



Deschutes County Board of Commissioners
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AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of December 21, 2015

DATE: 12/17/15

FROM: Matthew Martin Community Development Department 541-330-4620

TITLE OF AGENDA ITEM:

Deliberations - File No. 247-15-000-542-TA, Proposed Land Use Regulations of Marijuana Related Businesses

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

On November 4, 2014 voters approved Measure 91, which legalizes the consumption and sale of recreational marijuana in Oregon.

In 2015, the State Legislature passed five bills related to the regulation and taxation of recreational and medical marijuana. The most significant of these five bills is House Bill 3400, which revised a number of the key elements of Measure 91 and clarified provisions related to local regulation of marijuana businesses.

State law provides for four categories of OLCC-licensed, marijuana-related uses—recreational marijuana production, recreational marijuana processing, recreational marijuana wholesaling and recreational marijuana retailing—and three categories of OHA-registered, marijuana-related uses—medical marijuana production, medical marijuana processing and medical marijuana dispensaries.

Deschutes County may not completely prohibit any of the defined types of marijuana-related land uses without a vote of the people. The County may decide to opt out of one or more marijuana-related businesses by December 27, 2015 (the last Board meeting prior to this deadline is December 21, 2015). In addition, state law gives the county the authority to adopt “reasonable regulations” regarding these uses.

In September 2015, the Board held a series of work sessions to identify policy decisions and draft proposed standards for marijuana-related businesses in unincorporated Deschutes County for the Deschutes County Planning Commission to review and provide a recommendation.

On November 5 and 12, 2015, the Planning Commission conducted public hearings to receive public testimony on the proposed regulations. Subsequently, on November 16 and 23, the Planning Commission deliberated on the proposed regulations. The Planning Commission voted 7-0 to forward a package of recommendations to regulate marijuana businesses in unincorporated Deschutes County. The Commission also voted 5-2 to recommend the County not prohibit or “opt out” of any marijuana business type regulated by the State.

On December 2, 2015, the Board of County Commissioners conducted a public hearing to to receive public testimony on the proposal.

FISCAL IMPLICATIONS:

Unknown

RECOMMENDATION & ACTION REQUESTED:

Deliberation and decision on opt out of any marijuana related business and proposed regulations.

ATTENDANCE:

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

DISTRIBUTION OF DOCUMENTS:

Matthew Martin, CDD



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MEMORANDUM

TO: Deschutes County Board of Commissioners

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

DATE: December 17, 2015

SUBJECT: Deliberations – Marijuana Related Business Regulations, County Land Use File No. 247-15-000542-TA.

I. SUMMARY

The purpose of this memorandum is to summarize decision points, including whether or not to opt out of any or all marijuana businesses, and to identify policy questions pertaining to the types of marijuana businesses allowed or prohibited in each rural zone and reasonable time, place, and manner regulations.

Materials provided in this packet or online for the Board's consideration include the following:

1. The public record, which is available online at www.deschutes.org/marijuana and at <http://dial.deschutes.org/Real/DevelopmentDocs/151096> – please scroll down to File No. 247-15-000542-TA and click on this file to access the record. Please note the website is intended to be informational only. Documents in both online locations comprise the entire record.

A hard copy of the record has been submitted to the Board. Additional public comments submitted by the close of the written record on Thursday, December 17 at 5:00 p.m. will be provided to the Board on Friday, December 18 before noon.

2. The Planning Commission's recommendations.
3. The Board of County Commission's initial proposal.
4. Ordinances to opt out of each or all marijuana related businesses. December 21 is the last regular Board meeting prior to the 180-day deadline (December 27) to opt out of marijuana related businesses under HB 3400.

Key decision points during the deliberations include whether to opt out or to adopt reasonable time place and manner regulations pertaining to marijuana businesses. If the Board decides to opt out, the ordinance(s) must be adopted at this meeting. If the Board decides not to opt out, it will provide

direction to staff at this meeting concerning code amendments and enacting ordinance(s) for the Board's consideration and adoption on December 28 and/or December 30. The Board's deliberations at this meeting may begin or end with consideration and discussion of whether to pursue the opt out option(s) provided by HB 3400.

II. ZONING

Please refer to Exhibit A and Exhibit C listing marijuana businesses in rural zoning districts.

Policy questions:

- (1) Which zones to permit marijuana businesses, if any?
- (2) If permitted, how to permit marijuana businesses in each zone – as outright permitted uses (P), Conditional Uses (CU)?
- (3) If marijuana production is outright permitted (P) in the Exclusive Farm Use Zone, should it be a Development Action or Land Use Action?

III. REASONABLE TIME, PLACE, AND MANNER POLICY QUESTIONS

Please refer to the two versions of Table 2 summarizes specific use (reasonable time, place, and manner) standards and regulations. Table 2 also includes additional Planning Commission recommendations. One version of Table 2 is the Planning Commission's recommendation and the other is the Board's initial proposal.

Please note the list of policy issues and questions is not exhaustive. This list is intended to highlight the most prominent policy decision points. Many unresolved legal questions remain regarding the lawful extent and scope of regulations.

1. Should minimum lot sizes be established?

The Board's initial draft proposal did not designate a minimum lot size in the EFU Zone but did provide for 5 or 10 acre minimum lot sizes in other zones for production and processing uses. The Planning Commission recommended a 20-acre minimum lot size in the EFU Zone.

2. If marijuana production and processing is allowed in the Forest, MUA-10, RR-10 Zones, and/or Surface Mining Zones:

- a. **Should the owner be required to reside on the subject property?**
- b. **Should lot and operation size limitations be established?**

The initial proposals included the following lot and operation size limitations:

- a. An owner of the subject property shall reside in a dwelling unit on the subject property.
- b. The subject property minimum parcel size shall be:
 - i. Marijuana production: 5 acres.
 - ii. Marijuana processing, Type 1: 5 acres.
 - iii. Marijuana processing, Type 2: 10 acres.

- c. Marijuana production and marijuana processing shall be located entirely within one or more completely enclosed buildings, including greenhouses.
 - i. A maximum of 5,000 square feet of building space may be used for all activities associated with marijuana production on the subject property.
 - ii. A maximum of 3,000 square feet of building space may be used for all activities associated with marijuana processing on the subject property.

The Planning Commission recommended marijuana production only in the EFU and Rural Industrial Zones and that processing only be allowed in the EFU and various commercial and industrial Zones. Therefore, these standards are not included in the Commission’s recommendations.

3. Should Indoor / Outdoor production be defined and treated differently? If yes, should OLCC’s definitions be adopted into Code as defined below or as modified by the Board?

The initial draft text amendments did not differentiate between indoor and outdoor production. Rather, buildings included greenhouses for regulatory purposes. However, indoor and outdoor production definitions and regulations are provided in the Oregon Liquor Control Commission (OLCC) rules, and consistency may aid in implementation.

OLCC Definitions:

Indoor Production: Producing marijuana in any manner (a) utilizing artificial lighting on mature marijuana plants; or (b) other than “outdoor production.”

Note: This Indoor Production applies to all other greenhouses, hoop houses, and similar structures not defined by Outdoor Production.

Outdoor Production: Producing marijuana in an expanse of open or cleared ground; or in a greenhouse, hoop house or similar non-rigid structure that does not utilize any artificial lighting on mature plants, including but not limited to electrical lighting sources.

- 4. Should access standards be required as described in the matrix or modified by the Board?**
- 5. Should marijuana production and processing be required to comply with a 100-foot, 200-foot or other setback from property lines?**

The Board initially proposed a 100-foot setback for marijuana production and processing. The Planning Commission recommended a 200-foot setback.

- 6. Should 300-foot additional setbacks from existing dwelling units not located on the same property be established?**
 - a. Should properties under the same ownership be exempted from the setback requirements from residences not on the same property?**
 - b. Should a variance be available to waive or reduce this setback if adjoining property owners consent in writing?** This is the same variance process as the solar ordinance.
- 7. Should odor control measures apply to all indoor and outdoor production except in an expanse of open or cleared ground (i.e., a field) or should all outdoor production (may include greenhouses,**

hoop houses, etc. as defined by Outdoor Production above) be exempt from odor control requirements?

8. **Should the lighting standards (Dark Skies Ordinance) apply to all greenhouses or only to greenhouses used for marijuana production?**
 - a. **Should lighting standards apply to all Indoor and Outdoor Production?**
 - b. **Should shielding lighting from view outside the building to the “maximum extent possible” be retained or should “maximum extent possible” be removed?**
9. **Should screening be required for new marijuana production and processing businesses, existing businesses, no businesses, or all businesses?**

The Board’s initial proposal required screening for new marijuana production and processing businesses. The Planning Commission recommended screening be required for existing (not new) marijuana production and processing businesses because OLCC rules require screening of marijuana plants from public view.

10. **Should the requirement pertaining to “proof from the water master that proposed water supply complies with all applicable local, state, and federal laws” be adopted as proposed or as modified by the Board?**

Staff is continuing to coordinate with the Oregon Water Resources Department on the appropriate language to reflect the intended requirement. The language will be received after the submittal of this memorandum and supporting documents for the Board’s packet. Staff will provide the information separately.

11. **Should separation distances also apply to parks and youth-activity centers?**

The Planning Commission recommended additional separation distances for parks and youth-activity centers.

12. **Should the number of licenses be limited per parcel?**

The Planning Commission recommended limiting licenses to 1 indoor and 1 outdoor per every 10 or 20 acres – to be determined by the Board. Staff asked OLCC staff for an opinion on whether the number of licenses can be limited. OLCC staff replied, “... it would be totally up to the city/county if they wanted to limit licenses per tax lot. If you decide to do so, you will need to make sure it is through the LUCS process because OLCC does not have the current limitations in our rules and we would need to approve if all licensing criteria was met.”

13. **Should HB 3400 and OLCC Rules limiting marijuana businesses (i.e., prohibitions on farm stands, commercial activity in conjunction with a farm use, agri-tourism, and window service) be incorporated into County Code in the event the rules change?**

The Planning Commission recommended some state regulations limiting marijuana businesses be incorporated in the County Code in the event state rules change. Similarly, Clackamas County’s Code incorporates such provisions.

14. Are there other standards to be addressed?

Does the Board wish to discuss other standards or requirements not discussed above? Public input has raised a number of important issues related to sight, sound, smell, economics, environment, water, neighborhood character, and much more that might be addressed.

IV. REGULATING EXISTING MEDICAL MARIJUANA PRODUCTION SITES

One key issue raised throughout this process is whether and how to regulate existing lawfully established medical marijuana production (grow) sites and operations. CDD and Legal staff are of the opinion that HB 3400, Section 89(2) authorizes the County to adopt reasonable regulations that address operations of existing and future medical grow sites provided that the operator is growing for cardholders other than him/herself. In addition, Clackamas County’s adopted regulations partially apply to existing medical marijuana production operations.

1. Should reasonable time, place and manner regulations apply to existing lawfully medical marijuana production sites?

- a. **If yes, which regulations should apply?** For example, should odor, noise, lighting, secure disposal, and security camera standards apply? Existing buildings and operations may retrofit existing buildings and facilities to comply with these standards. However, lawfully established buildings may not be able to comply with setbacks or access requirements.
- b. **If yes, what should the time period be to comply?** Any lawfully established medical marijuana producer eligible to opt in to recreational marijuana production would be required to comply upon approval. However, existing medical marijuana operations may be provided time (i.e., June 1, 2016) to comply with applicable regulations.

V. TASK FORCE

1. Should a task force be established to review and evaluate adopted regulations, and provide recommendations for improvement?

The Planning Commission recommended a task force be established for this purpose.

Attachments:

- Exhibit A – Original Proposed Zoning and Specific Use Standards
- Exhibit B – Original Proposed Text Amendments
- Exhibit C – PC Recommended Zoning and Specific Use Standards
- Exhibit D – PC Recommended Text Amendments
- Exhibit E – Draft Opt Out Ordinances