State of Oregon as required by ZDO 841.03(H). (Exhibit 30). That study demonstrates that it is feasible to comply with the 50 dB(A) limit of this Code section. Neighbors' assertions to the contrary are not supported by substantial evidence and are inadequate to overcome the expert testimony of the applicant's engineer. The topography of the surrounding area, described as an "acoustical bowl" (Exhibit 43) will allow noise to travel as there are no physical barriers that to buffer noise generated on the site. However, noise dissipates with distance, regardless of the presence of topographic or other barriers. The hearings officer finds, based on the applicant's noise analysis, that it is feasible to comply with the 50 dB(A) limit of this Code section.

i. The applicant's noise study considered sounds generated by greenhouse fans, drying room and growing room heating systems, exhaust fans, and rooftop HVAC systems. The study makes no mention of generator noise. However, as discussed above, generators or some other backup power source will be required to provide electricity needed to ensure compliance with the odor control requirements of ZDO 841.03(G)(3). However, the hearings officer finds that it is feasible to design and install a generator system that complies with the noise limits of ZDO 841.03(H). If necessary, the applicant can ensure compliance by locating the generator inside a building, installing baffles, or utilizing other sound mitigation measures. Condition of approval VIII should be modified to that effect. This criterion is met as proposed and conditioned.

k. The applicant proposed to install security cameras consistent with the requirements of ZDO 841.03(I). The hearings officer finds that it is feasible to comply with these clear and objective requirements and such compliance is required by condition of approval IX. This criterion is met as proposed and conditioned.

l. The applicant provided proof of a legal source of water for the production facility, a "marijuana producer water use form" from the Oregon Water Resources Department (Exhibit 23) as required by ZDO 841.03(J). The applicant proposed to reclaim and store 210,000 gallons of rainwater collected from the roofs of buildings on the site. In addition, the applicant has contracted with River City Environmental to transport municipal water to the site if/when needed. The applicant is not required to provide evidence of a contract with the City of Estacada to provide water. The Oregon Water Resources Department determined that the contract with River City Environmental is sufficient evidence of a legal water source. River City Environmental can obtain water from any legal source. This criterion is met.

m. The applicant proposed to secure marijuana waste inside the proposed building where it will be in the possession and under the control of the applicant, an OLCC licensee. This is required by condition XI. Therefore, the application complies with ZDO 841.03(K) as proposed and conditioned.

n. ZDO 841.03(L) prohibits fencing in excess of ten feet high as well as the use of "[b]arbed wire, razor wire, concertina coils, anti-climb spikes or any other

similar security feature designed to discourage ingress through the potential of causing bodily harm.” The applicant does not propose any prohibited fencing at this time and condition XII forbids the use of prohibited fencing. This criterion is met as proposed and conditioned.

6. There is no dispute that the roads in this area are not in optimal condition. This use will generate additional traffic, including trucks hauling water and other materials used in the production and processing processes proposed on the site. However, such traffic is no different than from other agricultural uses that are allowed in the AG/F zone. This issue is not relevant to the applicable approval criteria.

7. Concerns were expressed that chemicals used in the concentrate process could contaminate surface and groundwater in the area. Those concerns are not unreasonable, but they are not unique to this use. Many agricultural production and processing activities utilize or generate potential contaminants. State law regulates the use and disposal of such materials and marijuana processing is subject to further regulations. The hearings officer finds that compliance with applicable regulations provides adequate assurance that this use will not create a significant risk of water contamination. In addition, this issue is not relevant to the applicable approval criteria.

8. There is no evidence that the proposed marijuana processing facility will require upgrades to the electrical supply system in this area. If such upgrades are required, the applicant will need to work with the power provider for this area to ensure obtain such upgrades. This issue is not relevant to the applicable approval criteria.

9. The Estacada Fire District submitted a letter stating that it “[i]s unable to support the proposed project at this time...” That letter was considered by the County and attached to the director’s decision. (Exhibit 1). However, the concerns raised by the Fire District do not relate to the applicable approval criteria. The applicant will be required to address compliance with the Fire Code through the building permit review process.

10. Other issues raised by opponents – impacts on property values, oversupply of marijuana products, potential increases in crime, consistency with the character of the area, and potential hazards for employees working on the site – are not relevant to the applicable approval criteria for this application.

D. CONCLUSIONS

Based on the findings adopted or incorporated above, the hearings officer concludes that the applicant sustained the burden of proof that the proposed use does or can comply with the applicable approval criteria and the appellants failed to rebut that proof with at least equally probative evidence. Therefore the appeal should be denied, and the planning director’s decision should be affirmed subject to the conditions of approval in the director’s decision, as modified by this Final Order.

E. DECISION

Based on the above findings and discussion, the hearings officer hereby denies the appeal, affirms the planning director’s decision, and approves File No. Z0079-23-M (Mr. Babalu Processing Facility), subject to the following revised conditions of approval:

CONDITIONS OF NONCONFORMING USE APPROVAL

I) General Conditions

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on March 2, 2023, April 27, 2023, June 16, 2023 and June 21, 2023. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. For structures used for marijuana concentrate processing: Processing facilities cannot be established within Agriculture Exempt buildings must be in permitted structures.

No development permits (building permits, plumbing permits, electrical permits, “AG exempt” permits, etc.) shall be issued until the stamped odor filtration system required under Subsection 841.03(G)(1-7) and the noise study required under Subsection 841.03(H) are submitted and approved by the Planning and Zoning Division.

3. Approval Period: Approval of this processing permit application under Subsection 841.03 is valid for four years from the date of the final decision. If the County’s final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
 - A. Implemented means all major development permits shall be obtained and maintained for the approved processing facility, or if no major development permits are required to complete the development contemplated by the approved processing facility, implemented means all other necessary County development permits (e.g., grading permit, building permit for an accessory structure) shall be obtained and maintained. A major development permit is:
 - i. A building permit for a new primary structure that was part of the approved development; or
 - ii. A permit issued by the County for parking lot or road improvements required by the approved development.

II) License Number Conditions:

Only one marijuana processor licensed by the OLCC or one medical marijuana processing site registered by the OHA may be located on the subject lot of record.

III) Siting Conditions:

1. The subject lot of record shall be a minimum of 10 acres.
2. The minimum front, rear, and side yard depths for any structure used for marijuana processing shall be 100 feet.
3. Any division of a lot of record that separates a processing facility or establishment from the farm operation on which it is located is prohibited.

IV) Marijuana Crop Processing Conditions:

1. Processing activities shall be limited to the processing of **cannabinoid concentrates**, as defined in section 202. Processing of cannabinoid extracts, as defined in section 202 is prohibited in the AG/F and EFU zone.
2. The facility for the processing of marijuana or farm crop shall be located on a farm that provides at least one-quarter (25%) of the crops processed at the facility. At the request of the County, the processor shall submit to the County a written statement that is prepared by a certified public accountant certifying the compliance of the production operation with this condition for the previous tax year.
3. Marijuana/farm crop processing shall be located entirely within one or more completely enclosed buildings as shown on the applicant's site plan.
4. A farm operator may not devote more than 10,000 square feet of floor area of a processing facility established or used for farm crop processing, exclusive of the floor area designated for preparation, storage, or other farm use.

V) Access Conditions:

Access to the subject tract and its processing facility shall only be by a driveway with a County-approved approach directly off of S Rainbow Rd. That driveway shall not cross or serve any lot of record other than those comprising the subject tract.

VI) Lighting Conditions:

1. Light cast by light fixtures inside any building used for marijuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
2. Light cast by exterior light fixtures (e.g., security lights, driveway lights) shall not be directed skyward and shall be directed within the boundaries of the subject lot of record.
3. The door on the north side of the building providing direct access between the extraction room and the exterior of the building shall remain closed between 7:00 p.m. to 7:00 a.m. the following day.

VII) Building Odor/Filtration Conditions:

For any building that is used for marijuana processing, where “building” means the building, or portion thereof, that is used for marijuana processing:

1. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
2. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
3. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
4. Negative air pressure shall be maintained inside the building.
5. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
6. The filtration system shall be designed by a mechanical engineer licensed in the State of Oregon. The engineer shall stamp the design and certify that it complies with Subsection 841.03(H).
7. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.
8. The applicant shall provide evidence of a generator or other backup power source sufficient to support the ongoing operation of the filtration system.

XII) Noise Conditions:

The applicant shall submit a noise study by an acoustic engineer licensed in the State of Oregon. The study shall demonstrate that that generators as well as mechanical equipment used for heating, ventilating, air conditioning, or odor control will not produce sound that, when measured at any lot line of the subject lot of record, exceeds 50 dB(A).

X) Security Camera Conditions:

If used, security cameras shall be directed to record only the subject lot of record and may be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the Oregon Liquor Control Commission (OLCC) or registration requirements of the Oregon Health Authority (OHA).

XI) Water Conditions:

The applicant shall submit proof of a legal source of water as evidenced by:

1. A copy of a water right permit, certificate, or other water use authorization from the Oregon Water Resources Department (OWRD);
2. A statement from a public or private water provider that water is supplied by that water provider. The statement shall include the name and contact information of the water provider; or
3. Proof from the OWRD that the water to be used for marijuana production is from a source that does not require a water right.

XII) Waste Management Conditions:

Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.

XIII) Fencing Conditions:

The maximum height of any fencing on the subject lot of record shall be 10 feet. Fences, walls, or other barriers shall not be electrified, or use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.

DATED this 16th day of October, 2023.



Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

APPEAL RIGHTS

ZDO 1307.14(D)(6) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).