Chapter 9.12. RIGHT TO FARM


A. It is the purpose of DCC 9.12 to protect farm and forest-based economically productive activities of Deschutes County in order to assure the continued health, safety and prosperity of its residents. Farm and forest uses sometimes offend, annoy, interfere with or otherwise affect others located on or near farm and forest lands. Deschutes County has concluded in conformance with ORS chapter 30 that persons located on or near farm and forest lands must accept resource uses and management practices.

B. DCC 9.12 is intended to limit the availability of remedies based on nuisance or trespass, rights of action and claims for relief and issuance of citations for violations over which Deschutes County has jurisdiction, when they otherwise would either have an adverse impact on farm and forest uses that Deschutes County seeks to protect, or would impair full use of the farm and forest resource base within Deschutes County.

C. Scope. DCC Chapter 9.12 (The Deschutes County Right To Farm Ordinance) does not apply to marijuana production operations whether permitted by Deschutes County, Oregon Liquor Control Commission, Oregon Health Authority, or otherwise.

(Ord. 2018-xxx §x, 2018; Ord. 2003-021 §21, 2003; Ord. 95-024 §2, 1995)
Chapter 18.24 REDMOND URBAN RESERVE AREA COMBINING ZONE


A. Subject to the prohibitions provided for in DCC 18.24.030(B), uses permitted conditionally in the RURA Combining Zone shall be those identified as conditional uses in the underlying zoning districts. Conditional uses shall be subject to all conditions of those zones as well as the requirements of this chapter.

B. The following uses are prohibited and not permitted in the RURA Combining Zone:
   1. Marijuana production; and
   2. Marijuana processing.

(Ord. 2018-xxx §x, 2018)
Chapter 18.116  SUPPLEMENTARY PROVISIONS

18.116.330 Marijuana Production, Processing, and Retailing
18.116.340 Marijuana Production Registered by the Oregon Health Authority (OHA)

*  *  *

18.116.330. Marijuana Production, Processing, and Retailing
A. Applicability. Section 18.116.330 applies to:
1. Marijuana Production in the EFU, MUA-10, and RI zones.
2. Marijuana Processing in the EFU, MUA-10, TeC, TeCR, TuC, TuI, RI, and SUBP zones.
3. Marijuana Retailing in the RSC, TeC, TeCR, TuC, TuI, RC, RI, SUC, SUTC, and SUBP zones.

B. Marijuana production and marijuana processing. Marijuana production and marijuana processing shall be subject to the following standards and criteria:
1. Minimum Lot Area.
   a. In the EFU and MUA-10 zones, the subject legal lot of record shall have a minimum lot area of five (5) acres.
2. Indoor Production and Processing.
   In the MUA-10 zone, marijuana production and processing shall be located entirely within one or more fully enclosed buildings with conventional or post framed opaque, rigid walls and roof covering. Use of greenhouses, hoop houses, and similar non-rigid structures is prohibited.
   a. In the EFU zone, marijuana production and processing shall only be located in buildings, including greenhouses, hoop houses, and similar structures.
   b. In all zones, marijuana production and processing are prohibited in any outdoor area.
3. Maximum Mature Plant Canopy Size. In the EFU zone, the maximum canopy area for mature marijuana plants shall apply as follows:
   a. Parcels from 5 acres to less than 10 acres in lot area: 2,500 square feet.
   b. Parcels equal to or greater than 10 acres to less than 20 acres in lot area: 5,000 square feet. The maximum canopy area for mature marijuana plants may be increased to 10,000 square feet upon demonstration by the applicant to the County that:
      i. The marijuana production operation was lawfully established prior to January 1, 2015; and
      ii. The increased mature marijuana plant canopy area will not generate adverse impact of visual, odor, noise, lighting, privacy or access greater than the impacts associated with a 5,000 square foot canopy area operation.
   c. Parcels equal to or greater than 20 acres to less than 40 acres in lot area: 10,000 square feet.
   d. Parcels equal to or greater than 40 acres to less than 60 acres in lot area: 20,000 square feet.
   e. Parcels equal to or greater than 60 acres in lot area: 40,000 square feet.
4. Maximum Building Floor Area. In the MUA-10 zone, the maximum building floor area used for all activities associated with marijuana production and processing on the subject property shall be:
   a. Parcels from 5 acres to less than 10 acres in lot area: 2,500 square feet.
   b. Parcels equal to or greater than 10 acres: 5,000 square feet.

54. Limitation on License/Grow Site per Parcel. No more than one (1) Oregon Liquor Control Commission (OLCC) licensed marijuana production or Oregon Health Authority (OHA)
registered medical marijuana grow site shall be allowed per legal parcel or lot.

65. Setbacks. The following setbacks shall apply to all marijuana production and processing areas and buildings:
   a. Minimum Yard Setback/Distance from Lot Lines: 2,100 feet.
   b. Setback from an off-site dwelling: 5,300 feet.

   For the purposes of this criterion, an off-site dwelling includes those proposed off-site dwellings with a building permit application submitted to Deschutes County prior to submission of the marijuana production or processing application to Deschutes County.

   e. 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.

26. Separation Distances. Minimum separation distances shall apply as follows:
   a. The use applicant property line shall be located a minimum of 1,000 feet from:
      i. A public elementary or secondary school for which attendance is compulsory under Oregon Revised Statutes 339.010, et seq., including any parking lot appurtenant thereto and any property used by the school;
      ii. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot appurtenant thereto and any property used by the school;
      iii. A licensed child care center or licensed preschool, including any parking lot appurtenant thereto and any property used by the child care center or preschool. This does not include licensed or unlicensed child care which occurs at or in residential structures;
      iv. A youth activity center; and
      v. National monuments and state parks;
      vi. Public Federal lands; and
      vii. Redmond Urban Reserve Area;
      viii. The boundary of any local jurisdiction that has opted out of Oregon’s recreational marijuana program; and
      ix. Any other lot or parcel approved by Deschutes County for marijuana production.
   b. For purposes of DCC 18.116.330(B)(26), all distances shall be measured from the lot line of the affected properties listed in DCC 18.116.330(B)(26)(a) to the closest point of the buildings and land area applicant’s property line of land occupied by the marijuana producer or marijuana processor.
   c. A change in use of another property to those identified in DCC 18.116.330(B)(26) shall not result in the marijuana producer or marijuana processor being in violation of DCC 18.116.330(B)(26) if the use is:
      i. Pending a local land use decision;
      ii. Licensed or registered by the State of Oregon; or
      iii. Lawfully established.

87. Access. Marijuana production over 5,000 square feet of canopy area for mature marijuana plants sites shall comply with the following standards:
   a. Have frontage on and legal direct access from a constructed public, county, or state road; or
   b. Have access from a private road or easement serving only the subject property.
   c. If the property takes access via a private road or easement which also serves other properties, the applicant shall obtain written consent to utilize the easement or private road for marijuana production access from all owners who have access rights to the private road or easement. The written consent shall:
      i. Be on a form provided by the County and shall contain the following information;
ii. Include notarized signatures of all owners, persons and properties holding a recorded interest in the private road or easement;

iii. Include a description of the proposed marijuana production or marijuana processing operation, and

iv. Include a legal description of the private road or easement.

98. Lighting. Lighting shall be regulated as follows:

a. Inside building lighting, including greenhouses, hoop houses, and similar structures, used for marijuana production shall not be visible outside the building from sundown to sunup—7:00 p.m. to 7:00 a.m. on the following day.

b. 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.

c. Light cast by exterior light fixtures other than marijuana grow lights shall comply with DCC 15.10, Outdoor Lighting Control.

109. Odor. As used in DCC 18.116.330(B)(9), building means the building, including greenhouses, hoop houses, and other similar structures, used for marijuana production or marijuana processing. Odor produced by marijuana production and processing shall comply with the following:

a. Standard. To prevent unreasonable interference of neighbors’ use and enjoyment of their property, no adverse or noxious odors shall be detectable beyond the applicant’s property line.

b. Odor control plan. To ensure that the standard stated in DCC 18.116.330(B)(9) is continuously met, the applicant shall submit an odor control plan prepared and stamped by a mechanical engineer licensed in the State of Oregon that includes the following:

   i. The mechanical engineer’s qualifications and experience with system design and operational audits of effective odor control and mitigation systems;

   ii. A detailed analysis of the methodology, which has been independently researched and tested, that will be relied upon to effectively control odor on the subject property;

   iii. A detailed description of any odor control systems that will be utilized, including operational schedules and maintenance intervals;

   iv. Contingence measures if any aspect of the odor control plan fails or is not followed, or if it is otherwise shown that the standard stated in DCC 18.116.330(B)(9) is not met;

   v. Testing protocols and intervals; and

   vi. Identification of the responsible parties tasked with implementing each aspect of the odor control plan.

Compliance. On-going compliance with the odor control plan is mandatory and shall be ensured with a permit condition of approval, but compliance with the odor control plan does not supersede required compliance with the standard set forth in DCC 18.116.330(B)(9). If provided in applicable state statutes, private actions alleging nuisance or trespass associated with odor impacts are authorized.

c. Modifications. Modifications to the odor control plan shall be approved in the same manner as a modification to a land use action pursuant to DCC 22.36.040.

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 system design and operational audit of effectively controlling odor. If provided in applicable state statutes, private actions alleging nuisance or trespass associated with odor impacts are authorized.
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:
   i. Consist of one or more fans. 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 required CFM; or
   ii. Utilize an alternative method or technology to achieve equal to or greater odor mitigation than provided by (i) above.

e. The system shall at all times be maintained in working order and shall be in use.

1110. Noise. Noise produced by marijuana production and marijuana processing shall comply with the following:

   a. Sustained noise from mechanical equipment used for heating, ventilation, air condition, odor control, fans and similar functions shall not exceed 30 dB(A) measured at any property line between 10:00 p.m. and 7:00 a.m. the following day.

   b. Sustained noise from marijuana production is exempt from protections of DCC 9.12 and ORS 30.395, Right to Farm. Intermittent noise for accepted farming practices is permitted.

   a. Standard. To prevent unreasonable interference of neighbors’ use and enjoyment of their property, sustained noise shall not be detectable beyond the applicant’s property line above 30 dB(A) between 10:00 pm and 7:00 am the following day.
      i. For purposes of DCC 18.116.330(B)(10), “sustained noise” shall mean noise lasting more than two continuous minutes or two total minutes in a one hour period from mechanical equipment used for heating, ventilation, air condition, odor control, fans and similar functions associated with marijuana production and processing.

   b. Noise control plan. To ensure that the standard stated in DCC 18.116.330(B)(10) is continuously met, the applicant shall submit a noise control plan prepared and stamped by a mechanical engineer licensed in the State of Oregon that includes the following:
      i. The mechanical engineer’s qualifications and experience with system design and operational audit of effective noise control and mitigation systems;
      ii. A detailed analysis of the methodology that will be relied upon to effectively control noise on the subject property;
      iii. A detailed description of any noise control systems that will be utilized, including operational schedules and maintenance intervals;
      iv. Contingence measures if any aspect of the noise control plan fails or is not followed, or if it is otherwise shown that the standard stated in DCC 18.116.330(B)(10) is not met;
      v. Testing protocols and intervals; and
      vi. Identification of the responsible parties tasked with implementing each aspect of the noise control plan.

   Compliance. On-going compliance with the noise control plan is mandatory and shall be ensured with a permit condition of approval, but compliance with the noise control plan does not supersede required compliance with the standard set forth in DCC 18.116.330(B)(1). If provided in applicable state statutes, private actions alleging nuisance or trespass associated with odor impacts are authorized.

c. Modifications. Modifications to the noise control plan shall be approved in the same manner as a modification to a land use action pursuant to DCC 22.36.040.

4211. Screening and Fencing. The following screening standards shall apply to greenhouses, hoop houses, and similar non-rigid structures and land areas used for
marijuana production and processing:

a. **All marijuana uses, buildings, structures, fences, and storage and parking areas, whether a building permit is required or not, in the Landscape Management Combining Zone, shall comply with and require** Subject to DCC 18.84, Landscape Management Combining Zone approval, if applicable.

b. Fencing and screening shall be finished in a muted earth tone that blends with the surrounding natural landscape and shall not be constructed of temporary materials such as plastic sheeting, hay bales, tarps, etc., and shall be subject to DCC 18.88, Wildlife Area Combining Zone, if applicable.

c. Razor wire, or similar, shall be obscured from view or colored a muted earth tone that blends with the surrounding natural landscape.

d. The existing tree and shrub cover screening the development from the public right-of-way or adjacent properties shall be retained to the maximum extent possible. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act; or agricultural use of the land.

1312. Water. **Applicant shall state the anticipated amount of water to be used on an annual basis.** Water use from any source for marijuana production shall comply with all applicable state statutes and regulations. The applicant shall provide:

a. **A copy of a water right permit, certificate, or other water use authorization from the Oregon Water Resource Department; or Oregon Water Resources Department (OWRD) Certificate(s), permit, or other water use authorization proving necessary water supply of proper classification will be available for intended use during required seasons, regardless of source.**

b. A will serve statement that water is supplied from a public or private water provider, along with a will haul statement, including the name and contact information of the water provider/ hauler; or **Source water provider Will Serve statement referencing Certificated Water Right to be utilized, if any, as well a Will Haul statement, including the name and contact information of the water hauler.**

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.** In the alternative to (a) and (b) above, proof from Oregon Water Resources Department that the water supply to be used does not require a Certificated Water Right for the specific application use classification, volume, and season of use (i.e., roof-collected water).

d. For production sites with 5,000 square feet or more of mature canopy, a water meter for all on-site commercial wells shall be required.

e. If multiple sources of water are being proposed during the year, the applicant shall provide proof from the controlling entity that the water can be applied to marijuana production.

1413. Fire protection for processing of cannabinoid extracts. Processing of cannabinoid extracts shall only be permitted on properties located within the boundaries of or under contract with a fire protection district.

1514. Utility Verification. **Utility statements identifying the proposed operation, or operational characteristics such as required electrical load and timing of such electrical loads and Aa statement from each utility company proposed to serve the operation, stating that each such company is able and willing to serve the operation, shall be provided.** The utility shall state whether system upgrades will be required to serve the proposed use, and that the use will not be served until such upgrades are completed to protect existing service to neighboring users. This may also be included as a condition of approval if appropriate, insuring applicant participation in upgrade costs.
1615. Security Cameras. If security cameras are used, they shall be directed to record only the subject property and public rights-of-way, except as required to comply with requirements of the OLCC or the OHA.

   a. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA Person Responsible for the Grow Site (PRMG).
   b. A statement is also required describing how any water runoff is being addressed.

18. Residency. In the MUA-10 zone, a minimum of one of the following shall reside in a dwelling unit on the subject property:
   a. An owner of the subject property;
   b. A holder of an OLCC license for marijuana production, provided that the license applies to the subject property;
   c. A person registered with the OHA as a person designated to produce marijuana by a registry identification cardholder, provided that the registration applies to the subject property.

17. Nonconformance. All medical marijuana grow sites lawfully established prior to June 8, 2016 by the Oregon Health Authority shall comply with Ordinance 2016-015 and with the provisions of DCC 18.116.330(B)(9) by September 8, 2016 and with the provisions of DCC 18.116.330(B)(10-12, 16, 17) by December 8, 2016.

20. Prohibited Uses.
   a. In the EFU zone, the following uses are prohibited:
      i. A new dwelling used in conjunction with a marijuana crop;
      ii. A farm stand, as described in ORS 215.213(1)(r) or 215.283(1)(o), used in conjunction with a marijuana crop;
      iii. A commercial activity, as described in ORS 215.213(2)(c) or 215.283(2)(a), carried on in conjunction a marijuana crop; and
      iv. Agri-tourism and other commercial events and activities in conjunction with a marijuana crop.
   b. In the MUA-10 Zone, the following uses are prohibited:
      i. Commercial activities in conjunction with farm use when carried on in conjunction with a marijuana crop.
   eb. In the EFU, MUA-10, and Rural Industrial zones, the following uses are prohibited on the same property as marijuana production:
      i. Guest Lodge.
      ii. Guest Ranch.
      iii. Dude Ranch.
      iv. Destination Resort.
      v. Public Parks.
      vi. Private Parks.
      viii. Bed and Breakfast.
      ix. Room and Board Arrangements.

   a. Odor. On-going compliance with the odor control plan is mandatory and shall be ensured with a permit condition of approval. The odor control plan does not supersede required compliance with the standard set forth in DCC 18.116.330(B)(9). If provided in applicable state statutes, private actions alleging nuisance or trespass associated with odor impacts are authorized.
   b. Noise. On-going compliance with the noise control plan is mandatory and shall be ensured with a permit condition of approval. The noise control plan does not supersede
required compliance with the standard set forth in DCC 18.116.330(B)(10). If provided in applicable state statutes, private actions alleging nuisance or trespass associated with odor impacts are authorized.

C. Marijuana Retailing. Marijuana retailing, including recreational and medical marijuana sales, shall be subject to the following standards and criteria:
1. Hours. Hours of operation shall be no earlier than 9:00 a.m. and no later than 7:00 p.m. on the same day.
2. Odor. The building, or portion thereof, used for marijuana retailing shall be designed or equipped to prevent detection of marijuana plant odor off premise by a person of normal sensitivity.
3. Window Service. The use shall not have a walk-up or drive-thru window service.
4. Secure Waste Disposal. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.
5. Minors. No person under the age of 21 shall be permitted to be present in the building, or portion thereof, occupied by the marijuana retailer, except as allowed by state law.
6. Co-Location of Related Activities and Uses. Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by the marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot or parcel or within the same building with any marijuana social club or marijuana smoking club.
7. Separation Distances. Minimum separation distances shall apply as follows:
   a. The use shall be located a minimum of 1,000 feet from:
      i. A public elementary or secondary school for which attendance is compulsory under Oregon Revised Statutes 339.010, et seq., including any parking lot appurtenant thereto and any property used by the school;
      ii. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot appurtenant thereto and any property used by the school;
      iii. A licensed child care center or licensed preschool, including any parking lot appurtenant thereto and any property used by the child care center or preschool. This does not include licensed or unlicensed family child care which occurs at or in residential structures;
      iv. A youth activity center;
      v. National monuments and state parks; and
      vi. Any other marijuana retail facility licensed by the OLCC or marijuana dispensary registered with the OHA.
   b. For purposes of DCC 18.116.330(CB)(7), distance shall be measured from the lot line of the affected property to the closest point of the building space occupied by the marijuana retailer. For purposes of DCC 18.116.330(CB)(7)(a)(vi), distance shall be measured from the closest point of the building space occupied by one marijuana retailer to the closest point of the building space occupied by the other marijuana retailer.
   c. A change in use to another property to a use identified in DCC 18.116.330(CB)(7), after a marijuana retailer has been licensed by or registered with the State of Oregon shall not result in the marijuana retailer being in violation of DCC 18.116.330(CB)(7).

D. Inspections and Annual Reporting.
1. An annual report shall be submitted to the Community Development Department by the real property owner or licensee, if different, each February 1, documenting all of the
following as of December 31 of the previous year, including the applicable fee as adopted in the current County Fee Schedule and a fully executed Consent to Inspect Premises form:

a. Documentation demonstrating compliance with the:
   i. Land use decision and permits.
   ii. Fire, health, safety, waste water, and building codes and laws.
   iii. State of Oregon licensing requirements.

b. A statement of annual water use.

b. Failure to timely submit the annual report, fee, and Consent to Inspect Premises form or to demonstrate compliance with DCC 18.116.330(DC)(1)(a) shall serve as acknowledgement by the real property owner and licensee that the otherwise allowed use is not in compliance with Deschutes County Code; authorizes permit revocation under DCC Title 22, and may be relied upon by the State of Oregon to deny new or license renewal(s) for the subject use.

c. Other information as may be reasonably required by the Planning Director to ensure compliance with Deschutes County Code, applicable State regulations, and to protect the public health, safety, and welfare.

d. As a condition of approval, the applicant must consent in writing to allow Deschutes County to, randomly and without prior notice, inspect the premises and ascertain the extent and effectiveness of the odor control system(s), compliance with the Deschutes County Code, and applicable conditions of approval. Inspections may be conducted by the County up to four (4) times per calendar year, including one inspection prior to the initiation of use.

e. Conditions of Approval Agreement to be established and maintained by the Community Development Department.

f. Documentation that System Development Charges have been paid.

g. This information shall be public record subject to ORS 192.502(17).

h. Failure to timely submit the annual report, fee, and Consent to Inspect Premises form or to demonstrate compliance with DCC 18.116.330(D)(1)(a) shall serve as acknowledgement by the real property owner and licensee that the otherwise allowed use is not in compliance with Deschutes County Code; authorizes permit revocation under DCC Title 22, and may be relied upon by the State of Oregon to deny new or license renewal(s) for the subject use.

(Ord. 2018-xxx §x, 2018; Ord. 2016-015 §10, 2016)

18.116.340. Marijuana Production Registered by the Oregon Health Authority (OHA)

A. Applicability. Section 18.116.340 applies to:
   1. All marijuana production registered by OHA prior to June 1, 2016; and
   2. All marijuana production registered by OHA on or after June 1 2016 until the effective date of Ordinances 2016-015, 2016-16, 2016-17, and 2016-18, at which time Ordinances 2016-015 through Ordinance 2016-018 shall apply.

B. All marijuana production registered by OHA prior to June 1, 2016 shall comply with the following standards by September 15, 2016:
   1. Lighting. Lighting shall be regulated as follows:
      a. Inside building lighting, including greenhouses, hoop houses, and similar structures, used for marijuana production shall not be visible outside the building from 7:00 a.m. to 7:00 p.m. sundown to sunup on the following day.
b. 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.

c. Light cast by exterior light fixtures other than marijuana grow lights shall comply with DCC 15.10, Outdoor Lighting Control.

C. All marijuana production registered by OHA prior to June 1, 2016 shall comply with the following standards by December 15, 2016:

1. Odor. As used in DCC 18.116.3430(CB)(40), 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:
      i. Consist of one or more fans. 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 required CFM; or
      ii. Utilize an alternative method or technology to achieve equal to or greater odor mitigation than provided by i. above.
   e. The system shall be maintained in working order and shall be in use.

2. Noise. Noise produced by marijuana production and marijuana processing shall comply with the following:
   a. Sustained noise from mechanical equipment used for heating, ventilation, air condition, odor control, fans and similar functions shall not exceed 30 dB(A) measured at any property line between 10:00 p.m. and 7:00 a.m. the following day.
   b. Sustained noise from marijuana production is not subject to the Right to Farm protections in DCC 9.12 and ORS 30.395. Intermittent noise for accepted farming practices is however permitted.

3. Screening and Fencing. The following screening standards shall apply to greenhouses, hoop houses, and similar non-rigid structures and land areas used for marijuana production and processing:
   a. Subject to DCC 18.84, Landscape Management Combining Zone approval, if applicable.
   b. Fencing shall be finished in a muted earth tone that blends with the surrounding natural landscape and shall not be constructed of temporary materials such as plastic sheeting, hay bales, tarps, etc., and shall be subject to DCC 18.88, Wildlife Area Combining Zone, if applicable.
   c. Razor wire, or similar, shall be obscured from view or colored a muted earth tone that blends with the surrounding natural landscape.
   d. The existing tree and shrub cover screening the development from the public right-of-way or adjacent properties shall be retained to the maximum extent possible. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act; or agricultural use of the land.
4. Water. The applicant shall provide:
   a. A copy of a water right permit, certificate, or other water use authorization from the Oregon Water Resource Department; 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.
5. Security Cameras. If security cameras are used, they shall be directed to record only the subject property and public rights-of-way, except as required to comply with requirements of the OLCC or the OHA.
6. Secure Waste Disposal. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA Person Responsible for the Grow Site (PRMG).
7. Inspections and Annual Reporting. All marijuana production registered by OHA prior to June 1, 2016 shall comply with DCC 18.116.340(D)(8) when site locations are identified or otherwise disclosed by the State of Oregon.

D. All new marijuana production registered by OHA on or after June 1, 2016 shall comply with DCC 18.116.3430(A-BC) and the following standards:
1. Shall only be located in the following zones
   a. EFU; or
   b. MUA-10; or
   c. Rural Industrial in the vicinity of Deschutes Junction.
   a. In the EFU and MUA-10 zones, the subject property shall have a minimum lot area of five (5) acres.
3. Maximum Building Floor Area. In the MUA-10 zone, the maximum building floor area used for all activities associated with medical marijuana production on the subject property shall be:
   a. Parcels from 5 acres to less than 10 acres in area: 2,500 square feet.
   b. Parcels equal to or greater than 10 acres: 5,000 square feet.
4. Setbacks. The following setbacks shall apply to all marijuana production areas and buildings:
   a. Minimum Yard Setback/Distance from Lot Lines: 1200 feet.
   b. Setback from an off-site dwelling: 5300 feet.
   For the purposes of this criterion, an off-site dwelling includes those proposed off-site dwellings with a building permit application submitted to Deschutes County prior to submission of the marijuana production or processing application to Deschutes County.
   e. Exception: Reductions to these setback requirements may be granted at the discretion of the Planning Director or Hearings Body provided the applicant demonstrates that the reduced setbacks afford equal or greater mitigation of visual, odor, noise, lighting, privacy, and access impacts.
5. Indoor Production and Processing.
   a. In the MUA-10 zone, marijuana production shall be located entirely within one or more fully enclosed buildings with conventional or post framed opaque, rigid walls and roof covering. Use of greenhouses, hoop houses, and similar non-rigid structures is prohibited.
   a. In the EFU zone, marijuana production shall only be located in buildings, including greenhouses, hoop houses, and similar structures.
   b. In all zones, marijuana production is prohibited in any outdoor area.
6. Maximum Mature Plant Canopy Size. In the EFU zone, the maximum canopy area for mature marijuana plants shall apply as follows:
a. Parcels from 5 acres to less than 10 acres in lot area: 2,500 square feet.

b. Parcels equal to or greater than 10 acres to less than 20 acres in lot area: 5,000 square feet. The maximum canopy area for mature marijuana plants may be increased to 10,000 square feet upon demonstration by the applicant to the County that:
   i. The marijuana production operation was lawfully established prior to January 1, 2015; and
   ii. The increased mature marijuana plant canopy area will not generate adverse impact of visual, odor, noise, lighting, privacy or access greater than the impacts associated with a 5,000 square foot canopy area operation.

c. Parcels equal to or greater than 20 acres to less than 40 acres in lot area: 10,000 square feet.

d. Parcels equal to or greater than 40 acres to less than 60 acres in lot area: 20,000 square feet.

e. Parcels equal to or greater than 60 acres in lot area: 40,000 square feet.

76. Separation Distances. Minimum separation distances shall apply as follows:
   a. The use shall be located a minimum of 1000 feet from:
      i. A public elementary or secondary school for which attendance is compulsory under Oregon Revised Statutes 339.010, et seq., including any parking lot appurtenant thereto and any property used by the school;
      ii. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot appurtenant thereto and any property used by the school;
      iii. A licensed child care center or licensed preschool, including any parking lot appurtenant thereto and any property used by the child care center or preschool. This does not include licensed or unlicensed child care which occurs at or in residential structures;
      iv. A youth activity center; and
      v. National monuments and state parks;
      vi. Public Federal lands; and
      vii. Redmond Urban Reserve Area;
      viii. The boundary of any local jurisdiction that has opted out of Oregon’s recreational marijuana program; and
   b. For purposes of DCC 18.116.3430(DB)(76), all distances shall be measured from the lot line of the affected properties listed in DCC 18.116.3430(DB)(76)(a) to the closest point of the buildings and land area occupied by the marijuana producer or marijuana processor.
   c. A change in use of another property to those identified in DCC 18.116.3430(DB)(76) shall not result in the marijuana producer or marijuana processor being in violation of DCC 18.116.330(B)(76) if the use is:
      i. Pending a local land use decision;
      ii. Registered by the State of Oregon; or
      iii. Lawfully established.

87. Access. Marijuana productions over 5,000 square feet of canopy area for mature marijuana plants shall comply with the following standards.
   a. Have frontage on and legal direct access from a constructed public, county, or state road; or
   b. Have access from a private road or easement serving only the subject property.
   c. If the property takes access via a private road or easement which also serves other properties, the applicant shall obtain written consent to utilize the easement or private
road for marijuana production access from all owners who have access rights to the private road or easement. The written consent shall:

i. Be on a form provided by the County and shall contain the following information;

ii. Include notarized signatures of all owners, persons and properties holding a recorded interest in the private road or easement;

iii. Include a description of the proposed marijuana production or marijuana processing operation; and

iv. Include a legal description of the private road or easement.

9. Residency. In the MUA-10 zone, a minimum of one of the following shall reside in a dwelling unit on the subject property:
   a. An owner of the subject property;
   b. A person registered with the OHA as a person designated to produce marijuana by a registry identification cardholder, provided that the registration applies to the subject property.

108. Inspections and Annual Reporting. An annual report shall be submitted to the Community Development Department by the real property owner or licensee, if different, of marijuana production registered by OHA, each February 1, documenting all of the following as of December 31 of the previous year, including the applicable fee as adopted in the current County Fee Schedule and a fully executed Consent to Inspect Premises form:

a. Documentation demonstrating compliance with the:
   i. Land use decision and permits.
   ii. Fire, health, safety, waste water, and building codes and laws.
   iii. State of Oregon licensing requirements.

b. A statement of annual water use.

b—Failure to timely submit the annual report, fee, and Consent to Inspect Premises form or to demonstrate compliance with DCC 18.116.3430(C)(8) shall serve as acknowledgement by the real property owner and licensee that the otherwise allowed use is not in compliance with Deschutes County Code; authorizes permit revocation under DCC Title 22, and may be relied upon by the State of Oregon to deny new or license renewal(s) for the subject use.

c. Other information as may be reasonably required by the Planning Director to ensure compliance with Deschutes County Code, applicable State regulations, and to protect the public health, safety, and welfare.

d. Marijuana Control Plan to be established and maintained by the Community Development Department. As a condition of approval, the applicant must consent in writing to allow Deschutes County to, randomly and without prior notice, inspect the premises and ascertain the extent and effectiveness of the odor control system(s), compliance with the Deschutes County Code, and applicable conditions of approval. Inspections may be conducted by the County up to four (4) times per calendar year, including one inspection prior to the initiation of use. As a condition of approval, the applicant must consent in writing to allow Deschutes County to randomly and without prior notice, up to four (4) times per calendar year, inspect the premises to ascertain the extent and effectiveness of odor control.

Conditions of Approval Agreement to be established and maintained by the Community Development Department.

e. Documentation that System Development Charges have been paid.

f. This information shall be public record subject to ORS 192.502(17).

g. Failure to timely submit the annual report, fee, and Consent to Inspect Premises form or to demonstrate compliance with DCC 18.116.340(C)(8) shall serve as acknowledgement by the real property owner and licensee that the otherwise allowed use is not in compliance with Deschutes County Code; authorizes permit revocation
under DCC Title 22, and may be relied upon by the State of Oregon to deny new or
license renewal(s) for the subject use.

119. Prohibited Uses.
   a. In the EFU zone, the following uses are prohibited:
      i. A new dwelling used in conjunction with a marijuana crop;
      ii. A farm stand, as described in ORS 215.213(1)(r) or 215.283(1)(o), used in
          conjunction with a marijuana crop;
      iii. A commercial activity, as described in ORS 215.213(2)(c) or 215.283(2)(a),
           carried on in conjunction a marijuana crop; and
      iv. Agri-tourism and other commercial events and activities in conjunction with a
           marijuana crop.
   b. In the MUA-10 Zone, the following uses are prohibited:
      i. Commercial activities in conjunction with farm use when carried on in conjunction
         with a marijuana crop.
   eb. In the EFU, MUA-10, and Rural Industrial zones, the following uses are prohibited on
      the same property as marijuana production:
      Guest Lodge.
      i. Guest Ranch.
      ii. Dude Ranch.
      iii. Destination Resort.
      iv. Public Parks.
      v. Private Parks.
      vi. Events, Mass Gatherings and Outdoor Mass Gatherings.
      vii. Bed and Breakfast.
      viii. Room and Board Arrangements.

(Ord. 2018-xxx §x, 2018; Ord. 2016-019 §1, 2016)
Chapter 18.124. SITE PLAN REVIEW

18.124.060. Approval Criteria.

* * *

18.124.060. Approval Criteria.

Approval of a site plan shall be based on the following criteria:

A. The proposed development shall relate harmoniously to the natural and man-made environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features.

B. The landscape and existing topography shall be preserved to the greatest extent possible, considering development constraints and suitability of the landscape and topography. Preserved trees and shrubs shall be protected.

C. The site plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transition from public to private spaces.

D. When appropriate, the site plan shall provide for the special needs of disabled persons, such as ramps for wheelchairs and Braille signs.

E. The location and number of points of access to the site, interior circulation patterns, separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures shall be harmonious with proposed and neighboring buildings and structures.

F. Surface drainage systems shall be designed to prevent adverse impacts on neighboring properties, streets, or surface and subsurface water quality.

G. Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be designed, located and buffered or screened to minimize adverse impacts on the site and neighboring properties.

H. All above-ground utility installations shall be located to minimize adverse visual impacts on the site and neighboring properties.

I. Specific criteria are outlined for each zone and shall be a required part of the site plan (e.g. lot setbacks, etc.).

J. All exterior lighting shall be shielded so that direct light does not project off-site.

K. Transportation access to the site shall be adequate for the use.
   1. Where applicable, issues including, but not limited to, sight distance, turn and acceleration/deceleration lanes, right-of-way, roadway surfacing and widening, and bicycle and pedestrian connections, shall be identified.
   2. Mitigation for transportation-related impacts shall be required.
   3. Mitigation shall meet applicable County standards in DCC 17.16 and DCC 17.48, applicable Oregon Department of Transportation (ODOT) mobility and access standards, and applicable American Association of State Highway and Transportation Officials (AASHTO) standards.

(Ord. 2018-xxx §x, 2018; Ord. 2010-018 §2, 2010, Ord. 93-043 §§21, 22 and 22A, 1993; Ord. 91-038 §1, 1991; Ord. 91-020 §1, 1991)
Chapter 22.24  LAND USE ACTION HEARINGS

22.24.010. Filing of Staff Report for Hearing.
A. At the time an application that in the judgment of the Planning director requires a hearing is deemed complete, a hearing date shall be set.
B. A staff report shall be completed seven days prior to hearing. If the report is not completed by such time, the hearing shall be held as scheduled, but any party may at the hearing or in writing prior to the hearing request a continuance of the hearing to a date that is at least seven days after the date the initial staff report is complete. Pursuant to DCC 22.24.140(A)(3), grant of a continuance under these circumstances shall be discretionary.
C. A copy of the staff report shall be mailed to the applicant, shall be made available to such other persons who request a copy and shall be filed with the Hearings Body.
D. Oral or written modifications and additions to the staff report shall be allowed prior to or at the hearing.
(Ord. 96-071 §1D, 1996; Ord. 95-045 §11, 1995; Ord. 90-007 §1, 1990)

A. The following shall serve as the hearings body:
   1. Hearings Officer.
   2. Planning Commission, as specified by DCC 22.24.020(C).
   3. Board of County Commissioners, except where an applicable joint management agreement within an acknowledged urban growth boundary specifies a city governing body as the final appeals body.
B. The Hearings Body order shall be as set forth in DCC 22.24.020(A), except that the Board may call up an administrative decision for review without the necessity of an application going before the Hearings Officer.
C. Where the Hearings Officer declines to hear a matter on the grounds of a conflict of interest, the Planning Commission shall substitute for the hearings officer. In the Redmond Urban Area, the initial Hearings Body for a quasi-judicial plan amendment or zone change may at the discretion of the Planning Director be either the Planning Commission or the Hearings Officer. Additionally, in the Redmond
Urban Area, the initial Hearings Body for Declaratory Rulings and revocations of land use approvals may, at the discretion of the Planning Director, be the Hearings Officer, the Redmond Urban Area Planning Commission or the Redmond City Council.

(Ord. 2001-045 §1, 2001; Ord. 2000-003 §1, 2000; Ord. 99-031 §5, 1999; Ord. 98-019 §3, 1998; Ord. 96-071 §1D, 1996; Ord. 95-045 §11A, 1995; Ord. 90-007 §1, 1990)


A. Individual Mailed Notice.
1. Except as otherwise provided for herein, notice of a land use application shall be mailed at least 20 days prior to the hearing for those matters set for hearing, or within 10 days after receipt of an application for those matters to be processed administratively with notice. Written notice shall be sent by mail to the following persons:
   a. The applicant.
   b. Owners of record of property as shown on the most recent property tax assessment roll of property located:
      1. Within 100 feet of the property that is the subject of the notice where any part of the subject property is within an urban growth boundary;
      2. Within 250 feet of the property that is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone, except where greater notice is required under DCC 22.24.030(A)(4) for structures proposed to exceed 30 feet in height; or
      3. Within 750 feet of the property that is the subject of the notice where the subject property is within a farm or forest zone, except where greater notice is required under DCC 22.24.030(A)(4) for structures proposed to exceed 30 feet in height.
   4. Within 1000 feet of the property that is subject of a marijuana production or processing notice where the subject property is within a farm zone.
   c. For a solar access or solar shade exception application, only those owners of record identified in the application as being burdened by the approval of such an application.
   d. The owner of a public use airport if the airport is located within 10,000 feet of the subject property.
   e. The tenants of a mobile home park when the application is for the rezoning of any part or all of a mobile home park.
   f. The Planning Commission.
   g. Any neighborhood or community organization formally recognized by the board under criteria established by the Board whose boundaries include the site.
   h. At the discretion of the applicant, the County also shall provide notice to the Department of Land Conservation and Development.
2. Notwithstanding DCC 22.24.030(A)(1) (b)(1), all owners of property within 250 feet of property that is the subject of a plan amendment application or zone change application shall receive notice.
3. The failure of a property owner to receive mailed notice shall not invalidate any land use approval if the Planning Division can show by affidavit that such notice was given.
4. For structures proposed to exceed 30 feet in height that are located outside of an urban growth boundary, the area for describing persons entitled to notice under DCC 22.24.030(A)(1)(b) shall expand outward by a distance equal to the distance of the initial notice area boundary for every 30 foot height increment or portion thereof.

B. Posted Notice.
1. Notice of a land use action application for which prior notice procedures are chosen shall be posted on the subject property for at least 10 continuous days prior to any date set for receipt of comments. Such notice shall, where practicable, be visible from any adjacent public way.
2. Posted notice of an application for a utility facility line approval shall be by posting the proposed route at intervals of not less than one-half mile. The notice shall be posted as close as practicable to, and be visible from, any public way in the vicinity of the proposed route.

3. Notice of a solar access application shall be posted as near as practicable to each lot identified in the application.

C. Published Notice. In addition to notice by mail and posting, notice of an initial hearing shall be published in a newspaper of general circulation in the County at least 20 days prior to the hearing.

D. Media Notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.


A. All mailed notices of a land use action hearing shall:
1. Describe the nature of the applicant's request and the nature of the proposed uses that could be authorized.
2. List the criteria from the zoning ordinance and the plan applicable to the application at issue.
3. Set forth the street address or easily understood geographical reference to the subject property.
4. State the date, time and location of any hearing or date by which written comments must be received.
5. State that any person may comment in writing and include a general explanation of the requirements for submission of testimony and the procedures for conduct of testimony, including, but not limited to, a party's right to request a continuance or to have the record held open.
6. If a hearing is to be held, state that any interested person may appear.
7. State that failure to raise an issue in person at a hearing or in writing precludes appeal by that person to the Land Use Board of Appeals (LUBA), and that failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to LUBA based on that issue.
8. State the name of a county representative to contact and the telephone number where additional information may be obtained.
9. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost.
10. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost.
11. All mailed notices shall contain the following statement: NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

B. All mailed and published notices for hearings shall contain a statement that recipients may request a copy of the staff report.

C. All mailed and published notices concerning applications necessitating an exception to one of the statewide land use planning goals shall state that a goal exception is proposed and shall summarize the issues in an understandable manner.


Throughout all local land use proceedings, the burden of proof rests on the applicant.

All relevant evidence shall be received.
(Ord. 90-007 §1, 1990)


The Hearings Body may set reasonable time limits on oral testimony.
(Ord. 90-007 §1, 1990)


A. Any interested person may appear and be heard in a land use action hearing, except that in appeals heard on the record, a person must have participated in a previous hearing on the subject application.
B. Any person appearing on the record at a hearing (including appeals) or presenting written evidence in conjunction with an administrative action or hearing shall have standing and shall be a party. A person whose participation consists only of signing a petition becomes a party only if his or her signature is legible and his or her address is clearly written on the petition.
C. Additionally, any owner of property to be burdened by a solar access permit shall be considered a party at every stage of the solar access permit decision process.
(Ord. 96-071 §1D, 1996; Ord. 95-045 §15, 1995; Ord. 90-007 §1, 1990)

22.24.090. Record.

A. A tape record of the hearing shall be made.
B. All exhibits presented shall be marked to show the identity of the person offering the exhibit.
C. Exhibits shall be numbered in the order presented in two categories, proponents and opponents, and shall be dated.
D. When exhibits are introduced, the proponent or opponent exhibit number or letter shall be read into the record.
(Ord. 05-051 §1, 2005; Ord. 90-007 §1, 1990)


Prior to making a decision, the Hearings Body or any member thereof shall not communicate directly or indirectly with any party or his representative in connection with any issue involved in a pending hearing except upon notice and opportunity for all parties to participate. Should such communication - whether written or oral - occur, the Hearings Body member shall:
A. Publicly announce for the record the substance of such communication; and
B. Announce the parties' right to rebut the substance of the ex parte communication during the hearing.
Communication between County staff and the Hearings Body shall not be considered to be an ex parte contact.
(Ord. 90-007 §1, 1990)


A. If the Hearings Body or any member thereof uses personal knowledge acquired outside of the hearing process in rendering a decision, the Hearings Body or member thereof shall state the substance of that knowledge on the record and allow all parties the opportunity to rebut such statement on the record.
B. For the purposes of DCC 22.24.105, a site visit by the Hearings Body shall be deemed to fall within this rule. After the site visit has concluded, the Hearings Body must disclose its observations and conclusions gained from the site visit in order to allow for rebuttal by the parties.
(Ord. 95-045 §16, 1995)
22.24.110. Challenge for Bias, Prejudgment or Personal Interest.

Prior to or at the commencement of a hearing, any party may challenge the qualification of the Hearings Body, or a member thereof, for bias, prejudgment or personal interest. The challenge shall be made on the record and be documented with specific reasons supported by facts. Should qualifications be challenged, the Hearings Body or the member shall disqualify itself, withdraw or make a statement on the record of its capacity to hear. A planning commission member with a conflict identified under ORS 215.035 or 215.244 must disqualify him or herself after disclosure.

(Ord. 90-007 §1, 1990)

22.24.120. Hearings Procedure.

A hearing shall be conducted as follows:
A. The Hearings Body shall explain the purpose of the hearing and announce the order of proceedings, including reasonable time limits on presentations by parties.
B. A statement by the Hearings Body regarding pre-hearing contacts, bias, prejudice or personal interest shall be made.
C. Any facts received, noticed or recognized outside of the hearing shall be stated for the record.
D. Challenges to the Hearings Body's qualifications to hear the matter shall be stated and challenges entertained.
E. The Hearings Body shall list applicable substantive criteria, explain that testimony and evidence must be directed toward that criteria or other criteria in the comprehensive plan or land use regulations that the person believes to apply to the decision, and that failure to address an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond precludes appeal to LUBA based on that issue.
F. Order of presentation:
   1. Open the hearing.
   2. Staff report.
   3. Proponents' presentation.
   4. Opponents' presentation.
   5. Proponents' rebuttal.
   6. Opponents' rebuttal may be allowed at the Hearings Body's discretion.
   7. Staff comment.
   8. Questions from or to the chair may be entertained at any time at the Hearings Body's discretion.
   9. Close the hearing.
G. The record shall be available for public review at the hearing.
H. A form of preliminary statement incorporating the provisions of DCC 22.24.120 is set forth as Appendix A to DCC Title 22 for use by the Board of County Commissioners.

(Ord. 90-007 §1, 1990)

22.24.125. Setting the Hearing.

A. After an application is deemed accepted a hearing date shall be set. A hearing date may be changed by the County staff, or the Hearings Body up until the time notice of the hearing is mailed. Once the notice of hearing is mailed any changes in the hearing date shall be processed as a continuance in accordance with DCC 22.24.140.
B. If an applicant requests that a hearing date be changed, such request shall be granted only if the applicant agrees that the extended time period for the hearing shall not count against the 150-day time limit set forth in DCC 22.20.040.

(Ord. 99-031 §7, 1999; Ord. 96-071 §1D, 1996; Ord. 95-045 §17, 1995)

A. Except as set forth herein, the record shall be closed to further testimony or submission of further argument or evidence at the end of the presentations before the Hearings Body.

B. If the hearing is continued or the record is held open under DCC 22.24.140, further evidence or testimony shall be taken only in accordance with the provisions of DCC 22.24.140.

C. Otherwise, further testimony or evidence will be allowed only if the record is reopened under DCC 22.24.160.

D. An applicant shall be allowed, unless waived, to submit final written arguments in support of its application after the record in the initial hearing has closed within such time limits as the Hearings Body shall set. The Hearings Body shall allow applicant at least seven days to submit its argument, which time shall be counted against the 150-day clock.

(Ord. 2006-010 §9, 2006; Ord. 99-031 §8, 1999; Ord. 96-071 §1D, 1996; Ord. 95-045 §19, 1995; Ord. 90-007 §1, 1990)

22.24.140. Continuances or Record Extensions.

A. Grounds.
   1. Prior to the date set for an initial hearing, an applicant shall receive a continuance upon any request. If a continuance request is made after the published or mailed notice has been provided by the County, the Hearings Body shall take evidence at the scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance.
   2. Any party is entitled to a continuance of the initial evidentiary hearing or to have the record left open in such a proceeding in the following instances:
      a. Where additional documents or evidence are submitted by any party; or
      b. Upon a party's request made prior to the close of the hearing for time to present additional evidence or testimony.
      For the purposes of DCC 22.24.140(A)(2), "additional documents or evidence" shall mean documents or evidence containing new facts or analysis that are submitted after notice of the hearing.
   3. The grant of a continuance or record extension in any other circumstance shall be at the discretion of the Hearings Body.

B. Except for continuance requests made under DCC 22.24.140(A)(1), the choice between granting a continuance or leaving the record open shall be at the discretion of the Hearings Body. After a choice has been made between leaving the record open and granting a continuance, the hearing shall be governed thereafter by the provisions that relate to the path chosen.

C. Continuances.
   1. If the Hearings Body grants a continuance of the initial hearing, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial hearing.
   2. An opportunity shall be provided at the continued hearing for persons to rebut new evidence and testimony received at the continued hearing.
   3. If new written evidence is submitted at the continued initial hearing, any person may request prior to the conclusion of the continued hearing that the record be left open for at least seven days to allow submittal of additional written evidence or testimony. Such additional written evidence or testimony shall be limited to evidence or testimony that rebuts the new written evidence or testimony.
   4. If the hearing is other than an initial hearing, any continuances are at the discretion of the hearings body.
D. Leaving record open.
   If at the conclusion of the initial hearing the Hearings Body leaves the record open for additional written evidence or testimony, the record shall be left open for at least 14 additional days, allowing at least the first seven days for submittal of new written evidence or testimony and at least seven additional days for response to the evidence received while the record was held open. Written evidence or testimony submitted during the period the record is held open shall be limited to evidence or testimony that rebuts previously submitted evidence or testimony.

E. A continuance or record extension granted under DCC 22.24.140 shall be subject to the 150-day time limit unless the continuance or extension is requested or otherwise agreed to by the applicant. When the record is left open or a continuance is granted after a request by an applicant, the time period during which the 150-day clock is suspended shall include the time period made available to the applicant and any time period given to parties to respond to the applicant's submittal.

(Ord. 99-031 §9, 1999; Ord. 96-071 §1D, 1996; Ord. 95-045 §18, 1995; Ord. 91-013 §9, 1991; Ord. 90-007 §1, 1990)

22.24.150. Objections to Jurisdiction, Procedure, Notice or Qualifications.

Any objections not raised prior to the close of oral testimony are waived. Parties alleging procedural error shall have the burden of proof at LUBA as to whether the error occurred and whether the error has prejudiced the party's substantial rights.

(Ord. 95-045 §20, 1995; Ord. 90-007 §1, 1990)

22.24.160. Reopening the Record.

A. The Hearings Body may at its discretion reopen the record, either upon request or on its own initiative. The Hearings Body shall not reopen the record at the request of an applicant unless the applicant has agreed in writing to an extension or a waiver of the 150-day time limit.

B. Procedures.
   1. Except as otherwise provided for in DCC 22.24.160, the manner of testimony (whether oral or written) and time limits for testimony to be offered upon reopening of the record shall be at the discretion at the Hearings Body.
   2. The Hearings Body shall give written notice to the parties that the record is being reopened, stating the reason for reopening the record and how parties can respond. The parties shall be allowed to raise new issues that relate to the new evidence, testimony or criteria for decision-making that apply to the matter at issue.

(Ord. 99-031 §10, 1999; Ord. 96-071 §1D, 1996; Ord. 95-045 §21, 1995)
Chapter 22.32  APPEALS

22.32.010. Who May Appeal.
22.32.015. Filing Appeals.
22.32.020. Notice of Appeal.
22.32.022. Determination of Jurisdictional Defects.
22.32.024. Transcript Requirement.
22.32.025. Consolidation of Multiple Appeals.
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22.32.030. Hearing on Appeal.
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22.32.040. Land Use Action Hearings on Appeal From the Hearings Officer.
22.32.050. Development Action Appeals.
22.32.060. Rehearing.
22.32.070. Remands.
22.32.080. Withdrawal of an Appeal.

22.32.010. Who may appeal.

A. The following may file an appeal:
   1. A party;
   2. In the case of an appeal of an administrative decision without prior notice, a person entitled to notice, a person adversely affected or aggrieved by the administrative decision, or any other person who has filed comments on the application with the Planning Division; and
   3. A person entitled to notice and to whom no notice was mailed. A person who, after such notices were mailed, purchases property to be burdened by a solar access permit shall be considered a person to whom notice was to have been mailed; and
   4. A city, concerning an application within the urban area for that city, whether or not the city achieved party status during the proceeding.

B. A person to whom notice is mailed is deemed notified even if notice is not received.

(Ord. 95-071 §2, 1995; Ord. 95-045 §31, 1995; Ord. 90-007 §1, 1990)

22.32.015. Filing appeals.

A. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division and an appeal fee.

B. Unless a request for reconsideration has been filed, the notice of appeal and appeal fee must be received at the offices of the Deschutes County Community Development Department no later than 5:00 PM on the twelfth day following mailing of the decision. If a decision has been modified on reconsideration, an appeal must be filed no later than 5:00 PM on the twelfth day following mailing of the decision as modified. Notices of Appeals may not be received by facsimile machine.

C. Unless a request for reconsideration has been filed for a marijuana production or processing administrative decision, the notice of appeal and appeal fee must be received at the offices of the Deschutes County Community Development Department no later than 5:00 PM on the fifteenth day following mailing of the decision.

D. If the Board of County Commissioners is the Hearings Body and the Board declines review, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the County in reviewing the appeal. When the Board declines review and the decision is subsequently appealed to LUBA, the appeal fee may be applied toward the cost of preparing a transcript of the lower Hearings Body’s decision.
The appeal fee shall be paid by method that is acceptable to Deschutes County.


22.32.020. Notice of Appeal.

Every notice of appeal shall include:
A. A statement raising any issue relied upon for appeal with sufficient specificity to afford the Hearings Body an adequate opportunity to respond to and resolve each issue in dispute.
B. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons why the Board should review the lower Hearings Body's decision.
C. If the Board of County Commissioners is the Hearings Body and de novo review is desired, a request for de novo review by the Board stating the reasons why the Board should provide de novo review as provided in DCC 22.32.030.

(Ord. 95-045 §35, 1995; Ord. 94-042 §3, 1994; Ord. 91-013 §11, 1991; Ord. 90-007 §1, 1990)

22.32.022. Determination of Jurisdictional Defects.

A. Any failure to conform to the requirements of DCC 22.32.015 and 22.32.020 shall constitute a jurisdictional defect.
B. Determination of jurisdictional defects in an appeal shall be made by the Hearings Body to which an appeal has been made.

(Ord. 96-071 §1G, 1996; Ord. 95-045 §33, 1995)

22.32.024. Transcript Requirement.

A. Except as otherwise provided in DCC 22.32.024, appellants shall provide a complete transcript of any hearing appealed from, from recorded magnetic tapes provided by the Planning Division.
B. Appellants shall submit to the Planning Division the transcript no later than the close of the day five days prior to the date set for a de novo appeal hearing or, in on-the-record appeals, the date set for receipt of written arguments. Unless excused under DCC 22.32.024, an appellant's failure to provide a transcript shall cause the Board to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower Hearings Body's decision to become final.
C. An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by: (1) the inability of the Planning Division to supply appellant with a magnetic tape or tapes of the prior proceeding; or (2) defects on the magnetic tape or tapes of the prior proceeding that make it not reasonably possible for applicant to supply a transcript. Appellants shall comply to the maximum extent reasonably and practicably possible.
D. Notwithstanding any other provisions in DCC 22.32, the appeal hearings body may, at any time, waive the requirement that the appellant provide a complete transcript for the appeal hearing.

(Ord. 2015-017 §3, 2015; Ord. 96-071 §1G, 1996)

22.32.025. Consolidation of Multiple Appeals.

A. If more than one party files a notice of appeal on a land use action decision, the appeals shall be consolidated and noticed and heard as one proceeding.
B. To the extent its costs are less than the duplicate appeal fees received when multiple appeals are filed, the Planning Division may refund a portion of the appeal fees to the appellants in an equitable manner.
C. In instances of multiple appeals where separate appellants have asked for a differing scope of review, any grant of de novo review shall control over a separate request for a more limited review on appeal.

(Ord. 96-071 §1G, 1996; Ord. 95-045 §34, 1995)
22.32.027. Scope of Review.

A. Before Hearings Officer or Planning Commission. The review on appeal before the Hearings Officer or Planning Commission shall be de novo.

B. Before the Board.
   1. Review before the Board, if accepted, shall be on the record except as otherwise provided for in DCC 22.32.027.
   2. The Board may grant an appellant's request for a de novo review at its discretion after consideration of the following factors:
      a. Whether hearing the application de novo could cause the 150-day time limit to be exceeded; and
      b. If the magnetic tape of the hearing below, or a portion thereof, is unavailable due to a malfunctioning of the recording device during that hearing, whether review on the record would be hampered by the absence of a transcript of all or a portion of the hearing below; or
      c. Whether the substantial rights of the parties would be significantly prejudiced without de novo review and it does not appear that the request is necessitated by failure of the appellant to present evidence that was available at the time of the previous review; or
      d. Whether in its sole judgment a de novo hearing is necessary to fully and properly evaluate a significant policy issue relevant to the proposed land use action.

   For the purposes of DCC 22.32.027, if an applicant is an appellant, factor DCC 22.32.027(B)(2)(a) shall not weigh against the appellant's request if the applicant has submitted with its notice of appeal written consent on a form approved by the County to restart the 150-day time clock as of the date of the acceptance of applicant's appeal.

   3. Notwithstanding DCC 22.32.027(B)(2), the Board may decide on its own to hear a timely filed appeal de novo.

   4. The Board may, at its discretion, determine that it will limit the issues on appeal to those listed in an appellant's notice of appeal or to one or more specific issues from among those listed on an applicant's notice of appeal.

(Ord. 99-031 §16, 1999; Ord. 96-071 §1G, 1996)

22.32.030. Hearing on Appeal.

A. The appellant and all other parties to the decision below shall be mailed notice of the hearing on appeal at least 10 days prior to any de novo hearing or deadline for submission of written arguments.

B. Except as otherwise provided in DCC 22.32, the appeal shall be heard as provided in DCC 22.24. The applicant shall proceed first in all de novo appeals.

C. The order of Hearings Body shall be as provided in DCC 22.24.020.

D. The record of the proceeding from which appeal is taken shall be a part of the record on appeal.

E. The record for a review on the record shall consist of the following:
   1. A written transcript of any prior hearing;
   2. All written and graphic materials that were part of the record below;
   3. The Hearings Body decision appealed from;
   4. Written arguments, based upon the record developed below, submitted by any party to the decision;
   5. Written comments submitted by the Planning Commission or individual planning commissioners, based upon the record developed below; and
   6. A staff report and staff comment based on the record.

   No oral evidence, argument or comment other than staff comment based on the record shall be taken. The Board shall not consider any new factual information.

(Ord. 97-008 §1, 1997; Ord. 96-071 §1G, 1996; Ord. 95-045 §36, 1995; Ord. 90-007 §1, 1990)
22.32.035. Declining Review.

Except as set forth in DCC 22.28.030, when there is an appeal of a land use action and the Board of County Commissioners is the Hearings Body:

A. The Board may on a case-by-case basis or by standing order for a class of cases decide at a public meeting that the decision of the lower Hearings Body of an individual land use action or a class of land use action decisions shall be the final decision of the County.

B. If the Board of County Commissioners decides that the lower Hearings Body decision shall be the final decision of the County, then the Board shall not hear the appeal and the party appealing may continue the appeal as provided by law. In such a case, the County shall provide written notice of its decision to all parties. The decision on the land use application becomes final upon mailing of the Board's decision to decline review.

C. The decision of the Board of County Commissioners not to hear a land use action appeal is entirely discretionary.

D. In determining whether to hear an appeal, the Board of County Commissioners may consider only:
   1. The record developed before the lower Hearings Body;
   2. The notice of appeal; and
   3. Recommendations of staff.

(Ord. 96-071 §1G, 1996; Ord. 95-045 §37, 1995; Ord. 94-042 §1, 1994)

22.32.040. Land Use Action Hearings on Appeal From the Hearings Officer.

Redundant testimony shall not be allowed.

(Ord. 90-007 §1, 1990)

22.32.050. Development Action Appeals.

Notice of the hearing date set for appeal shall be sent only to the applicant. Only the applicant, his or her representatives, and his or her witnesses shall be entitled to participate. Continuances shall be at the discretion of the Hearings Body, and the record shall close at the end of the hearing.

(Ord. 90-007 §1, 1990)

22.32.060. Rehearing.

Rehearings shall not be allowed.

(Ord. 90-007 §1, 1990)

22.32.070. Remands.

Applications shall not be remanded to a lower level Hearings Body after appeal.

(Ord. 90-007 §1, 1990)

22.32.080. Withdrawal of an Appeal.

An appeal may be withdrawn in writing by an appellant at any time prior to the rendering of a final decision. Subject to the existence of other appeals on the same application, in such event the appeal proceedings shall terminate as of the date the withdrawal is received. An appeal may be withdrawn under DCC 22.32.080 regardless of whether other non-filing parties have relied upon the appeal filed by the appellant.

(Ord. 95-045 §38, 1995)