



Community Development Department

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MEMORANDUM

DATE: August 17, 2015
TO: Board of County Commissioners
FROM: Nick Lelack, Community Development Director
RE: HB 3400 Opt Out Deliberations & Future Land Use / Zoning Decisions

The purpose of this memorandum is to assist the Board in beginning the processes to:

- I. Identify issues raised during the August 12, 2015 public hearing and submitted in writing;
- II. Identify and summarize the opt out decisions; and
- III. Summarize future land use / zoning decisions for businesses not subject to the "opt out," if any.

Please find attached selected provisions of HB 3400 applicable to land use regulations.

I. Issues Raised

Issues raised during the hearings and in submittals include, but are not limited to, the following:

- Economic benefits: new jobs; investments in properties, buildings, landscaping, equipment (i.e., lighting); taxes; potential tourism; new and emerging industries; regulate black market.
- Compatibility with surrounding properties/neighborhoods: greenhouse interior lighting; minimal setbacks, building and grow locations; screening, fencing, and buffers; odor; noise/exhaust filtration; security and safety; number of greenhouses on a property; and operations (size, scale, hours, employees, transportation, access).
- Health impacts: Positive - medical benefits; **and** negative - gateway drug, youth
- Farm use: put property to beneficial/profitable agricultural use; marijuana is the same as any other farm use with similar impacts; Central Oregon is ideal for cannabis with sun, cool nights.
- Property values: increase (i.e., clean up solid waste, weed removal, property investments) **and** decrease (compatibility issues with surrounding properties/neighborhoods above)
- Other: livability (pros and cons; need for good neighbor regulations); against Federal law; education about marijuana issues is needed; take time to develop land use regulations; external impacts concentrated to a few months per year, but some impacts are permanent (buildings) or extend for longer periods (i.e., large indoor grow operations with lighting).

II. Opt Out Decisions

Table 1 lists the six marijuana business types allowed by state law. The Board may decide to select “yes” or “no” to opt out of any or all of the six business types at this meeting or a future meeting.

After the Board selects “yes” or “no” to each business type, staff will prepare an ordinance based on this direction for the Board’s consideration at a future business meeting.

Specifically, if the Board selects “yes” to opt out of a business type, then a temporary moratorium will be imposed on the “opt out” business type(s) in unincorporated Deschutes County and referred to voters in the November 2016 general election.

If the Board selects “no” to not opt out of a business type, then it will be permitted as an outright allowed use in the Exclusive Farm Use (EFU) Zone. As discussed below, the Board may decide to impose “reasonable regulations” on these business type(s) in the EFU Zone through a subsequent public process.

The Board will also decide whether and how to permit such business type(s) in the Rural Residential-10 Zone (RR-10), Multiple Use Agricultural-10 Zone (MUA-10), and Forest 1 and 2 Zones (F-1 F-2), and, if so, how to regulate such business types (land uses) in these zones.

Table 1 – Opt Out?

Business Type	YES	NO
Medical Marijuana Processing Site		
Medical Marijuana Dispensaries		
Recreational Marijuana Producers (Growers)		
Recreational Marijuana Processors		
Recreational Marijuana Wholesalers		
Recreational Marijuana Retailers		

III. Future Land Use / Zoning Decisions

The purpose of Table 2 is to identify future land use / zoning decisions the Board will make for business types that are not included in the “opt out” ordinance. Specifically, the Board will decide if and how to allow a business type/land use in each zone:

- **Outright permitted use:** the business type/land use is approved, approved with conditions, or denied subject to compliance with clear and objective standards; or
- **Conditional use:** the business type/land use is approved, approved with conditions, or denied subject to compliance with compatibility standards (Deschutes County Code 18.128.015) and other applicable standards; or
- **Prohibit** the use in the zone.

Table 2 – Land Use / Zoning

Business Type	RR-10 Zone			MUA-10 Zone			Forest 1 & 2 Zones		
	Permitted	CUP	Prohibit	Permitted	CUP	Prohibit	Permitted	CUP	Prohibit
Medical Marijuana Processing Site									
Medical Marijuana Dispensaries									
Recreational Marijuana Producers (Growers)									
Recreational Marijuana Processors									
Recreational Marijuana Wholesalers									
Recreational Marijuana Retailers									

The EFU Zone is not listed in Table 2. The reason is that, as discussed above, 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.¹ 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.

However, per HB 3400, Sections 33, 89 and 34 (attached), which permit time, place and manner regulations, it appears the County may adopt “reasonable regulations” pertaining to marijuana businesses in the EFU Zone.

¹ Processing facilities require a land use permit in the EFU Zone under Deschutes County Code 18.16.025(I).

Compliance with the “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.

It appears that the “reasonable regulations” must be clear and objective because HB 3400 states that a LUCS for a marijuana business cannot be a land use decision (a land use decision involves discretion.)

Board Direction / Options

1. The Board may continue deliberations to a future public meeting.
2. 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 identified in Table 1.
3. At this or a future public meeting, the Board may direct staff to initiate a public process (i.e., community conversation) to draft/develop:
 - a. “Reasonable regulations” to address marijuana businesses not subject to the “opt out” ordinance; and/or
 - b. Text amendments based on the Board’s direction per Table 2, which will be land use regulations subject to Planning Commission review and recommendation, followed by Board public hearing(s) and consideration.

B. Local Time, Place and Manner Regulations (Sections 33 and 89)

SECTION 33. (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.

SECTION 89. (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.

C. Land Use (Section 34)

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.