



Community Development Department

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MEMORANDUM

DATE: August 27, 2015

TO: Board of County Commissioners

FROM: Matthew Martin, Associate Planner
Nick Lelack, Community Development Director

RE: Marijuana Related Business Land Use / Zoning Decisions

PURPOSE

The purpose of this memorandum is to assist the Board in determining the following:

I. Allowed Uses:

Review marijuana business use categories and determine which, if any, should be allowed in the unincorporated county; identify opt out for those that will not be allowed.

II. Reasonable Regulations:

Identify preliminarily, reasonable regulations to address marijuana businesses not subject to an opt out ordinance; and

III. Review Process:

Identify the process for drafting local regulations for marijuana businesses and the review criteria.

SUMMARY

The work session on September 2, 2015 is a continuation of the discussion addressing marijuana businesses in unincorporated Deschutes County. It is an opportunity for the Board of County Commissioners (Board) to provide direction on what, if any, marijuana related businesses to "opt out" of and the process for establishing regulations of the businesses that will be allowed.

INTRODUCTION

Land use issues associated with medical and recreational marijuana in Oregon are very dynamic with many varying opinions. In an effort to frame the discussion, the following land use policy issues have been identified for the Board's consideration:

- Where should marijuana producers, processors, wholesalers and retailers be permitted outright, permitted conditionally or prohibited in the unincorporated county?
- Should medical marijuana and recreational marijuana uses be treated differently?

- Are the existing time, place and manner restrictions for medical marijuana dispensaries appropriate? ¹
- Marijuana producers (grow operations) are considered farm uses and allowed outright in Exclusive Farm Use (EFU) zone. Should grow operations be allowed in the county's other two resource zones (F-1/F-2) in a similar manner as EFU?
- The County allows farm/agricultural uses in most rural transitional (i.e. MUA-10) and residential (i.e. RR-10) zones as well as in the urban reserve areas of Bend, Redmond, and Sisters. Should the growing of marijuana as a farm /agricultural use in these and similar zones be limited, prohibited, or treated differently than other farm uses?
- Are other general development standards addressing site, sound and smell (e.g., buffers – landscaping/fencing, setbacks, lighting, charcoal filtration, lot coverage, building size) appropriate or necessary to address the impacts of marijuana facilities and operations?
- What types of regulatory measures (development standards, review process) should apply to entitling marijuana businesses.

I. Allowed Uses

The County is responsible for regulating land uses, including those related to recreational and medical marijuana, pursuant to the Deschutes County Code (DCC). Marijuana production, processing and sale are no different than any other land use when it comes to administering the zoning ordinance. As with other land uses, the appropriate zoning district(s) to locate these businesses will be based on characteristics of the business (growing, processing, wholesaling, retailing or a combination thereof). Medical marijuana-related uses have been regulated in the same manner as other similar uses under the DCC for many years. The Oregon Medical Marijuana Act was adopted in 1998, although retail dispensaries were not legalized until 2014. For recreational marijuana, the inherent conflict is that related uses may be legally permissible under the construct of the DCC and yet cannot legally operate until such time as the Oregon Liquor Control Commission (OLCC) issues a license for each facility.

House Bill (HB) 3400 identifies the following six (6) marijuana related businesses that require registration or licensing by OLCC prior to being established:

- Medical Marijuana Processing Site
- Medical Marijuana Dispensaries
- Recreational Marijuana Producers (Growers)
- Recreational Marijuana Processors
- Recreational Marijuana Wholesalers
- Recreational Marijuana Retailers

Please note that HB 3400 identifies which business types/land uses are permitted in the EFU zone and which are not. Specifically, medical and recreational marijuana processing is outright permitted in the EFU zone unless the County opts out of these businesses.² Recreational marijuana production (grow) is outright permitted as a farm use. HB 3400 prohibits farms stands and commercial activities in the EFU zone, meaning retail sales are not allowed.

¹ http://www.deschutes.org/sites/default/files/fileattachments/community_development/page/1064/ordnc_2015-004_-_med_marijuana_dispensaries.pdf

² Processing facilities require a land use permit in the EFU zone under Deschutes County Code 18.16.025(I).

As discussed at the public hearings on August 12, 2015, and deliberations on August 17th HB 3400 also provides an opportunity for the Board to prohibit, or “opt out” of any one or more of the following marijuana related use categories in the unincorporated areas of Deschutes County. If the Board elects to “opt out” of a business category, then a temporary moratorium will be imposed on the “opt out” business category(s) in the unincorporated county and referred to voters in the November 2016 general election.

In addition, the Board will need to identify future land use / zoning decisions for business types that are not included in an “opt out” ordinance. Specifically, the Board will decide if and how to allow a business type/land use in each zone:

- **Permitted use:** the business type/land use is approved, approved with conditions, or denied subject to compliance with clear and objective standards (Site Plan Review or an Administrative Determination may be required); or
- **Conditional Use:** the business type/land use is approved, approved with conditions, or denied subject to compliance with compatibility standards (DCC 18.128.015) and other applicable standards; or
- **Prohibit:** the use in the zone is disallowed.

Staff seeks direction from the Board on which, if any, of the business types shall be permitted and which shall be prohibited through the “opt out” process. To assist the Board, Table 1 provides a cursory analysis of the DCC identifying how many zones each use could potentially be located. For example, “7-Permitted” means there are 7 zones where a use is allowed outright and “4-Conditional Use” means there are 4 zones where a use is allowed conditionally.

Table 1

Potential Number of Zones Where Marijuana Businesses are Permitted				
	Title 18 Deschutes County	Title 19* Bend	Title 20* Redmond	Title 21* Sisters
Medical Marijuana Processing	7 – Permitted 4 – Conditional Use	3 - Permitted		
Medical Marijuana Dispensaries	11 - Permitted	4 - Permitted		
Recreational Marijuana Producers	20 - Permitted	8 - Permitted	1 - Permitted	1 - Permitted
Recreational Marijuana Processors	7 - Permitted 4 – Conditional Use	3 - Permitted		
Recreational Marijuana Wholesalers	6 – Permitted (office only) 4 –Conditional Use (incl. warehouse)	4 - Permitted 2 – Permitted (office only) 1 – Conditional Use		
Recreational Marijuana Retailers	13 - Permitted	4 - Permitted 2 –Conditional Use (service commercial)	1 - Permitted	
* The County shall coordinate with the cities on proposed changes pursuant to the Intergovernmental Agreements (IGA).				

II. Reasonable Regulations

The provisions of HB 3400, Sections 33, 34, and 89 provide an opportunity for the County to establish “reasonable regulations” addressing the time, place and manner characteristics of marijuana related uses.

- A. **Regulation:** Compliance with “reasonable regulations” must be demonstrated by the applicant prior to the issuance of a Land Use Compatibility Statement (LUCS). HB 3400 provides local jurisdictions 21 days to determine compliance and issuance of the LUCS. These regulations can apply to outright permitted uses or conditional uses. Table 2 lists several time, place, and manner regulation options that staff has noted from comments received, but this is not a comprehensive or definitive list. It is simply intended to begin identifying options.

Table 2

Time	Place	Manner/Operations
Hours of Operation Seasonal Duration	Zones Lot Size (needs to match zone) Site Plan Review Setbacks Lot Coverage	Lighting Transportation Management Access Buffer/Screening

- B. **Process:** The process for drafting regulations can be conducted in a several ways. Staff has identified the following options for consideration:³
1. Board Directed Approach: The Board provides direction to staff on the proposed amendments (i.e., permitted/conditional/prohibited uses in each zone; “reasonable regulations”; etc.).
 2. Committee Directed Approach:
 - a. Convened by Staff: Staff will convene a stakeholder committee to discuss, review, and make a recommendation.⁴
 - b. Appointed by the Board: The Board can appoint a committee to provide recommendations. Such a committee will be governed by State public meeting rules.
 3. Planning Commission: Utilize the planning commission for direction and recommendations.
 4. Other: The Board can identify a preferred alternative approach not listed.
- C. **Timeline:** Jurisdictions across the state are contemplating what is the most effective and efficient method of establishing regulations for marijuana related businesses given the limited time available to develop and adopt them prior to OLCC accepting licensee applications on January 4, 2016. Two approaches identified are:

³ Each process option requires Planning Commission review public hearing(s) and recommendation, followed by Board public hearing(s) and adoption.

⁴ Clackamas County approach.

1. Wait until after OLCC completes its rulemaking process in November to understand the gaps in land use regulations the County needs to address, while recognizing there is a short timeline to adopt rules prior to January 4, 2016; or
2. Initiate the process now to get ahead of the curve, but potentially duplicating OLCC's land use rulemaking efforts, and/or facing inconsistencies in the County and OLCC's rules, which would need to be reconciled in November/December.

III. Board Direction / Options

- A. The Board may direct staff to prepare an ordinance for consideration at a future business meeting to opt out of any or all marijuana businesses. (See Section I of this memo).
- B. At this or a future public meeting, the Board may direct staff to initiate a public process to draft/develop "reasonable regulations" and review criteria to address marijuana businesses not subject to the "opt out" ordinance. These amendments will be land use regulations subject to Planning Commission review and recommendation, followed by Board public hearing(s) and consideration (see Sections II(A) and (B) of this memo).
- C. If the Board chooses to pursue text amendments, staff seeks direction on the process of drafting proposed standards and the timeline (See Section II(C) of this memo).

Attachment: Appendix addresses the following topics:

- A. MARIJUANA LAND USE IN DESCHUTES COUNTY: CURRENT STATUS
- B. NEW STATE LEGISLATION
- C. RECREATIONAL MARIJUANA (Ballot Measure 91/House Bill 3400)
- D. MEDICAL MARIJUANA

APPENDIX

A. MARIJUANA LAND USE IN DESCHUTES COUNTY: CURRENT STATUS

1. The County Planning Division, Building Division and other departments routinely receive inquiries regarding marijuana regulations and associated land use regulations and permitting requirements.
2. The County is responsible for regulating land uses, including those related to recreational and medical marijuana, pursuant to the Deschutes County Code (DCC), specifically Titles 18, 19, 20, and 21. Marijuana production, processing and sales are no different than any other land use when it comes to administering the zoning ordinance. As with other land uses, the appropriate zoning district(s) to locate these businesses will be based on characteristics of the business (growing, processing, wholesaling, retailing or a combination thereof). Medical marijuana-related uses have been regulated in the same manner as other similar uses under the DCC for many years. The Oregon Medical Marijuana Act was adopted in 1998, although retail dispensaries were not legalized until 2014. For recreational marijuana, the inherent conflict is that related uses may be legally permissible under the construct of the County DCC and yet cannot legally operate until such time as the OLCC issues a license for each facility.
3. The county's time, place and manner ordinance (DCC 18.116.320), which was adopted by the Board of County Commissioners (Board) in April 2015 for medical marijuana dispensaries, is administered by the Planning Division through the normal permitting process.
4. On August 12, 2015, the Board held a public hearing to receive testimony regarding whether to "opt out" of marijuana land uses, as permitted by HB 3400. The Board briefly deliberated on August 17, 2015, and decided not to opt out of any marijuana businesses at this time in favor of considering whether it is prudent to consider whether the better option is to develop regulations addressing where and how marijuana businesses may operate. With that said, the Board also acknowledged the opportunity to opt out is still available if a regulatory approach is determined to not be suitable.

B. NEW STATE LEGISLATION

The 2015 legislature adopted five bills related to marijuana. In addition to HB 3400, discussed at length below, only one bill is related to marijuana land use regulations.

Senate Bill 460A (Early Start) allows *medical* marijuana dispensaries to sell limited recreational marijuana products (i.e. recreational marijuana seeds, leaves, flowers and non-flowering plants) beginning October 1, 2015. The effect of this bill brings the legal sale of recreational marijuana to the market prior to the OLCC accepting and approving licenses for recreational marijuana dispensaries in 2016. The sale of limited recreational marijuana products can only occur in licensed medical marijuana dispensaries that are already authorized under the County's time, place and manner regulations. Therefore, no additional land use regulations are necessary before October 1, 2015 to allow the sale of limited recreational marijuana products.

House Bill 3400 *amended* Ballot Measure 91 and certain provisions of the Oregon Medical Marijuana Act. Details are below in sections C and D.

C. RECREATIONAL MARIJUANA (Ballot Measure 91/House Bill 3400)

Definitions:

- a. Household: *a housing unit, including any place in or around the housing unit at which the occupants of the housing unit are producing, processing, keeping or storing homegrown marijuana or homemade marijuana products*
- b. Marijuana: *the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae*
- c. Immature Marijuana Plant: *a marijuana plant that is not flowering*
- d. Mature marijuana plant: *a marijuana plant that is not an immature marijuana plant*
- e. Marijuana items: *marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts*
- f. Marijuana processor: *a person who processes marijuana items in this state*
- g. Marijuana producer: *a person who produces marijuana in this state*
- h. Marijuana retailer: *a person who sells marijuana items to a consumer in this state*
- i. Marijuana wholesaler: *a person who purchases marijuana items in this state for resale to a person other than a consumer*
- j. Processes: *the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts. Processes does not include packaging and labeling.*
- k. Produces: *the manufacture, planting, cultivation, growing or harvesting of marijuana*
- l. Public place: *a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartment designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and areas used in conjunctions with public passenger transportation.*

Overview:

Measure 91, approved by Oregon voters in November 2014 -- the *Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act* -- was approved in Deschutes County by a vote of 51.86% in favor (37,018) to 48.14% in opposition (34,366), with a voter turnout of 72.63%. HB 3400, which amends Measure 91, was adopted by the 2015 state legislature. The following information summarizes the original act as amended by HB 3400.

- a. The purpose of the law is to permit persons licensed, controlled, regulated and taxed by this state to legally manufacture and sell marijuana to persons 21 year of age and older.
- b. Though the original Act does not include any specific land use regulations, HB 3400 does.

- c. Though the original Act does not amend the Oregon Medical Marijuana Act, HB 3400 does.
- d. The Act clarifies that *marijuana* does not include industrial hemp, as defined in ORS 571.300, or industrial hemp commodities or products. (Growing industrial hemp is considered to be an agricultural product / farm use (OAR 571.305(1)). Industrial hemp facilities must be licensed by the Oregon Department of Agriculture (ODA).)

Recreational Marijuana for Personal Use:

The production, processing and storage of homegrown marijuana and marijuana products is often referred to as the *Personal Use Allowance*. The personal allowance authorized for recreational marijuana per household is a right to possess marijuana; it is *not* a land use issue and will not be regulated by the DCC.

- a. Effective July 1, 2015, the making, processing and storage of homegrown marijuana and marijuana products is not to exceed four plants, eight ounces of useable marijuana, 16 ounces in solid form, 72 ounces in liquid form and 16 ounces of concentrates *per* household at any time
- b. The delivery of marijuana is not to exceed more than one ounce of homegrown marijuana, 16 ounces of solids, 72 ounces of liquids and 16 ounces of concentrates at a time by a person 21 years of age or older to another person 21 years of age or older for non-commercial purposes.
- c. No consumption is allowed in public.
- d. No person may produce, process, keep or store homegrown marijuana or homemade marijuana products if the products can be readily seen by normal unaided vision from a public place.

Oregon Liquor Control Commission (OLCC):

The Oregon Liquor Control Commission (OLCC) is responsible to adopt laws (Oregon Administrative Rules) to implement and administer Measure 91 and HB 3400. The duties of the OLCC include:

- a. To regulate the purchase, sale, production, processing, transportation and delivery of marijuana items.
- b. On or before **January 1, 2016**, to adopt rules and regulations as deemed necessary for the implementation and administration of the Act.
- c. On or before **January 4, 2016**, to begin **receiving** applications for the licensing of persons to produce, process, wholesale and retail marijuana. (The Act states that OLCC may not unreasonably delay decisions on a license, but does not specify a time limit.)

RECREATIONAL MARIJUANA LICENSES

Type: Licenses approved by the OLCC are required for four types of commercial recreational marijuana facilities:

- a. producers;
- b. processors;
- c. wholesalers, and
- d. retailers.

The same person may hold one or more production licenses, one or more processor licenses, one or more wholesale licenses, and one or more retail licenses. The following information is excerpts from HB 3400 regarding each license

PRODUCTION LICENSE: Sections 12 and 13 of HB 3400 identify the requirements for a marijuana production license:

SECTION 12. Section 19, chapter 1, Oregon Laws 2015, is amended to read:

- (1) The production of marijuana is subject to regulation by the Oregon Liquor Control Commission.*
- (2) A marijuana producer must have a production license issued by the commission for the premises at which the marijuana is produced. To hold a production license under this section, a marijuana producer:*
 - (a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;*
 - (b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older; and*
 - (c) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.*
- (3) The commission shall adopt rules that:*
 - (a) Require a marijuana producer to annually renew a license issued under this section;*
 - (b) Establish application, licensure and renewal of licensure fees for marijuana producers;*
 - (c) Require marijuana produced by marijuana producers to be tested in accordance with section 92 of this 2015 Act;*
 - (d) Require marijuana producers to submit, at the time of applying for or renewing a license under section 28, chapter 1, Oregon Laws 2015, a report describing the applicant's or licensee's electrical or water usage; and*
 - (e)*
 - (A) Require a marijuana producer to meet any public health and safety standards and industry best practices established by the commission by rule related to:*
 - (i) The production of marijuana; or*

- (ii) *The propagation of immature marijuana plants and the seeds of the plant Cannabis family Cannabaceae.*
- (B) *For purposes of establishing rules under subparagraph (A)(ii) of this paragraph, the commission may not limit:*
 - (i) *The number of immature marijuana plants that may be possessed by a marijuana producer licensed under this section;*
 - (ii) *The size of the grow canopy a marijuana producer licensed under this section uses to grow immature marijuana plants; or*
 - (iii) *The weight or size of shipments of immature marijuana plants made by a marijuana producer licensed under this section.*
- (4) *Fees adopted under subsection (3)(b) of this section:*
 - (a) *May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana producers;*
 - (b) *Shall be in the form of a schedule that imposes a greater fee for premises with more square footage or on which more mature marijuana plants are grown; and*
 - (c) *Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.*

SECTION 13.

- (1) *Subject to subsection (2) of this section, the Oregon Liquor Control Commission shall adopt rules restricting the size of mature marijuana plant grow canopies at premises for which a license has been issued under section 19, chapter 1, Oregon Laws 2015. In adopting rules under this subsection, the commission shall:*
 - (a) *Limit the size of mature marijuana plant grow canopies, for premises where marijuana is grown outdoors and for premises where marijuana is grown indoors, in a manner calculated to result in premises that produce the same amount of harvested marijuana leaves and harvested marijuana flowers regardless of whether the marijuana is grown outdoors or indoors.*
 - (b) *Adopt a tiered system under which the permitted size of a marijuana producer's mature marijuana plant grow canopy increases at the time of licensure renewal under section 19, chapter 1, Oregon Laws 2015, except that the permitted size of a marijuana producer's mature marijuana plant grow canopy may not increase following any year during which the commission disciplined the marijuana producer for violating a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or a rule adopted under a provision of sections 3 to 70, chapter 1, Oregon Laws 2015.*
 - (c) *Take into consideration the market demand for marijuana items in this state, the number of persons applying for a license under section 19, chapter 1, Oregon Laws 2015, and to whom a license has been issued under section 19, chapter 1, Oregon Laws 2015, and whether the availability of marijuana items in this state is commensurate with the market demand.*
- (2) *This section does not apply to a premises for which a license has been issued under section 19, chapter 1, Oregon Laws 2015, if the premises is used only to propagate*

immature marijuana plants.

PROCESSOR LICENSE: Section 14 of HB 3400 identifies the requirements for a marijuana processor license: *SECTION 14. Section 20, chapter 1, Oregon Laws 2015, is amended to read:*

- (1) The processing of marijuana items is subject to regulation by the Oregon Liquor Control Commission.*
- (2) A marijuana processor must have a processor license issued by the commission for the premises at which marijuana items are processed. To hold a processor license under this section, a marijuana processor:*
 - (a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;*
 - (b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;*
 - (c) If the marijuana processor processes marijuana extracts, may not be located in an area zoned exclusively for residential use; and*
 - (d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.*
- (3) The commission shall adopt rules that:*
 - (a) Require a marijuana processor to annually renew a license issued under this section;*
 - (b) Establish application, licensure and renewal of licensure fees for marijuana processors;*
 - (c) Require marijuana processed by a marijuana processor to be tested in accordance with section 92 of this 2015 Act; and*
 - (d) Require a marijuana processor to meet any public health and safety standards and industry best practices established by the commission by rule related to:*
 - (A) Cannabinoid edibles;*
 - (B) Cannabinoid concentrates;*
 - (C) Cannabinoid extracts; and*
 - (D) Any other type of cannabinoid product identified by the commission by rule.*
- (4) Fees adopted under subsection (3)(b) of this section:*
 - (a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana processors; and*
 - (b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.*

STAFF COMMENT: Paragraph 2(c) prohibits a marijuana processor who processes marijuana extracts from being "... located in an area zoned exclusively for residential

use.” [emphasis added] There is no zoning district in unincorporated Deschutes County that is exclusively zoned for residential use. All of the residential zones also allow uses such as parks, churches, schools and other uses. Staff can only surmise that this provision is intended to prohibit marijuana processors in districts **primarily** zoned for residential use.

WHOLESALE LICENSE: Section 15 identifies the requirements for a marijuana wholesale license: *SECTION 15. Section 21, chapter 1, Oregon Laws 2015, is amended to read:*

- (1) The wholesale sale of marijuana items is subject to regulation by the Oregon Liquor Control Commission.*
- (2) A marijuana wholesaler must have a wholesale license issued by the commission for the premises at which marijuana items are received, stored or delivered. To hold a wholesale license under this section, a marijuana wholesaler:*
 - (a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;*
 - (b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;*
 - (c) May not be located in an area that is zoned exclusively for residential use; and*
 - (d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.*
- (3) The commission shall adopt rules that:*
 - (a) Require a marijuana wholesaler to annually renew a license issued under this section;*
 - (b) Establish application, licensure and renewal of licensure fees for marijuana wholesalers;*
 - (c) Require marijuana items received, stored or delivered by a marijuana wholesaler to be tested in accordance with section 92 of this 2015 Act; and*
 - (d) Require a marijuana wholesaler to meet any public health and safety standards and industry best practices established by the commission by rule.*
- (4) Fees adopted under subsection (3)(b) of this section:*
 - (a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana wholesalers; and*
 - (b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.*

RETAIL LICENSE: Sections 16 and 17 identify the requirements for a marijuana retail license:

SECTION 16. Section 22, chapter 1, Oregon Laws 2015, is amended to read:

- (1) The retail sale of marijuana items is subject to regulation by the Oregon Liquor Control Commission.*

- (2) *A marijuana retailer must have a retail license issued by the commission for the premises at which marijuana items are sold. To hold a retail license under this section, a marijuana retailer:*
- (a) *Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;*
 - (b) *Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;*
 - (c) *May not be located in an area that is zoned exclusively for residential use;*
 - (d) *May not be located within 1,000 feet of:*
 - (A) *A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or*
 - (B) *A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a); and*
 - (e) *Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.*
- (3) *The commission shall adopt rules that:*
- (a) *Require a marijuana retailer to annually renew a license issued under this section;*
 - (b) *Establish application, licensure and renewal of licensure fees for marijuana retailers;*
 - (c) *Require marijuana items sold by a marijuana retailer to be tested in accordance with section 92 of this 2015 Act; and*
 - (d) *Require a marijuana retailer to meet any public health and safety standards and industry best practices established by the commission by rule.*
- (4) *Fees adopted under subsection (3)(b) of this section:*
- (a) *May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana retailers; and*
 - (b) *Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.*

SECTION 17. *If a school described in section 22 (2)(d), chapter 1, Oregon Laws 2015, that has not previously been attended by children is established within 1,000 feet of a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, the marijuana retailer located at that premises may remain at that location unless the Oregon Liquor Control Commission revokes the license of the marijuana retailer under section 30, chapter 1, Oregon Laws 2015.*

REASONABLE REGULATIONS: Section 33 of HB 3400 authorizes the County to impose reasonable regulations on the operation of licensed recreational marijuana businesses.

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:

- (1) For purposes of this section, “reasonable regulations” includes:*
 - (a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;*
 - (b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;*
 - (c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;*
 - (d) Reasonable limitations on the hours during which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may operate;*
 - (e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;*
 - (f) Reasonable requirements related to the public’s access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and*
 - (g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.*
- (2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.*
- (3) Regulations adopted under this section must be consistent with city and county comprehensive plans and zoning ordinances and applicable provisions of public health and safety laws.*

STAFF COMMENT: The word “reasonable” is not defined by HB 3400. Depending on the result of discussion with County Counsel about statutory construction, a dictionary definition of “reasonable” may be relevant.

FARM USE: Section 34 explicitly applies various farm-related provisions of state law to marijuana and requires a land use compatibility statement from the County as part of the Oregon Liquor Control Commission’s marijuana business licensing process.

SECTION 34.

- (1) Notwithstanding any other provision of law, marijuana is:
 - (a) A crop for the purposes of “farm use” as defined in ORS 215.203;
 - (b) A crop for purposes of a “farm” and “farming practice,” both as defined in ORS 30.930;
 - (c) A product of farm use as described in ORS 308A.062; and
 - (d) The product of an agricultural activity for purposes of ORS 568.909.
- (2) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses on land designated for exclusive farm use:
 - (a) A new dwelling used in conjunction with a marijuana crop;
 - (b) A farm stand, as described in ORS 215.213 (1)(r) or 215.283 (1)(o), used in conjunction with a marijuana crop; and
 - (c) A commercial activity, as described in ORS 215.213 (2)(c) or 215.283 (2)(a), carried on in conjunction with a marijuana crop.
- (3) A county may allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones under this section and ORS 215.213 and 215.283.
- (4)
 - (a) Prior to the issuance of a license under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, the Oregon Liquor Control Commission shall request a land use compatibility statement from the city or county that authorizes the land use. The land use compatibility statement must demonstrate that the requested license is for a land use that is allowable as a permitted or conditional use within the given zoning designation where the land is located. The commission may not issue a license if the land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.
 - (b) A city or county that receives a request for a land use compatibility statement under this subsection must act on that request within 21 days of:
 - (A) Receipt of the request, if the land use is allowable as an outright permitted use; or
 - (B) Final local permit approval, if the land use is allowable as a conditional use.
 - (c) A city or county action concerning a land use compatibility statement under this subsection is not a land use decision for purposes of ORS chapter 195, 196, 197 or 215.

STAFF COMMENT: It appears that marijuana production is permitted outright in the Exclusive Farm Use (EFU) District. In addition, the definition of farm use at ORS 215.203 permits wholesaling and certain levels of processing (i.e., 10,000-square-foot maximum processing space with a minimum of 25% of processed crops grown onsite). ORS 30.930 prohibits the county from regulating farm practices as nuisances or trespass on land zoned for farm use. This may in fact

limit the degree to which farming practices associated with marijuana may be restricted by the county. Outside of the EFU zone, HB 3400 provides less clarity. However, the use of the word “may” (A county may allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones under this section and ORS 215.213 and 215.283.) strongly suggests that the County is not required to permit marijuana production in its forest and rural residential zones. However, these zones currently permit a broad range of farm uses, including horticulture, raising of crops, and marketing of farm products. In some cases, processing of farm products is permitted.

D. MEDICAL MARIJUANA

Definitions (HB 3400)

- a. Registry identification cardholder: *a person to whom a registry identification card has been issued under ORS 475.309*
- b. Marijuana grow site: *a location registered under ORS 475.304 where marijuana is produced for use by a registry identification holder.*
- c. Person designated to produce marijuana by a registry identification card holder: *a person designated to produce marijuana by a registry identification cardholder under ORS 475.304 who produces marijuana for a registry identification cardholder at an address other than the address where the registry identification cardholder resides or at an address where more than 12 mature plants are produced.*

The Oregon Medical Marijuana Act (OMMA) is codified in ORS 475.300-475.346. The Oregon Health Authority (OHA) adopted Oregon Administrative Rules (OAR 333, Division 8) necessary for the implementation and administration of the Oregon Medical Marijuana Act. The County is not responsible for administering the OAR's relative to medical marijuana. Registration is required through the Oregon Health Authority for production and processing of medical marijuana and for medical marijuana dispensaries.

- a. Deschutes County adopted an ordinance in 2014 establishing a moratorium prohibiting *medical* marijuana dispensaries until May 1, 2015. On April 22, 2015, the Board adopted a time, place and manner ordinance regulating all medical marijuana dispensaries. The ordinance permits medical marijuana dispensaries in areas where similar uses (i.e. pharmacy) are permitted, establishes hours of operation, and requires registration and compliance with ORS 475.300-475.346 and all OHA rules. The ordinance also specifies that the addition or conversion of a dispensary to recreation use marijuana sales and distribution is a change of use and requires land use review and approval. To date, no dispensaries have been approved in the unincorporated county.

GROW SITE POSSESSION LIMITS: Section 82 of HB 3400 establishes limits on the number of plants and amount of marijuana that may be at a grow site. *SECTION 82. ORS 475.320 is amended to read:*

- (1) *Subject to subsection (2) of this section, a registry identification cardholder and the designated primary caregiver of the registry identification cardholder may jointly possess six or fewer mature marijuana plants.*

- (2)
- (a) A person may be designated to produce marijuana under ORS 475.304 by no more than four registry identification cardholders.*
 - (b) A person who is designated to produce marijuana by a registry identification cardholder may produce no more than six mature marijuana plants per registry identification cardholder.*
- (3) If the address of a person responsible for a marijuana grow site under ORS 475.304 is located within city limits in an area zoned for residential use:*
- (a) Except as provided in paragraph (b) of this subsection, no more than 12 mature marijuana plants may be produced at the address; or*
 - (b) Subject to subsection (5) of this section, if each person responsible for a marijuana grow site located at the address first registered with the Oregon Health Authority under ORS 475.304 before January 1, 2015, no more than the amount of mature marijuana plants located at that address on December 31, 2014, in excess of 12 mature marijuana plants, not to exceed 24 mature marijuana plants, may be produced at the address.*
- (4) If the address of a person responsible for a marijuana grow site under ORS 475.304 is located in an area other than an area described in subsection (3) of this section:*
- (a) Except as provided in paragraph (b) of this subsection, no more than 48 mature marijuana plants may be produced at the address; or*
 - (b) Subject to subsections (5) and (6) of this section, if each person responsible for a marijuana grow site located at the address first registered with the authority under ORS 475.304 before January 1, 2015, no more than the amount of mature marijuana plants located at that address on December 31, 2014, in excess of 48 mature marijuana plants, not to exceed 96 mature marijuana plants, may be produced at the address.*
- (5) If the authority suspends or revokes the registration of a person responsible for a marijuana grow site that is located at an address described in subsection (3)(b) or (4)(b) of this section:*
- (a) No more than 12 mature marijuana plants may be subsequently produced at any address described in subsection (3) of this section at which the person responsible for that marijuana grow site produces marijuana.*
 - (b) No more than 48 mature marijuana plants may be subsequently produced at any address described in subsection (4) of this section at which the person responsible for that marijuana grow site produces marijuana.*
- (6) If a registry identification cardholder who designated a person to produce marijuana for the registry identification cardholder pursuant to ORS 475.304 terminates the designation, the person responsible for the marijuana grow site whose designation has been terminated may not be designated to produce marijuana by another registry identification cardholder, except that the person may be designated by another registry identification cardholder if no more than 48 mature marijuana plants are produced at the address for the marijuana grow site at which the person produces marijuana.*

STAFF COMMENT: Medical marijuana grows currently are permitted in several ways under the Deschutes County Code (e.g., as a farm or agricultural use in several zones, as a production use in industrial zones, or accessory to a residential use). Amendments to the DCC to prohibit or restrict medical marijuana production would not prevent existing approved grow sites from continuing to operate but would convert those sites to nonconforming uses. Nonconforming uses enjoy statutory protections but are also limited in some ways.

MEDICAL MARIJUANA PROCESSORS: Section 85 of HB 3400 provides, in pertinent part:

- (3) To qualify for registration under this section, a marijuana processing site:*
 - (a) May not be located in an area that is zoned for residential use if the marijuana processing site processes cannabinoid extracts;*

MEDICAL MARIJUANA DISPENSARIES: Section 86 of HB 3400 provides, in pertinent part:

- (3) To qualify for registration under this section, a medical marijuana dispensary:*
 - (a) May not be located in an area that is zoned for residential use;*
 - (b) May not be located at the same address as a marijuana grow site;*
 - (c) Must be registered as a business, or have filed an application to register as a business, with the office of the Secretary of State;*
 - (d) May not be located within 1,000 feet of:*
 - (A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or*
 - (B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a);*
 - (e) Must not be located within 1,000 feet of another medical marijuana dispensary;*

SECTION 86a. If a school described in ORS 475.314 (3)(d) that has not previously been attended by children is established within 1,000 feet of a medical marijuana dispensary, the medical marijuana dispensary may remain at its current location unless the Oregon Health Authority revokes the registration of the medical marijuana dispensary.

REASONABLE REGULATIONS: Section 89 of HB 3400 authorizes the County to impose reasonable regulations on the operation of medical marijuana uses.

(1) For purposes of this section, “reasonable regulations” includes:

- (a) Reasonable limitations on the hours during which the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary may operate;*
 - (b) Reasonable conditions on the manner in which a marijuana processing site or medical marijuana dispensary may transfer usable marijuana, medical cannabinoid products, cannabinoid concentrates, cannabinoid extracts, immature marijuana plants and seeds;*
 - (c) Reasonable requirements related to the public’s access to the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary; and*
 - (d) Reasonable limitations on where the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary may be located.*
- (2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of marijuana grow sites of persons designated to produce marijuana by registry identification cardholders, marijuana processing sites and medical marijuana dispensaries that are located in the area subject to the jurisdiction of the city or county.*