



## Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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### Memorandum

Date: February 2015

To: Board of County Commissioners  
Planning Commission  
Community Development Department  
Department Heads

From: Nick Lelack, Director  
Peter Gutowsky, Planning Manager

RE: Medical and Recreational Marijuana / Land Use Issues

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The following information is intended to help answer land use and related questions about medical and recreational marijuana.

1. The land use issues associated with medical and recreational marijuana are very dynamic. There are court opinions, pending litigation, various interpretations of the law, likely State legislation in 2015, existing laws regulating medical marijuana, new laws forthcoming regulating recreational marijuana, policy direction from the County Commissioners, etc. which may all influence the administration and regulatory aspects of medical and recreational marijuana. **The information in this memo is intended as a general guide addressing existing and anticipated new laws regulating marijuana.**

There is a likelihood that the information in this memo will change. Therefore, the information does not constitute a final decision or interpretation of Deschutes County Code. **It should not be relied upon to make land use, investment or business decisions.**

2. The Oregon Medical Marijuana Act is codified in ORS 475.300. The Oregon Health Authority (OHA) adopted Oregon Administrative Rules (OAR 333 Division 8) necessary for the implementation and administration of the Oregon Medical Marijuana Act. The County is not responsible for administering the OAR's relative to medical marijuana.
3. Measure 91, recently authorized the use of recreational marijuana and regulates "Personal Allowances" and "Retail Regulations." See Attachment 1 prepared by the League of Oregon Cities and Association of Oregon Counties.

Personal Allowances: This section of Measure 91 becomes effective July 1, 2015 and allows a certain amount of useable marijuana, marijuana plants, solids and liquid amount of marijuana products per

household (There are ongoing discussions about moving the effective date through legislative action). Outside of their households, the Measure allows up to 1 ounce of useable marijuana and delivery of marijuana for noncommercial purposes to another person subject to limits. No consumption is allowed in public. The “Personal Allowances” authorized for recreational marijuana per household is not a land use standard or issue. It will not be regulated by the County’s zoning ordinance.

Retail Regulations: The Oregon Liquor Control Commission (OLCC) is required to adopt laws (Oregon Administrative Rules) regulating “Retail Regulations.” Marijuana businesses regulated under “Retail Regulations” include producers (growers), processors, wholesalers and retailers. The OLCC is required to begin “accepting” applications for licenses by January 2016 (the law does not identify when licenses will be issued) for recreational marijuana.

4. Legislation is anticipated during the 2015 session that may clarify and amend components of both medical and recreational use marijuana regulations (time, place, manner, nuisance restrictions, taxation, production, labeling, etc.) The scope and likelihood of success of the legislation is unknown.
5. Deschutes County has a moratorium in effect prohibiting medical marijuana dispensaries until May 1, 2015. Deschutes County has initiated a text amendment to regulate time, place and manner regulations for medical marijuana facilities prior to May 1, 2015. The draft amendments are attached to this memorandum.
6. Deschutes County is responsible for regulating land uses outside of incorporated cities, including medical and recreational marijuana dispensaries and facilities pursuant to Deschutes County Code. Marijuana businesses and facilities are no different than any other land use when it comes to administering the zoning ordinance. Like other land uses, the appropriate zoning district(s) to locate these businesses will be based on characteristics of the business (growing, manufacturing, wholesaling, retailing or a combination thereof). In light of the proposed amendments and pending State legislation, it is important to review closely proposals for all marijuana-related regulations.
7. If the County receives a land use application and / or building permit for a marijuana facility (growing, processing, dispensary, manufacturing, wholesaling or retailing) the proposal will be evaluated to determine consistency with County Code and State Law. **Individuals, non-profits and businesses may want to consider obtaining legal advice on any land use matters related to marijuana before making investment decisions.**
8. Farm Tax Deferral: It is unclear whether the growing of medical or recreational marijuana would qualify a property for farm tax deferral. Those questions should be directed to the County Assessor.
9. The growing of industrial hemp is considered to be an agricultural product / farm use. See OAR 571.305(1). These facilities must be licensed by the Oregon Department of Agriculture (ODA).
10. Marijuana is illegal under the federal Controlled Substances Act (CSA) of 1970.
11. The Deschutes County Substance Abuse Prevention Unit of the Health Services Department provides information directed at reducing and preventing substance use and abuse. For more information visit: [www.deschutes.org/health/page/substance-abuse-prevention](http://www.deschutes.org/health/page/substance-abuse-prevention)