



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

Deschutes County Marijuana Advisory Committee

Meeting #4: Wednesday, March 2, 2016, 4:00-8:00 pm
Barnes and Sawyer Rooms, Deschutes Services Building, 1300 NW Wall Street, Bend

NOTICE: A QUORUM OF THE BOARD OF COUNTY COMMISSIONS MAY BE IN ATTENDANCE AT THIS MEETING.

TIME	TOPIC	DESIRED OUTCOME
3:30 (:30)	Optional pre-meeting refreshments for MAC members (DeArmond Room)	
4:00 (:05)	1. Welcome from Deschutes County	Welcome attendees
4:05 (:05)	2. Introductions and overview of agenda: Mary Orton, The Mary Orton Company, LLC (facilitator) <i>See Packet: Agenda</i>	Clarity on the agenda.
4:10 (:15)	3. Public Comments Those who wish to speak will be limited to no more than 3 minutes, and perhaps less to allow time for everyone who wishes to speak. In addition, written comments will be accepted at any time, and will be posted to the County's website where all MAC members will be expected to read them. Please note that this is a time for giving your views to the MAC members, not asking questions. If you have a question, please ask a County staff person during a break, or send your question to mac@Deschutes.org .	Opportunity to hear from members of the public who are present.
4:25 (:30)	4. Discussion and consensus building on medical and recreational marijuana regulations: <u>Retail</u> <i>See Packet: Matrices on zoning and standards</i> <u>Retail marijuana</u> : "Selling marijuana items to a consumer in Oregon." ▪ Do you want to recommend that the Board treat the one existing dispensary in unincorporated Deschutes	Provisional agreement on regulations.

TIME	TOPIC	DESIRED OUTCOME
	<p>County differently from the others? (If yes, staff can work with the Board to address this issue. (Please note that Josh cannot participate in decision-making on this issue because it would be a conflict of interest.)</p> <p>Additional standards suggested by MAC member:</p> <ul style="list-style-type: none"> ▪ No grandfathering of existing establishments ▪ Limit amount of cash on site ▪ Inspections – above and beyond OLCC ▪ Firearm/gun regulations on premises (what does OLCC say on this?) ▪ No outdoor patio space ▪ No loitering ▪ No samples ▪ No open container – covered in OLCC/OHA but worth including in local ordinance ▪ Other youth-oriented centers (i.e., Tumalo Community Church and the Community Fellowship Hall) 	
4:55 (:15)	<p>5. MAC Information Requests for Production and Processing <i>See Memorandum</i></p> <p>The following requests have been received from MAC members. MAC members will discuss whether they wish to receive this information.</p> <ul style="list-style-type: none"> ▪ Results of the investigation into the fire/explosion incident that occurred on 19555 Pinchurst Road. ▪ The difference between OSHA requirements for businesses with employees versus what individuals can do on their own with flammable substances. ▪ Presentation from ODEQ on marijuana waste ending up in air, down drain/septic, etc. ▪ Presentation from fire district to explain their capability to handle potential incidents around the county. ▪ County map highlighting all 80+ acre EFU parcels; and if possible, highlight adjoining parcels to these 80+ acre EFU lots if there is a zone change (i.e., RR, MUA, etc.). ▪ Other? 	<p>General agreement from the MAC on what additional information the MAC would find helpful in developing and recommending regulations.</p>

TIME	TOPIC	DESIRED OUTCOME
5:10 (:50)	6. Discussion and consensus building on medical and recreational marijuana regulations: <u>Production and Processing in EFU</u> <i>See Packet: Matrices on zoning and standards</i> <u>Production of marijuana</u> : “Manufacturing, planting, cultivation, growing or harvesting of marijuana in Oregon.” <u>Processing marijuana</u> : “Processing, compounding or conversion of marijuana into cannabinoid products, concentrates, or extracts; excluding packaging or labeling.” <ul style="list-style-type: none"> i. Zoning, conditional and permitted uses ii. Standards 	Provisional agreement on regulations.
6:00 (:10)	Break	
6:10 (1:30)	7. Discussion and consensus building on medical and recreational marijuana regulations: <u>Production and Processing in EFU</u> (continued)	Provisional agreement on regulations.
7:40 (:15)	8. Request from the BOCC: Do you want to recommend the BOCC extend the MAC process to include two additional meetings (possibly March 16 and March 28) to complete your work?	Possible agreement on a request for an extension.
7:55 (:05)	9. Next steps <ul style="list-style-type: none"> ▪ Agenda and date for meeting #5: Wednesday, March 9, 4-8 pm, Barnes and Sawyer Rooms ▪ Meeting evaluation 	Agreement on next steps, continual improvement
8:00	10. Adjourn	

NOTE: Items included in the packet can be located at:

<http://www.deschutes.org/marijuana>

Deschutes County encourages persons with disabilities to participate in all programs and activities.

This event/location is accessible to people with disabilities.

If you need accommodations to make participation possible, please call the ADA Coordinator at (541) 617-4747.



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MEMORANDUM

TO: Deschutes County Marijuana Advisory Committee

FROM: Nick Lelack, Director
Matthew Martin, Associate Planner

DATE: February 26, 2016

SUBJECT: Agenda Overview, March 2, 2016 Meeting

I. OVERVIEW

The primary purposes of this meeting are to continue and possibly conclude discussions on retail regulations, and begin discussions toward obtaining provisional agreement on production and processing regulations for medical and recreational marijuana in the Exclusive Farm Use Zone, followed by other zones as time allows (Forest, Rural Residential-10, and Multiple Use Agricultural-10).

Please notice that all Planning Commission-recommended specific use standards for marijuana processing and production are substantially the same with only the following three (3) exceptions:

	PLANNING COMMISSION RECOMMENDATION PROCESSING	PLANNING COMMISSION RECOMMENDATION PRODUCTION
Minimum Lot Size	Processing not permitted in the MUA-10 zone. Therefore, the originally proposed minimum parcel size is not applicable.	<u>In the EFU zone:</u> Minimum parcel size shall 20 acres . Production not permitted in the RR-10, MUA-10, F-1, and F-2 Zones. Therefore, the originally proposed minimum parcel size is not applicable.
Limit the Number of licenses a parcel		Consider limiting the number of OLCC production licenses of one type on a parcel to 1 indoor and 1 outdoor license per 10 or 20 acres.
Fire Protection	Processing of cannabinoid extracts shall only be permitted on properties located within or under contract with a fire district.	

In recognition of these similarities, which are subject to revisions and additional standards by the MAC, the agenda is structured such that the MAC will discuss and work toward provisional agreements on recommendations for processing and production specific use standards simultaneously.

Please keep in mind the MAC is charged with developing and recommending reasonable regulations (state law) and taking a balanced and respectful approach (committee charter). This means that **minimum recommendations may not be viewed as balanced and restrictive recommendations may not be viewed as reasonable**. Members should be prepared to articulate how proposals/recommendations comply with these sidebars.

In addition, the agenda allocates time for the MAC to discuss:

- Whether additional information is necessary for staff to prepare or provide for the production and processing discussions (discussed below); and,
- Whether MAC members want to ask the Board of County Commissioners for two additional meetings to complete its work. The tentative dates for additional meetings are Wednesday, March 16 (4-8 p.m.) and Monday, March 28 (4-8 p.m.).

II. RETAIL

The MAC has two general items to discuss pertaining to retail regulations.

1. Should the County treat the one approved medical marijuana dispensary differently, should it be grandfathered or not, etc.? There is one approved medical marijuana dispensary that has been approved but not yet established.
2. Are there other standards MAC members would like to be applied to marijuana retail uses? Please find below a list of additional standards a MAC member has requested be discussed and considered:
 - Limit amount of cash on site
 - Inspections – above and beyond OLCC
 - Firearm/gun regulations on premises (what does OLCC say on this?)
 - No outdoor patio space
 - No loitering
 - No samples
 - No open container – covered in OLCC/OHA but worth including in local ordinance
 - Other youth-oriented centers (i.e., Tumalo Community Church and the Community Fellowship Hall).

Please note that the Community Development Department does not or cannot enforce codes pertaining to cash on site, firearm/gun regulations, loitering, samples, or open containers. These standards, if recommended by the MAC, may be included in other sections of County Code and may be enforced by other departments.

The MAC member has also asked that additional specific locations that include children or children's programs also be subject to the buffer requirements:

Terrebonne

- Dayspring Christian Center, 7801 NW 7th St: Offers morning Sunday School and Children's Church after worship; and a children's program from mid-September to mid-March which meets on Wednesday evenings from 6 - 7:30pm. Park beside church.
- Smith Rock Community Church, 8344 11th St: Children's program from mid-September to mid-March which meets on Wednesday evenings from 6 - 7:30pm. Park in rear of church.
- Cascade Missionary Baptist Church, 8515 7th St
- Terrebonne Assembly of God, 379 NW Smith Rock Way
- Jehovah's Witness Kingdom Hall, 9066 11th St

- Cascade Missionary Baptist Church, 8515 7th St, Terrebonne, OR 97760

Are there any other reasonable standards or locations to be considered in the proposed package of balanced recommendations?

III. MAC INFORMATION REQUESTS FOR PRODUCTION AND PROCESSING

The purpose of this agenda item is for the MAC to discuss and determine if there is general agreement on what, if any, additional information the MAC would find helpful in developing and recommending regulations.

A MAC member has requested the following. Please be prepared to indicate whether you would find these presentations useful as you develop your recommendations.

1. Hear the results of the Deschutes County Sheriff's Office investigation into the fire/explosion incident that occurred on 19555 Pinehurst Rd.
2. When the MAC begins its discussion on processing, especially the chemical extraction process, have the following individuals as "expert resources" available and provide explanations as described below.

Note: This may or may not be possible depending on schedules. Randy Scheid, Deschutes County Building Official, is knowledgeable regarding State Building Codes for processing facilities. Staff has forwarded this information to Mr. Stengel and Ms. Gorman.

- Cory Stengel, Senior Occupational Health Consultant, OSHA, Bend. The MAC member stated, "It would be worth having Cory explain the difference between OSHA requirements for businesses with employees versus what individuals can do on their own with flammable substances."
 - Linda Hayes Gorman, Region Administrator, Oregon DEQ, Bend. The MAC member stated, "DEQ's Linda should address waste ending up in air, down drain/septic, etc. Has she reviewed OLCC/OHA regulations for waste treatment on MJ-producing properties?"
 - Representative from fire district (at least 1 fire district representative will be in attendance). The MAC member stated the benefit would be, "... having the fire district individual explain their capability to handle potential incidents around the county would be helpful too."
3. If SB 1598 is adopted by the 2016 Legislature and signed by the Governor prior to this MAC meeting (note: the MAC agreed not to discuss legislation until or unless it is adopted and signed), then, a MAC member requests information below (1-3) based on text in this bill (page 4, starting at line 10) (note: highlights provided by MAC member):

"(b) Adopt an ordinance after January 1, 2015, that imposes a setback requirement for an agricultural building used to produce marijuana located on a premises for which a license has been issued under ORS 475B.070 if the agricultural building:

"(A) Was constructed **on or before July 1, 2015**, in compliance with all applicable land use and building code requirements at the time of construction;

“(B) Is located at an address where a marijuana grow site first registered with the Oregon Health Authority under ORS 475B.420 on or before January 1, 2015;

“(C) Was used to produce marijuana pursuant to the provisions of ORS 475B.400 to 475B.525 on or before January 1, 2015; and

“(D) Has four opaque walls and a roof.

The MAC member requested the following:

- (1) Since SB 1598 offers exclusions to reasonable TPM regulations, please provide the MAC with those addresses where buildings were constructed on/before 7/1/15 and comply with all land use and building codes; sites that were registered with OHA on/before 1/1/15 AND are constructed with opaque walls and roof.

Staff comment: If the MAC requests this information, more clarity is necessary to fully understand the information request.

- (2) The challenge has been that neighbors are not sure if OHA medical MJ sites are registered and compliant with zones and codes.

Staff comment: CDD does not regulate OHA medical marijuana sites, or a have list of such sites.

- (3) Since both county code enforcement and residents tasked with code violation complaint will need to know status of and date of said status, can you please inquire with OMMP/OHA and OLLC for this information?

Staff comment: CDD will initiate this request if supported by the MAC, however, staff is uncertain if OHA would provide this information.

4. County map highlighting all 80+ acre EFU parcels.

5. If possible, highlight adjoining parcels to these 80+ acre EFU lots if there is a zone change (i.e., RR, MUA, etc).

Are there other MAC member requests for information?

IV. PROCESSING

Please refer to the matrix provided for the MAC’s third meeting with the Planning Commission-recommended processing specific use standards.

Exclusive Farm Use (EFU) Zone

Under current Deschutes County Code (DCC), processing is a permitted use with standards in the EFU Zone. This means a land use permit (Administrative Determination) is required to allow processing in the EFU zone. Processing is subject to following standards (DCC 18.16.025(I)):

A facility for the processing of farm crops, or for the production of biofuel as defined in ORS 315.141, if the facility is located on a farm operation that provides at least one-quarter of the farm crops processed at the facility, or an establishment for the slaughter, processing or selling of poultry or poultry products pursuant to ORS 603.038.

- a. If a building is established or used for the processing facility or establishment, the farm operator may not devote more than 10,000 square feet of floor area to the processing facility or establishment, exclusive of the floor area designated for preparation, storage or other farm use.
- b. A processing facility or establishment must comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.
- c. The County shall not approve any division of a lot or parcel that separates a processing facility or establishment from the farm operation on which it is located.

The MAC's task is to develop and recommend any additional reasonable time, place and manner regulations for medical and recreational marijuana processing in addition to these standards in the EFU Zone.

The original proposal on the matrix included definitions of Type 1 and Type 2 processing. The intent was to acknowledge there are some processing methods that may be more dangerous and warrant additional safeguard. "Type 1 Processing" was originally defined as "the processing of marijuana limited to trimming, drying, curing, and packaging of harvested marijuana, provided that the marijuana processor is licensed by the Oregon Liquor Control Commission or registered with the Oregon Health Authority."

Since the original proposal was developed, the Oregon Department of Land Conservation and Development (DLCD) provided the interpretation that processing does **not** include packaging or labeling of marijuana items. In addition, DLCD concludes that processing does not include drying marijuana by a marijuana producer, which DLCD considers to be "preparation" of farm products and part of the definition of farm use at OAR 660-033-0020(7)(b)(A). We further learned that it is the processing of extracts that are more dangerous due to the substances and methods used. In response, the Planning Commission recommended revising the definitions and specify the additional standards are applicable to marijuana extraction.

The Planning Commission recommended revising the definition of "Marijuana Processing" to mean the processing, compounding, or conversion of marijuana into cannabinoid products, cannabinoid concentrates, or cannabinoid extracts, provided that the marijuana processor is licensed by the Oregon Liquor Control Commission or registered with the Oregon Health Authority.

"Cannabinoid extract" means a substance obtained by separating cannabinoids from marijuana by a chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane; or by a chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses high heat or pressure. These methods of processing are known to be more dangerous than others given the volatility of the substances or processes involved. It is noteworthy that these extraction methods are also used in the processing of lavender, mint, and other agricultural products.

Multiple Use Agricultural-10 (MUA-10) Zone (to be addressed after the EFU Zone discussion is completed)

The Board initially proposed allowing marijuana processing in the MUA-10 Zone under certain standards (please refer to the matrices) as a Conditional Use. The Planning Commission did not recommend allowing marijuana processing in the MUA-10 Zone. The MAC's task is to decide whether to recommend allowing processing in the MUA-10 zone (or any other potentially applicable zone) and, if so, under what standards.

Currently, processing is allowed in the **MUA-10 Zone under DCC 18.32.030(C) Commercial activities in conjunction with a farm use. The commercial activity shall be associated with the farm use occurring on the**

parcel where the commercial use is proposed. The commercial activity may use, process, store or market farm products produced in Deschutes County or an adjoining County.

Marijuana processing would need to comply with the Conditional Use criteria in DCC 18.128.015 General Standards Governing Conditional Uses (attached) and any additional regulations adopted by the Board.

V. PRODUCTION

The Planning Commission recommended limiting marijuana production to the Rural Industrial Zone and on parcels 20 acres or greater in the EFU zone. Please find included in the packet a map set that identifies all EFU zoned properties, excluding federally owned lands, with all tax lots 20 acres or greater highlighted.

Please refer to the matrix to guide the discussion regarding specific use standards. The Lane County Code, not included in the matrix but previously emailed to the MAC, may also be a useful reference or resource.

As noted above, due to potential time constraints, staff suggests the MAC first focus on the specific use standards that are applicable to the EFU zone. In addition, as stated in the MAC's charter, the committee is beginning with the Planning Commission's recommendations, which only addressed the EFU Zone.

If time permits and members are interested, the MAC may then discuss allowing production in zones other than EFU and specific use standards unique to those zones.

VI. NON-CONFORMING USES

A number of issues have been raised regarding existing medical marijuana sites that may become non-conforming uses if they do not comply with any zoning and specific uses standards eventually adopted by the County. Please find attached Deschutes County Code (DCC) 18.120. Also, the original matrix provided to the MAC in advance of Meeting #1 includes information on legal, non-conforming uses.

It is important to note that these sites would remain legal under the County Code, but in case of expansions or conversions to recreational marijuana, the property would be required to comply with adopted standards and be subject to a land use permitting process, among other regulations as required.

**MARIJUANA PRODUCTION
(RECREATIONAL AND MEDICAL)
SUMMARY OF ZONES FOR CONSIDERATION TO ALLOW**

Related Definition Originally Proposed And Recommended By The Planning Commission:

Marijuana Production” means the manufacture, planting, cultivation, growing, trimming, harvesting, or drying of marijuana, provided that the marijuana producer is licensed by the Oregon Liquor Control Commission, or registered with the Oregon Health Authority and a “person designated to produce marijuana by a registry identification cardholder.”

	ORIGINAL PROPOSAL	PLANNING COMMISSION RECOMMENDATION	MAC PROVISIONAL RECOMMENDATIONS
Permitted (P) Conditional Use (CU) Not Allowed (-)			
Zone			
TITLE 18 – Deschutes County			
18.16 Exclusive Farm Use - EFU	P	P (20 acre minimum)	
18.32 Multiple Use Agricultural - MUA10	CU (5 acre minimum)	-	
18.36 Forest Use - F-1	CU (5 acre minimum)	-	
18.40 Forest Use - F-2	CU (5 acre minimum)	-	
18.52 Surface Mining - SM	CU	-	
18.60 Rural Residential - RR-10	CU (5 acre minimum)	-	
18.65 RURAL SERVICE CENTER - UC			
18.65.020 Commercial Mixed Use District (Brothers, Hampton, Millican, Whistlestop, Wildhunt)	CU	-	
18.65.021 Commercial Mixed Use (Alfalfa)	CU	-	
18.65.022 Residential District (Alfalfa)	CU	-	
18.66 TERREBONNE RURAL COMMUNITY			
18.67.030 Residential 5-acre - TuR5	CU	-	
18.74 RURAL COMMERCIAL			
18.74.020 Deschutes Junction and Deschutes River Woods Store	CU	-	
18.100 Rural Industrial - RI	CU	CU	
TITLE 19 – BEND URBAN AREA ZONING ORDINANCE			
No Marijuana Related Businesses Allowed			
TITLE 20 - REDMOND URBAN AREA ZONING ORDINANCE			
No Marijuana Related Businesses Allowed			
TITLE 21 - SISTERS URBAN AREA ZONING ORDINANCE			
No Marijuana Related Businesses Allowed			

MARIJUANA PRODUCTION
(RECREATIONAL AND MEDICAL)
SPECIFIC USE STANDARDS FOR CONSIDERATION

Related Definition Originally Proposed And Recommended By The Planning Commission:

“**Marijuana Production**” means the manufacture, planting, cultivation, growing, trimming, harvesting, or drying of marijuana, provided that the marijuana producer is licensed by the Oregon Liquor Control Commission, or registered with the Oregon Health Authority and a “person designated to produce marijuana by a registry identification cardholder.”

LAND USE / DEVELOPMENT STANDARDS	MAC PROVISIONAL RECOMMENDATIONS	ORIGINAL PROPOSAL	PLANNING COMMISSION RECOMMENDATION	CLACKAMAS COUNTY	JACKSON COUNTY PLANNING COMMISSION RECOMMENDATION	OLCC (RECREATIONAL)	OHA PROPOSED RULES (MEDICAL)
Home Occupation		Prohibited	Prohibited	Prohibited	Prohibited		
Minimum Lot Size		<u>In the RR-10, MUA-10, F-1, and F-2 Zones:</u> Minimum parcel size shall be 5 acres .	<u>In the EFU zone:</u> Minimum parcel size shall be 20 acres . Production not permitted in the RR-10, MUA-10, F-1, and F-2 Zones. Therefore, the originally proposed minimum parcel size is not applicable.	<u>In the FF-10 and RRFF-5 Districts:</u> 5-acre minimum , except that if the majority of abutting properties are equal to or greater than 2 acres, the subject property shall be a minimum of 2 acres . Abutting properties include properties that are contiguous to the subject property, as well as properties directly across any access drive, or private, public, or county road, provided the functional classification of the road is below that of a collector. <u>In the AG/F, EFU, and TBR Districts:</u> 2-acre minimum , except that if outdoor production is proposed, the subject property shall be a minimum of five acres . Outdoor production means producing marijuana: 1. In an expanse of open or cleared ground; or 2. In a greenhouse, hoop house, or similar non-rigid structure that does not utilize any artificial lighting on mature marijuana plants, including but not limited to electrical lighting sources. A mature marijuana plant is a marijuana plant that is flowering.			

LAND USE / DEVELOPMENT STANDARDS	MAC PROVISIONAL RECOMMENDATIONS	ORIGINAL PROPOSAL	PLANNING COMMISSION RECOMMENDATION	CLACKAMAS COUNTY	JACKSON COUNTY PLANNING COMMISSION RECOMMENDATION	OLCC (RECREATIONAL)	OHA PROPOSED RULES (MEDICAL)
Yard Setback		No land area or structure used for marijuana production shall be located closer than 100 feet from any lot line.	No land area or structure used for marijuana production shall be located closer than 200 feet from any lot line.	<p><u>In the FF-10 and RRRF-5 Districts:</u> 50 feet minimum setback from all property lines for any structure used for marijuana production.</p> <p><u>In the AG/F, EFU, and TBR Districts:</u> Outdoor production, as defined above, shall be a minimum of 100 feet from all lot lines.</p>	<p><u>In the Rural Residential and Rural Use Zoning Districts:</u></p> <ol style="list-style-type: none"> No land area or structure used for medical marijuana production shall be located closer than 250 feet from any property line. If the property line abuts a public or private road or a waterway those features will be included in the setback area. Setback requirement will not take effect until March 1, 2017. If permitted before March 1, 2017, medical marijuana production not meeting the setbacks above will not be considered non-conforming uses as defined in Jackson County Code. 		
Additional Setback		No land area or structure used for marijuana production can be within 300 feet from an existing dwelling unit not located on the same property.	No land area or structure used for marijuana production can be within 300 feet from an existing dwelling unit not located on the same property.				
Minimum Separation Distances		<ol style="list-style-type: none"> 1000 feet from public/private elementary schools, licenses child care center, and licensed preschool Change of use (e.g. new school) shall not cause violation of this standard. <p>Distance Calculation: All distances shall be measured from the lot line of the affected property (e.g., a school) to the closest lot line of the property occupied by the marijuana producer.</p>	<ol style="list-style-type: none"> 1000 feet from public/private elementary and secondary schools, licenses child care center, licensed preschool, parks, and all approved/licensed youth activity centers (e.g., Boys & Girls Club) with a 501c3 status or description stating youth activities, excluding in-home child care. Change of use (e.g. new school) shall not cause violation of this standard. <p>Distance Calculation: All distances shall be measured from the lot line of the affected property (e.g., a school) to the closest lot line of the property occupied by the marijuana producer.</p>				

LAND USE / DEVELOPMENT STANDARDS	MAC PROVISIONAL RECOMMENDATIONS	ORIGINAL PROPOSAL	PLANNING COMMISSION RECOMMENDATION	CLACKAMAS COUNTY	JACKSON COUNTY PLANNING COMMISSION RECOMMENDATION	OLCC (RECREATIONAL)	OHA PROPOSED RULES (MEDICAL)
Odor		<p>Buildings and Greenhouses shall:</p> <ol style="list-style-type: none"> 1. Be equipped with carbon filtration system for odor control. 2. Consist of 1 or more fans. 3. 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. 4. The filter(s) shall be rated for the required CFM. 	<p>Buildings and Greenhouses shall:</p> <ol style="list-style-type: none"> 1. Be equipped with carbon filtration system for odor control. 2. Consist of 1 or more fans. 3. 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. 4. The filter(s) shall be rated for the required CFM. 5. The filtration system shall be maintained in working order and shall be in use. 6. 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 carbon filtration system otherwise required. 	<p>The building shall be:</p> <ol style="list-style-type: none"> 1. 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(G). 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. 	<p><u>In the Rural Residential and Rural Use Zoning Districts (it is unclear but assumed this is also applicable to EFU and Forest Zoning Districts):</u></p> <p>A building used for marijuana production shall be:</p> <ol style="list-style-type: none"> 1. Equipped with a carbon filtration system for odor control. 2. The system shall consist of one or more fans and filters. 3. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor Space (i.e., one CFM per square foot of building floor space. 4. The filter(s) shall be rated for the applicable CFM. The filtration system shall be maintained in working order and shall be in use. 5. 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 carbon filtration system otherwise required. 		

LAND USE / DEVELOPMENT STANDARDS	MAC PROVISIONAL RECOMMENDATIONS	ORIGINAL PROPOSAL	PLANNING COMMISSION RECOMMENDATION	CLACKAMAS COUNTY	JACKSON COUNTY PLANNING COMMISSION RECOMMENDATION	OLCC (RECREATIONAL)	OHA PROPOSED RULES (MEDICAL)
Lighting		<ol style="list-style-type: none"> 1. Light cast by light fixtures inside any building, including greenhouses, shall be screened or shielded from view outside the building to the maximum extent possible from sunset to sunrise the following day. 2. Outdoor marijuana grow lights shall not be illuminated from sunset to sunrise the following day. 3. Light cast by exterior light fixtures shall comply with the outdoor lighting standards of DCC 15.10. 	<p>General consensus to mitigate light and preserve dark skies, but no consensus on to what extent or method (e.g. require shielding or obscuring roof/walls of greenhouses).</p> <ol style="list-style-type: none"> 1. Light cast by light fixtures inside any building, including greenhouses, shall be screened or shielded from view outside the building to the maximum extent possible from sunset to sunrise the following day. 2. Outdoor marijuana grow lights shall not be illuminated from sunset to sunrise the following day. 3. Light cast by exterior light fixtures shall comply with the outdoor lighting standards of DCC 15.10. 	<ol style="list-style-type: none"> 1. Light cast by light fixtures inside any building used for marijuana production or marijuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day. 2. Outdoor marijuana grow lights shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day. 3. Light cast by exterior light fixtures other than marijuana grow lights (e.g., security lights, driveway lights) shall not be directed skyward and shall be directed within the boundaries of the subject property. 	<ol style="list-style-type: none"> 1. Inside building lighting used for marijuana production shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. on the following day. 2. Outdoor marijuana grow lights shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day. 3. Light cast by exterior light fixtures other than marijuana grow lights (i.e. security lights) shall not trespass onto adjacent lots. 4. Lighting fixtures shall be fully shielded in such a manner that all light emitted directly by the lamp or a diffusing element, or indirectly by reflection or refraction is projected below the horizontal plane through the lowest light-emitting part. 		
Noise		<ol style="list-style-type: none"> 1. Comply with the Noise Control Standards of DCC 8.08 2. Noise from mechanical equipment used shall not produce sound that, when measured at any lot line of the subject property, exceed 50 dB(A) anytime between 10:00 p.m. and 7:00 a.m. the following day. 	Move to Noise Control Ordinance 8.08, and apply to all marijuana production building and mechanical equipment outside of an industrial zone.	The applicant shall submit a noise study by an acoustic engineer licensed in the State of Oregon. The study shall demonstrate 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 property, exceeds 50 dB(A) .	<u>In the Rural Residential and Rural Use Zoning Districts:</u> The applicant shall submit a noise study by an acoustic engineer licensed in the State of Oregon. The study shall demonstrate that the 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 property, exceeds 60 dB(A) .		
Limit the Number of licenses per parcel			Consider limiting the number of OLCC production licenses of one type on a parcel to 1 indoor and 1 outdoor license per 10 or 20 acres.				
Enclosed Production Only		<u>In the RR-10, MUA-10, F-1, F-2 zones:</u> Marijuana production shall be located entirely within one or more completely enclosed buildings, including greenhouses.	Production not permitted in the RR-10, MUA-10, F-1, and F-2 Zones. Therefore, the originally proposed indoor production requirement is not applicable.	<u>In the FF-10 and RRFF-5 Districts:</u> Marijuana production shall be located entirely within one or more completely enclosed buildings.			

LAND USE / DEVELOPMENT STANDARDS	MAC PROVISIONAL RECOMMENDATIONS	ORIGINAL PROPOSAL	PLANNING COMMISSION RECOMMENDATION	CLACKAMAS COUNTY	JACKSON COUNTY PLANNING COMMISSION RECOMMENDATION	OLCC (RECREATIONAL)	OHA PROPOSED RULES (MEDICAL)
Maximum Building Floor Space		<p><u>In the RR-10, MUA-10, F-1, F-2 zones:</u></p> <ol style="list-style-type: none"> A maximum of 5,000 square feet of building space may be used for all activities associated with marijuana production on the subject property. If only a portion of a building is authorized for use in marijuana production, a partition wall at least seven feet in height, or a height as required by the County Building Codes Division, whichever is greater, shall separate the marijuana production space from the remainder of the building. A partition wall may include a door, capable of being closed, for ingress and egress between the marijuana production space and the remainder of the building. 	<p>Production not permitted in the RR-10, MUA-10, F-1, and F-2 Zones. Therefore, the originally proposed maximum building space requirement is not applicable.</p>	<p><u>In the FF-10 and RRRF-5 Districts:</u></p> <ol style="list-style-type: none"> A maximum of 5,000 square feet of building floor space may be used for all activities associated with marijuana production on the subject property. If only a portion of a building is authorized for use in marijuana production, a partition wall at least seven feet in height, or a height as required by the County Building Codes Division, whichever is greater, shall separate the marijuana production space from the remainder of the building. A partition wall may include a door, capable of being closed, for ingress and egress between the marijuana production space and the remainder of the building. 			
Screening		<p>Land area and buildings, including greenhouses, shall be screened in the following manner:</p> <ol style="list-style-type: none"> A row of evergreen trees or shrubs along the outside perimeter of the land area and buildings, including greenhouses, shall be no less than 4 feet in height when planted, and spaced in such a way as to reduce the visual impacts of the land areas and buildings as viewed from roads, rivers, streams, and abutting private properties. Vegetation shall be continuously maintained. Combination of existing vegetation, berming, topography, wall, fence, or other can be used. All materials used for buildings, structures, and fencing, excluding greenhouses shall be finished in muted earth tones that blend with the surrounding vegetation and landscape of the marijuana production and processing area. 	<p>Do not apply to buildings and greenhouses for new operations because OLCC's security and site obscuring requirements combined with Planning Commission recommendations (e.g. increased setbacks) will mitigate impacts.</p> <p>These standards should only apply to existing, non-conforming operations, including buildings and greenhouses to mitigate impacts:</p> <ol style="list-style-type: none"> A row of evergreen trees or shrubs along the outside perimeter of the land area and buildings, including greenhouses, shall be no less than 4 feet in height when planted, and spaced in such a way as to reduce the visual impacts of the land areas and buildings as viewed from roads, rivers, streams, and abutting private properties. Vegetation shall be continuously maintained. Combination of existing vegetation, berming, topography, wall, fence, or other can be used. All materials used for buildings, structures, and fencing, excluding greenhouses shall be finished in muted earth tones that blend with the surrounding vegetation and landscape of the marijuana production and processing area. 				

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Water		Proof of a water right for the proposed marijuana production or marijuana processing, or proof of access to a public or community water system.	Proof from the Watermaster that proposed water supply complies all applicable local, state, and federal laws.	<p>The applicant shall submit:</p> <ol style="list-style-type: none"> 1. A water right permit or certificate number for the proposed marijuana production; 2. 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 3. Proof from the Oregon Water Resources Department that the water to be used for marijuana production is from a source that does not require a water right. 	<p>The applicant shall provide:</p> <ol style="list-style-type: none"> 1. A water right permit or certificate number; or 2. A statement that water is supplied from a water provider, along with the name and contact information of the public water provider; or 3. Proof from the Oregon Water Resources Department that the water to be used for production is from a source that does not require a water right. 4. Private water provision is allowed, only as a secondary water source, to be used only when the other sources described herein are not available. 	<p>The applicant shall provide:</p> <ol style="list-style-type: none"> 1. A water right permit or certificate number; 2. 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 3. Proof from the Oregon Water Resources Department that the water to be used for production is from a source that does not require a water right. 	<ol style="list-style-type: none"> 1. A medical marijuana producer must have: <ol style="list-style-type: none"> a. A water right for irrigation or nursery use; b. Water supplied from a public or private water provider that has a legal authorization to use water; or c. Proof from the Oregon Water Resources Department that the water to be used for producing marijuana is from a source that does not require a water right. 2. A medical marijuana producer must document the information in section (1) of this rule and provide that information to the Authority upon request.

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Access		<p>1. The subject property shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject property.</p> <p>2. If property takes access via a private road or easement which also serves other properties, evidence must be provided by the applicant, in the form of a petition, that all other property owners who have access rights to the private road or easement agree to allow the specific marijuana production or marijuana processing described in the application. Such evidence shall include any conditions stipulated in the agreement.</p>	<p>1. The subject property shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject property.</p> <p>2. If property takes access via a private road or easement which also serves other properties, evidence must be provided by the applicant, in the form of a petition that all other property owners who have access rights to the private road or easement agree to allow the specific marijuana production or marijuana processing described in the application. Such evidence shall include any conditions stipulated in the agreement.</p>	<p>1. The subject property shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject property.</p> <p>2. However, this standard will be waived if the property takes access via a private road or easement which also serves other properties and evidence is provided by the applicant, in the form of a petition, that all other property owners who have access rights to the private road or easement agree to allow the specific marijuana production described in the application. Such evidence shall include any conditions stipulated in the agreement.</p>	<p><u>In the Rural Residential and Rural Use Zoning Districts:</u></p> <p>1. The subject property shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on a private road or easement serving only the subject property.</p> <p>2. If property takes access via a private road or easement which also serves other properties, evidence must be provided by the applicant, in the form of a petition, which a majority of other property owners who have access rights to the private road or easement agree to allow the specific marijuana production described in the application. The petition shall include any conditions stipulated to, by the parties, and shall be recorded.</p>		
Security Cameras		<p>Shall be directed to record only the subject property and public rights-of-way.</p>	<p>If used, they shall be directed to record only the subject property and public rights-of-way, except as required to comply with licensing requirements of the Oregon Liquor Control Commission (OLCC) or registration requirements of the Oregon Health Authority (OHA).</p>	<p>If used, security cameras shall be directed to record only the subject property 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).</p>	<p>If are used, they shall be directed to record only the subject property and public rights-of-way, except as required to comply with licensing requirements of the Oregon Liquor Control Commission or registration requirements of the Oregon Health Authority.</p>	<p>See OAR 845-025-1430, Video Surveillance Equipment</p>	<p>See OAR 333-008-2110 (Draft), Video Surveillance Equipment</p>

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Secure Disposal		<ol style="list-style-type: none"> Secure disposal of discarded marijuana items shall be provided Marijuana items shall not be placed within exterior refuse containers on the subject property. 	Store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.	Store marijuana waste in a secured waste receptacle in the possession of and under the control of the OLCC licensee.	<p>In the Rural Residential and Rural Use Zoning Districts:</p> <ol style="list-style-type: none"> Marijuana waste shall be stored in a secured waste receptacle, and in the possession of and under the control of the licensee. Composting of marijuana waste is limited to waste from the permitted premises. Marijuana waste burning is prohibited. <p>In the EFU and Forest Zoning Districts:</p> <ol style="list-style-type: none"> Marijuana waste shall be stored in a secured waste receptacle, and in the possession of and under the control of the licensee. Marijuana waste burning is prohibited. 	Store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.	Store marijuana waste in a secured waste receptacle in the possession of and under the control of the Person Responsible for the Grow Site (PRMG).
On Site Residency		<p><u>In the RR-10, MUA-10, F-1, F-2 zones:</u></p> <p>An owner of the subject property shall reside in a dwelling unit on the subject property.</p>	Production not permitted in the RR-10, MUA-10, F-1, and F-2 Zones. Therefore, the originally proposed residency requirement is not applicable.	<p><u>In the FF-10 and RRFF-5 Districts,</u> a minimum of one of the following shall reside in a dwelling unit on the subject property:</p> <ol style="list-style-type: none"> An owner of the subject property; or A holder of an OLCC license for marijuana production, provided that the license applies to the subject property. 			

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Inspections			<div><div>1.</div><div>County to conduct inspections of each approved site in 1-2 years to determine compliance and to learn what’s working and what’s not.</div><div>2.</div><div>Require property owner to grant County access to conduct the inspection.</div></div>			<div><div>1.</div><div>The commission may conduct:<div><div>a.</div><div>A complaint inspection at any time following the receipt of a complaint that alleges a licensee or permittee is in violation of applicable State laws;</div><div>b.</div><div>An inspection at any time if it believes, for any reason, that a licensee or permittee is in violation of applicable State laws; or</div><div>c.</div><div>Compliance transactions in order to determine whether a licensee or permittee is complying with applicable State laws</div></div></div><div>2.</div><div>A licensee, licensee representative, or permittee must cooperate with the Commission during an inspection.</div><div>3.</div><div>If licensee, licensee representative or permittee fails to permit the Commission to conduct an inspection the Commission may seek an investigative subpoena to inspect the premises and gather books, payrolls, accounts, papers, documents or records.</div></div>	<div><div>1.</div><div>The Authority may inspect the following to ensure compliance with applicable State laws:<div><div>a.</div><div>The marijuana grow site of a medical marijuana producer; and</div><div>b.</div><div>The records of a medical marijuana producer.</div></div></div><div>2.</div><div>The Authority may inspect:<div><div>a.</div><div>A medical marijuana producer’s grow site address at any reasonable time to determine whether a producer is in compliance with applicable State laws; and</div><div>b.</div><div>Any grow site address if there is a reasonable basis for believing that a PRMG is in violation of applicable State laws.</div></div></div><div>3.</div><div>If an individual at a grow site address fails to permit the Authority to conduct an inspection or if the Authority requires access to a grow site address and cannot obtain permission the Authority may seek an administrative warrant authorizing the inspection pursuant to ORS 431.262.</div></div>

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Non Conformance: Applying to lawfully established medical marijuana sites that continue to by only medical marijuana sites		Shall comply with odor, lighting, security camera, secure disposal, noise, and screening requirements by 12/31/16.	Shall comply with odor, lighting, security camera, secure disposal, noise, and screening requirements by 12/31/16.				
Fencing					Fencing, as required by State law, shall not be constructed of temporary materials such as plastic sheeting, hay bales, tarps, etc.		
Temporary Residences Prohibited					Use of tents, and recreational or camping vehicles as living space is not allowed in conjunction with marijuana production.		
Minors						Minors are not permitted at the licensed premise except if minor is an employee, has a legitimate business purpose (e.g. plumber) or is resident of the property . Minor resident may not be present in areas where usable marijuana or cut and drying marijuana plants are located.	
Consumption						Product may not be consumed at a licensed premise.	

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Security						<p>1. In addition to the security requirements in OAR 845-025-1400 to 845-025-1460 a producer must effectively prevent public access and obscure from public view all areas of marijuana production. A producer may satisfy this requirement by:</p> <p>a. Submitting a security plan as described in (x-ref);</p> <p>b. Fully enclosing indoor production on all sides so that no aspect of the production area is visible from the exterior satisfies; or</p> <p>c. Erecting a solid wall or fence on all exposed sides of an outdoor production area that is at least eight (8) feet high.</p> <p>2. If a producer chooses to dispose of usable marijuana by any method of composting, as described in OAR 845-025-7750, the producer must prevent public access to the composting area and obscure the area from public view.</p>	<p>1. A PRMG must effectively prevent public access and obscure from public view all areas of where marijuana is being produced. A PRMG may satisfy this requirement by:</p> <p>a. Fully enclosing indoor production on all sides so that no aspect of the production area is visible from the exterior; or</p> <p>b. Erecting a solid wall or fence on all exposed sides of an outdoor production area that is at least eight feet high.</p> <p>2. A medical marijuana producer must comply with all applicable security requirements in OAR 333-008-2080 to 333-008-2120.</p> <p>3. A PRMG may request a waiver of a security requirement in accordance with OAR 333-008-2130.</p>
Size Limits						See OAR 845-025-2040, Production Size Limitations	See OAR 333-008-0560 (Draft), Grow Site Plant Limits

Chapter 18.120. EXCEPTIONS

18.120.010. Nonconforming Uses.

18.120.020. Nonconforming Lot Sizes.

18.120.030. Exceptions to Yard Requirements.

18.120.040. Building Height Exceptions.

18.120.050. Fill and Removal Exceptions.

18.120.010. Nonconforming Uses.

Except as otherwise provided in DCC Title 18, the lawful use of a building, structure or land existing on the effective date of DCC Title 18, any amendment thereto or any ordinance codified therein may be continued although such use or structure does not conform with the standards for new development specified in DCC Title 18. A nonconforming use or structure may be altered, restored or replaced subject to DCC 18.120.010. No nonconforming use or structure may be resumed after a one-year period of interruption or abandonment unless the resumed use conforms with the provisions of DCC Title 18 in effect at the time of the proposed resumption.

A. Expansion or Replacement of a Nonconforming Structure.

1. Nonconforming Structure. For the purposes of DCC 18.120.010, a nonconforming structure is one that was lawfully established and violates current setbacks of DCC Title 18 but conforms with respect to use.
2. Replacement or Expansion without Additional Encroachment in Setback Area. A nonconforming structure may be replaced with a new structure of the same size on the same footprint as the preexisting nonconforming structure or may be expanded with an addition that does not project into the required setback area at any point, subject to all other applicable provisions of DCC Title 18.
3. Replacement or Expansion with Additional Encroachment in Setback Area. Replacement or expansion of a nonconforming structure that would involve an additional projection into the front, side or rear yard setback area at any point along the footprint of the existing or preexisting structure may be allowed provided such additional projection into the setback area (1) does not exceed 900 square feet; (2) does not exceed the floor space of the existing or preexisting structure; (3) does not cause the structure to project further toward the front, side or rear property lines than the closest point of the existing or preexisting structure; and (4) meets the variance approval standards set forth in DCC 18.132.025(A)(1) through (4).

Such replacements or expansions must conform with all other applicable provisions of DCC Title 18.

B. Verification of Nonconforming Use.

1. Subject to the procedures set forth in DCC 18.120.010 and in DCC Title 22 for processing declaratory rulings, the planning division will verify whether or not a use constitutes a valid nonconforming use in accordance with the provisions of DCC 18.120.010 and applicable state law. Verification of the existence of a nonconforming use is required prior to or concurrent with any application to alter or restore the use.
2. Subject to DCC 18.120.010(F)(2), the applicant shall demonstrate all of the following:
 - a. The nonconforming use was lawfully established on or before the effective date of the provisions of the zoning ordinance prohibiting the use or had proceeded so far toward lawful completion as of the date it became nonconforming that a right to complete and maintain the use would be vested;
 - b. The nonconforming use as it existed on the date it became nonconforming, considering the nature and the extent of the actual use of the property, has continued without abandonment or interruption; and

- c. Any alteration in the nature and extent of the nonconforming use was done in compliance with applicable zoning ordinance standards governing alterations of non-conforming uses.
- 3. For purposes of determining whether an abandonment or interruption of use has occurred, the following shall apply:
 - a. The reference period for determining whether an abandonment or interruption of a nonconforming use or an aspect thereof has occurred shall be one year.
 - b. An abandonment or interruption in a use or portion thereof may arise from the complete cessation of actual use of a property for a one-year period or may arise from a change in the nature or extent of the use made of the property for a one-year period or more.
 - c. An interruption or abandonment that constitutes less than full cessation of the use or a portion thereof may, in accordance with DCC 18.120.010(F)(4), result in a declaration of a continuing use, but of a lesser intensity or scope than what would have been allowable if the nature and extent of the use as of the date it became nonconforming had continued.
 - d. Absent an approved alteration, a change in the nature of the use may result in a determination that the use has been abandoned or has ceased if there are no common elements between the activities of the previous use and the current use.
 - e. Change of ownership or occupancy shall not constitute an interruption or abandonment, provided that, absent an approved alteration, the continuing use made of the property falls within the allowed scope of use made of the property by previous owners or occupants.
 - f. Factors to be considered in determining whether there has been a change in the nature and/or extent of a use shall include, but are not limited to, consideration of the type of activities being conducted, the operating characteristics of the activities associated with the use (including off-site impacts of those activities), the frequency of use, the hours of operation, changes in structures associated with the use and changes in the degree to which the activities associated with the use occupy the site.
- C. Maintenance of a nonconforming use. Normal maintenance of a verified nonconforming use or structure shall be permitted. Maintenance does not include alterations which are subject to DCC 18.120.010(E).
- D. Restoration or replacement of a nonconforming use. A verified nonconforming use may be restored or replaced if all of the following criteria are met:
 - 1. Restoration is made necessary by fire, natural disaster or other casualty;
 - 2. The nonconforming use is restored or replaced on the same location and is the same size or smaller than it was prior to the damage or destruction; and
 - 3. The restoration or replacement of the nonconforming use is commenced within one year of the damage or destruction.
- E. Alteration of a nonconforming use.
 - 1. The alteration of a nonconforming use shall be permitted when necessary to comply with any lawful requirement.
 - 2. Any other alteration to a nonconforming use may be permitted subject to all applicable provisions of DCC Title 18, including site plan review and upon a finding that the alteration will have no greater adverse impact on the neighborhood.
 - 3. For the purposes of DCC 18.120.010(E)(2), an “alteration of a nonconforming use” shall include any change in the use of the property that would constitute a change in the nature or extent of the use of the property.

F. Procedure.

1. Any application for verification of a nonconforming use or to expand, alter, restore or replace a nonconforming use shall be processed in conformance with the applicable procedures set forth in DC 18.120.010 and the applicable procedures of DCC Title 22, the Deschutes County Uniform Development Procedures Ordinance.
2. Notwithstanding DCC 22.20.010, the initial decision on an application for an alteration of a nonconforming use shall be made administratively, without a public hearing. The Planning Director may give prior notice of the pending application pursuant to DCC 22.20.020.
3. Except as allowed by DCC 18.120.010(F)(3)(a), the burden of proof shall be on a verification applicant to prove the existence, continuity, nature and extent of the use.
 - a. Notwithstanding DCC 22.24.050, if an applicant demonstrates by a preponderance of the evidence that the nature and extent of the use sought to be verified is of the same nature and extent as the use of the property for the ten-year period immediately preceding the application, without interruption or abandonment, it shall be presumed that the nonconforming use, as proven, lawfully existed at the time the use became nonconforming and has continued without interruption or abandonment until the date of application.
 - b. The presumption may be rebutted by a preponderance of evidence showing that the use was unlawful prior to the time it became nonconforming, or that the use prior to the ten-year period was of a different nature or different in extent than the use, as proven, or that the use prior to the ten-year period was interrupted or abandoned. If the presumption is so rebutted, the presumption shall disappear and be of no further aid to the applicant.
4. If the proof demonstrates the continued existence of a valid non-conforming use, but of a different nature or extent than that claimed by the applicant, the Hearings Body may declare there to be a valid nonconforming use to the extent proven.
5. An approval of a verification, replacement or restoration of a nonconforming use verification shall not be conditioned; an approval shall be sufficiently detailed to describe the allowed parameters of the verified use. However, an approval of an alteration of a nonconforming use may be conditioned in a manner calculated to ensure mitigation of adverse impacts so that the change has no greater adverse impact to the neighborhood.
6. After a decision has been rendered on an application for a verification of a nonconforming use (including any appeals provided for under DCC Title 22 and under state law), the applicant shall not be entitled to reapply under DCC 22.28.040 for another verification determination involving the same use of the property.

(Ord. 2004-013 §13, 2004; Ord. 98-037 §1, 1998; Ord. 95-050 §1, 1995; Ord. 93-043 §20, 1993; Ord. 91-038 §1, 1991)

18.120.020. Nonconforming Lot Sizes.

- A. Any parcel of land or portion thereof which is to be dedicated to a public or other entity for a road, canal, railroad, utility or other public use shall be exempt from the minimum lot size requirements set forth by DCC Title 18.
- B. Whereas land sections in the County are affected by survey adjustments, minimum requirements relative to lot sizes, where applicable, shall be considered as standard metes and bounds land section division, (i.e., 160 acres, 80 acres, 40 acres, 20 acres, etc.); lot sizes, therefore, may be reasonably smaller than set forth by DCC Title 18 if a total section acreage reduction is due to a survey adjustment or other man-made barriers over which the applicant has had no control.
- C. Any lot that is smaller than the minimum area required in any zone may be occupied by an allowed use in that zone provided that:
 1. The lot or parcel is a lot of record, as defined in DCC 18.04.030(J), Lot of record.
 2. The use conforms to all other requirements of that zone.
 3. If there is an area deficiency, residential use shall be limited to a single dwelling unit.

4. All necessary permits are obtained.
- D. Lots or parcels within the Rural Residential Zone (RR-10) that are separated by an arterial right of way created after June 30, 1993, shall be exempt from the minimum lot dimension of 10 acres in size. Such parcels may be partitioned only as separated by the right of way and shall not be smaller than one acre. (Ord. 93-034 §2, 1993; Ord. 87-015 §§1 and 2, 1987)

18.120.030. Exceptions to Yard Requirements.

The following exceptions to yard requirements are authorized for a lot in any zone:

- A. If there are buildings on both lots adjoining an intervening lot that are within 100 feet of the intervening lot, and the buildings have front yards of less than the required depth for the zone, the depth of the front yard for the intervening lot need not exceed the average depth of the front yards of the adjoining lots.
- B. Architectural features such as cornices, eaves, sunshades, gutters, chimneys and flues may project into a required yard in accordance with DCC 18.116.100. Also, steps, terraces, platforms, porches having no roof covering and fences not interfering with the vision clearance requirements may project into a required yard. Signs conforming to the requirements of DCC Title 18 and all other applicable ordinances shall be permitted in required yards.
- C. Canopies: The yard between a canopy and any lot line shall be a minimum of 10 feet, except that a smaller setback may be permitted if specifically allowed in a given zone.
- D. An addition to an existing residential dwelling which is within 100 feet from the ordinary high water mark along a stream or lake may be constructed provided that the addition is for residential dwelling purposes, no part of the addition is closer to the stream or lake than the existing residential structure, the addition is 900 square feet in area or smaller and does not exceed the area of floor space of the existing structure and the addition conforms with all other setbacks and building limitations.
- E. Dwellings on parcels created prior to November 1, 1979, may be granted an exception to the 100-foot setback from the ordinary high water mark along a stream or lake subject to DCC Title 22, the Uniform Development Procedures Ordinance, and the following conditions:
 1. An application shall be filed which includes:
 - a. A detailed explanation of the planned development.
 - b. An explanation of why an exception is necessary.
 - c. A site plan, drawn to scale, and accompanied by such drawings, sketches and descriptions necessary to describe and illustrate the proposed development. The site plan shall, at a minimum, include:
 - i. An inventory of existing vegetation, including trees on the lot located within 200 feet of the ordinary high water mark along the stream or lake. The inventory shall be in sufficient detail to allow the review and evaluation of the impacts of the proposed development.
 - ii. Proposed modifications of the vegetation on the lot within 200 feet of the ordinary high water mark along the stream or lake, including the size, species and approximate locations of existing vegetation to be retained and new vegetation proposed to be placed upon the site.
 - iii. Existing and proposed site contours.
 - iv. The locations and dimensions of all structures, property lines, easements, high water lines or marks, utilities and uses.
 - v. Other site elements and information that will assist in the evaluation of the proposed development.
 - d. An explanation of how the proposed development will satisfy each of the exception criteria set forth in DCC 18.120.030(E)(4)(b).

2. An exception may be granted only upon findings that:
 - a. The structure to be sited is a dwelling that is no greater than 40 feet in depth (including garages, carports and decks);
 - b. Adherence to the 100-foot setback would create a hardship, as defined in DCC 18.120.030(E)(3), preventing such a dwelling from being sited on the lot;
 - c. The site plan protects and enhances the vegetative fringe between the dwelling and the stream or lake to the degree necessary to meet the requirements set forth in the applicable goals and policies of the Comprehensive Plan; and
 - d. A conservation easement providing that the elements of the site plan will be carried out and maintained as approved, in perpetuity, for the area between the ordinary high water mark and the dwelling has been conveyed to the County.
3. For the purposes of DCC 18.120.030, a hardship exists in one or more of the following situations:
 - a. Adherence to setbacks required by the zoning ordinance in effect at the time of the application made under DCC 18.120.030 would prevent the dwelling from being sited on the lot, if the 100-foot setback were observed;
 - b. The siting of a legal on-site disposal system, placed on the lot prior to November 1, 1979 makes it impossible for the dwelling to meet the 100-foot setback;
 - c. Any approved initial on-site sewage disposal system and replacement system other than a sand filter system cannot be sited on the lot in a manner that will allow the dwelling to meet the 100-foot setback requirement;
 - d. If the only initial on-site sewage disposal system for which approval can be obtained is a sand filter system and such a system and its replacement system cannot be sited on the lot in a manner that will allow the dwelling to meet the 100-foot setback requirement; or
 - e. Dwellings exist on both adjoining lots that are closer to the stream or lake than the proposed dwelling and such existing dwellings are located within 40 feet of the proposed dwelling. If utilization of a sand filter system as a replacement system will allow such a dwelling to meet the 100-foot setback, no exception shall be granted for reasons of on-site sewage disposal constraints.
4. Dwellings qualifying for a setback exception under the criteria set forth above shall be located as follows:
 - a. Except as set forth in DCC 18.120.030(E)(4)(b), the dwelling must be located as far as possible from the ordinary high water line of the stream or lake, allowing for the hardship constraints identified for the property.
 - i. In instances where use of a sand filter system for a replacement system would allow the dwelling to be located further from the stream or lake than if another type of replacement system were utilized, the dwelling shall be sited in a manner to allow only enough room for the approved initial on-site sewage disposal system and a sand filter system as a replacement system.
 - b. Where a dwelling qualifies for a setback by virtue of DCC 18.120.030(E)(3)(e), the dwelling may be set back at a distance from the ordinary high water mark consistent with the adjoining houses, but in no case shall any part of such dwelling be located closer to the ordinary high water line than a line extending between the points of the adjoining houses that are closest to the river.

(Ord. 2004-013 §13, 2004; Ord. 95-075 §1, 1995; Ord. 93-043 §§20A and B, 1993; Ord. 91-020 §1, 1991; Ord. 90-020 §2, 1990; Ord. 86-032 §1, 1986; Ord. 84-002 §1, 1984; Ord. 81-005 §1, 1981; Ord. 81-003 §1, 1981)

18.120.040. Building Height Exceptions.

- A. The following structures or structural parts are not subject to the building height limitations of DCC Title 18:

1. chimneys, not more than three feet six inches above the highest point of the roof, vertical support structures for telephone and power transmission lines in utility easements or public rights-of-way, not requiring a site plan review as defined in DCC 18.124.060, flagpoles not exceeding 40 feet, agricultural structures as defined in DCC 18.04.030 not exceeding 36 feet, and amateur radio facilities as outlined in DCC Title 18.116.290. This exception does not apply to an Airport Development Zone, Airport Safety Combining Zone or Landscape Management Combining Zone.
 - B. The following structures or structural parts may receive exceptions to the building height limitations of DCC Title 18 if approved as part of a Site Plan Review, as defined in DCC 18.124.060 and subject to the criteria contained therein: non-commercial wind energy systems generating less than 100 kW of electricity, public schools, vertical support structures for telephone and power transmission lines requiring a site plan, structures that are necessary for public safety and flagpoles. This exception does not supersede the more restrictive requirements that are found in the Airport Safety Combining Zone or Landscape Management Combining Zone.
 - C. An exception (up to 36 feet) to the building height limitations for structures not otherwise exempted by DCC 18.120.040(A) may be approved upon findings that:
 1. The structure is not located in a Landscape Management Zone, except when the structure is a single-family dwelling with an attached hangar located in an unincorporated community and the structure has a maximum height of 35 feet including chimneys, antennas, flagpoles or other projections from the roof of the structure;
 2. The structure is not located within 100 feet of any rimrock, as defined in DCC 18.04.030;
 3. After consultation with the applicable fire department, the proposed height does not exceed the height limitation of the department's fire fighting equipment, considering the evacuation of the building's occupants and the fire fighting requirements of the department; and
 4. The proposed additional height will not adversely impact scenic views from existing nearby residences.
 5. The proposed structure shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.
 - D. An exception to building height limitations for agricultural structures may be approved upon findings that the applicant meets the criteria listed in DCC 18.120.040(C)(1) through (3) and demonstrates that the proposed structure is:
 1. An agricultural structure as defined in DCC 18.04.030;
 2. Located in an EFU or Forest zone; and
 3. Necessary to conduct generally accepted farming practices that are typical or customary of Deschutes County farmers who are regularly involved in the proposed type of agriculture. The applicant shall document satisfaction of this criterion by submitting evidence or testimony from an authorized representative of the Deschutes County Farm Bureau.
- (Ord. 2011-009 §1, 2011; Ord. 2008-007 §3, 2008; Ord. 2001-033 §1, 2001; Ord. 2001-004 §3, 2001; Ord. 98-035 §1, 1998; Ord. 96-035 §1, 1996; Ord. 93-043 §20C, 1993; Ord. 92-055 §10, 1992; Ord. 92-036 §1, 1992)

18.120.050. Fill and Removal Exceptions.

- A. Fill and removal activities involving the removal of vegetation are permitted outright if the material to be filled or removed will not exceed 50 cubic yards in volume and such fill or removal activities are undertaken for the purpose of:
 1. Removal of diseased or insect-infested trees or shrubs or of rotten or damaged trees that present safety hazards, or
 2. Normal maintenance and pruning of trees and shrubs.
- B. The following fill and removal activities may be authorized by the Planning Director or Hearings Body upon a finding that no adverse impacts will occur to the water resources of Deschutes County:

1. Minor fill or removal required for vegetative enhancement, including excavation and preparation of the ground for planting additional vegetation.
 2. Fill or removal for maintenance and repair of existing bridges, dams, irrigation facilities and similar public and semipublic facilities, provided such fill or removal does not alter the existing characteristics of the stream, river or wetland.
 3. Fill or removal for maintenance and repair of nonconforming structures or boat docks.
 4. Emergency actions taken to mitigate fill and removal violations when such emergency actions are intended to have a beneficial impact on fish and wildlife habitat and are determined to be the actions with the least overall impacts on the surrounding area, considering hydrologic factors; impact on water quality, on aquatic life and habitat and wildlife and habitat; the recreational, aesthetic and economic values of the affected water resources; and existing stream bank stabilization problems.
 5. Fish and wildlife habitat enhancement projects approved or sponsored by the Oregon Department of Fish and Wildlife.
- C. Fill and removal activities conducted by an Irrigation District involving piping work in existing canals and ditches within wetlands are permitted outright.
(Ord. 2001-039 §13, 2001; Ord. 2001-016 §2, 2001; Ord. 91-038 §1, 1991; Ord. 91-020 §1, 1991; Ord. 86-056 §3, 1986)