



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of May 25, 2016

DATE: 5/19/16

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

TITLE OF AGENDA ITEM:

Consideration of First Reading by Title Only of:

Ordinance Nos. 2016-013 through 2016-018 amending Deschutes County Code (DCC) Titles 8, 18, 19, 20, and 21 to define, permit, and regulate marijuana related businesses in unincorporated Deschutes County, and Title 15 to define and regulate greenhouse lighting.

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

On May 2, 2016, The Board of County Commissioners (Board) conducted a public hearing to consider regulations of marijuana related land uses and the status of the "opt out" moratorium (Ord. 2015-009) prohibiting several marijuana related land uses. On May 4, 9, and 11, 2016, the Board deliberated and provided direction to staff to develop land use regulations for marijuana-related businesses in unincorporated Deschutes County. In addition, the Board decided to initiate the process to rescind Ord. 2015-009. Staff has converted that direction into draft text amendments to Deschutes County Code (DCC) for the Board to review, amend, and/or adopt.

FISCAL IMPLICATIONS:

Unknown

RECOMMENDATION & ACTION REQUESTED:

The purpose of this agenda item is for the Board to consider the draft text amendments, and then:

1. Provide direction and clarification to staff on revisions to incorporate into the text amendments to bring back for Board approval and First Reading on June 6 or June 8; or
2. Conduct First Reading on some or all ordinances to adopt the amendments into DCC; Second Reading would occur on or after June 8.

In addition, the Board may consider conducting First Reading of an ordinance to rescind the opt-out.

MOTION 1: First Reading by title only of Ordinance 2016-013.

(Repeat first reading a process for Ordinances 2016-014 through 2016-018)

ATTENDANCE:

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

DISTRIBUTION OF DOCUMENTS:

Matthew Martin, CDD, Legal Counsel



Community Development Department

Planning, Building Safety, Environmental Soils, Code Enforcement
PO Box 6005, Bend, Oregon 97708-6005
117 NW Lafayette Avenue
www.deschutes.org/cd

MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Nick Lelack, AICP, Director
Matthew Martin, AICP, Associate Planner

DATE: May 19, 2016

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

I. SUMMARY

On May 11, 2016 the Board of County Commissioners (Board) deliberated and provided direction to staff to develop land use regulations for marijuana-related businesses in unincorporated Deschutes County. Following that direction, staff drafted text amendments to Deschutes County Code (DCC) and, in the process, identified key issues that require Board direction and/or clarification.

The purpose of this agenda item is for the Board to consider the draft text amendments, and then either:

1. Provide direction and clarification to staff on revisions to incorporate into the text amendments to bring back for Board approval and First Reading on June 6 or June 8; or
2. Conduct First Reading on some or all ordinances to adopt the amendments into DCC; Second Reading would occur on or after June 8.

In addition, the Board may consider conducting First Reading of an ordinance to rescind the opt-out.

A list of all ordinances is provided on page 5 of this memorandum. Please note, of primary interest:

1. Exhibit J to Ordinance 2016-015 provides the specific use standards for marijuana production, processing and retail.
2. Exhibit K to Ordinance 2016-015 provides the findings demonstrating that these reasonable regulations are compliant with State law and the County's Comprehensive Plan.

II. KEY ISSUES

1. Setback Exceptions

The Board directed staff to allow for exceptions to the setback requirements under certain conditions. Staff proposes the following:

Exception: Any reduction to these setback requirements may be granted by the Planning Director or Hearings Body provided the applicant demonstrates the reduced setbacks afford equal or greater mitigation of visual, odor, noise, lighting, privacy, and access impacts.

2. Access

The Board directed staff to apply access restrictions to Tier 2 or similarly large marijuana production and processing operations. Staff proposes the same general provisions recommended by the Planning Commission, but only applicable to properties with marijuana production over 5,000 square feet of canopy area for mature marijuana plants.

3. Odor

The Board generally supported the Marijuana Advisory Committee's recommendation, while also stating that that the odor control requirements should not be too specific to preclude new technologies or other effective mitigation measures. Staff proposes two options to address odor. One option is the MAC recommendation as conceptually refined by the Board during deliberations. The second is an alternative that provides significantly greater flexibility to mitigate this impact.

Option 1

Odor. As used in Subsection 18.116.330(B)(10), building means the building, including greenhouses, hoop houses, and other similar structures, used for marijuana production or marijuana processing.

- a. The building shall be equipped with an effective odor control system which must at all times prevent unreasonable interference of neighbors' use and enjoyment of their property.
- b. An odor control system is deemed permitted only after the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the system will control odor so as not to unreasonably interfere with neighbors' use and enjoyment of their property.
- c. Private actions alleging nuisance or trespass associated with odor impacts are authorized, if at all, as provided in applicable state statute.
- d. The odor control system shall consist of one or more fans.
- e. 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.
- f. The filter(s) shall be rated for the required CFM.
- g. The system shall be maintained in working order and shall be in use.

Option 2

Odor. All marijuana production and processing shall install an effective odor control system in all buildings, including but not limited to, greenhouses, hoop houses, and similar non-rigid structures. The effective odor control system shall:

- a. Prevent marijuana plant odor from disturbing people of normal sensitivity owning or residing on properties within one-quarter mile of all property lines on which the marijuana production and processing is sited;
- b. Designed and stamped by a mechanical engineer licensed in the State of Oregon; and
- c. Continually maintained in working order and in use when plants are in the building.

In addition, staff proposes to separately draft an amendment to the Code Enforcement Policy and Procedures Manual to permit affected residents within a specified distance to submit anonymous complaints pertaining to odor impacts.

4. Screening and Fencing

The proposed screening standards are intended to:

- a. Require all marijuana production and processing-related buildings, greenhouses, hoop houses, and similar structures to comply with the Landscape Management standards requirements when they are located in that combining zone.
- b. Outside the Landscape Management Combining Zone, preserve existing vegetation and landscape features.
- c. Outside the Landscape Management Combining Zone, require fencing, razor wire, etc. to blend in with the natural environment by finishing in earth tones, and prohibit the use of temporary materials.

5. Water

Staff proposes the same text that was adopted by Clackamas and Jackson counties:

Water. The applicant shall provide:

- a. A water right permit or certificate number; or
- b. A statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or
- c. Proof from the Oregon Water Resources Department that the water to be used is from a source that does not require a water right.

6. Nonconformance

The proposed standards aim to require all lawfully established medical marijuana grow sites by the date of Second Reading of the ordinances (possibly June 8, 2016) to comply with the following standards at the time the ordinance is in effect (lighting) or within six (6) months of the adoption of the ordinances:

1. Lighting
2. Odor
3. Noise

4. Screening
5. Security Cameras
6. Secure Waste Disposal

Existing lawfully established medical marijuana grow sites would not be required to comply with the standards below. The reason is that it is unknown if or how compliance may be achieved, or if - compliance would be legal. As a result, existing lawfully established medical marijuana grow sites not in noncompliance with the standards below would become legal nonconforming uses. Conversion to recreational marijuana production would require compliance with all applicable standards. In addition, Clackamas County provided similar exemptions in its Code for the same reasons.

1. Zoning District
2. Minimum Lot Size
3. Maximum Mature Plant Canopy Size
4. Indoor Production and Processing
5. Maximum Building Floor Area
6. Limitation on License/Grow Site per Parcel
7. Setbacks
8. Minimum Separation Distances
9. Access
10. Water
11. Fire Protection
12. Utility Verification
13. Residency

7. **Prohibited Uses**

Staff proposes to include uses specifically prohibited by HB 3400 into DCC similar to Clackamas and Jackson counties. In addition, per Board direction, staff proposes to prohibit agri-tourism and other commercial events and activities related to marijuana. There is no requirement that any of these prohibitions be included in DCC. If State law changes, then Deschutes County's more restrictive regulations would remain in effect until or unless DCC is amended to allow these uses.

Prohibited Uses. In the EFU zone, the following uses are prohibited:

- 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;
- 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; and
- d. Agri-tourism and other commercial events and activities in conjunction with a marijuana crop.

III. BOARD DIRECTION / DECISIONS

Staff seeks Board direction on next steps.

1. Provide direction and clarification to staff on revisions to incorporate into the text amendments based on the issues discussed above or any other issue in the package of amendments and ordinances to bring back for Board approval and First Reading on June 6 or June 8; or
2. Conduct First Reading on some or all ordinances to adopt the amendments into DCC; Second Reading would occur on or after June 8.
3. Consider conducting First Reading of the ordinance to rescind the opt-out.

IV. ATTACHMENTS

1. Ordinance 2016-013, Title 8
2. Ordinance 2016-014, Title 15
3. Ordinance 2016-015, Title 18
4. Ordinance 2016-016, Title 19
5. Ordinance 2016-017, Title 20
6. Ordinance 2016-018, Title 21

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending DCC Title 8 to Exempt *
Sustained Noise from Marijuana Production and *
Processing from Right to Farm Protections. *
*

ORDINANCE NO. 2016-013

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000253-TA) to the Deschutes County Code (DCC) Title 8, Chapter 8.08, Noise Control; and

WHEREAS, the Deschutes County Planning Commission held public hearings on November 5 and 12 2015, to review the amendments and recommended adoption; and

WHEREAS, the Board of County Commissioners considered this matter after a duly noticed public hearings on December 2, 2015, and May 2, 2016, and concluded that the public will benefit from the changes to Title 8; and

WHEREAS, the Board finds it in the public interest to adopt amendments to the DCC to define permit, and establish standards for Marijuana Related Businesses in conjunction with Deschutes County Code (Title 8, Chapter 8.08) and state law (including HB 3400, SB 1598, and ORS 30.395); now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 8.08.050, Exception for Certain Farming and Forestry Practices, is amended to read as described in Exhibit "A," attached and incorporated by reference herein, with new language underlined and deleted language set forth in ~~strikethrough~~.

Section 2. FINDINGS. The Board adopts as its findings in support of this decision attached to Ordinance 2016-015 as Exhibit "K" and incorporated by reference herein.

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Dated this _____ of _____, 2016

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ALAN UNGER, Chair

TAMMY BANEY, Vice Chair

ATTEST:

Recording Secretary

ANTHONY DeBONE, Commissioner

Date of 1st Reading: _____ day of _____, 2016.

Date of 2nd Reading: _____ day of _____, 2016.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Alan Unger	_____	_____	_____	_____
Tammy Baney	_____	_____	_____	_____
Anthony DeBone	_____	_____	_____	_____

Effective date: _____ day of _____, 2016.

8.08.050. Exception for Certain Farming and Forestry Practices.

Generally accepted, reasonable and prudent farming and forest practices as described in ORS 30.930 to 30.937 and DCC 9.12 do not constitute nuisances under DC 8.08, excepting therefrom sustained noise from mechanical equipment used for heating, ventilation, air condition, odor control, fans and similar functions associated with marijuana production and processing.
(Ord. 2016-013 §1, 2016; Ord. 95-024 §12, 1995)