

# Marijuana Text Amendments

File No.: 247-18-000540-TA  
Applicant: Deschutes County



BOARD OF COUNTY COMMISSIONERS PUBLIC HEARING  
AUGUST 28, 2018

# Public Hearing Procedure

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- Board's recommendation on this application will be based upon the record, staff report, and testimony and evidence presented at this hearing.
- Hearing will be conducted in the following order:
  - Staff/applicant will provide a brief report.
  - Opponents and proponents will testify and present evidence.
  - Other interested persons will then present testimony or evidence.
  - Staff/applicant will provide final comments.



# Public Hearing Procedure

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- Questions to and from the Chair may be entertained at any time at the Chair's discretion.
- Prior to the commencement of the hearing any party may challenge the qualifications of any Commissioner for conflict of interest. This challenge must be documented with specific reasons supported by facts.
- At this time, do any members of the Commission need to set forth any information that may be perceived as a conflict of interest?
- If hearing none, the public hearing is open.



# Background: State Law

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- **Ballot Measure 91 (2014)** legalized the production, possession, distribution and use of recreational marijuana in certain amounts
- **HB 3400 (2015)** allowed local governments to adopt reasonable regulations on production, processing, wholesale and retail sale



# Background: State Law

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- 2016: Legislature clarified that medical and recreational marijuana are farm crops
- Allowed marijuana to be grown on land zoned for exclusive farm use subject to local time, place and manner restrictions



# Deschutes County Distinguishing Land Use Characteristics

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- Agricultural land is challenge-ridden: poor soils, low rainfall, short growing season
- Commercial farm study (1992) resulted in some farm lot sizes that are smaller than 80 acres required by State—LCDC approved
- Introduction of marijuana production on these lands provides additional economic opportunities but also raises compatibility issues



# Background: Deschutes County

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- 2016: Deschutes County adopted marijuana regulations
- Board committed to re-evaluating the regulations after one year
- Based on ensuing experience, Board determined further refinements to regulation and enforcement were necessary
- Eight work sessions were conducted by the Board to develop changes



# Background: Deschutes County

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- August 9: Work session with Planning Commission
- PC functioned as advisory body at end of amendment development process
- Interpretive questions focused on necessity to minimize ambiguous language



# Measure 56 Notice

## Deschutes County Marijuana Text Amendments



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NOTICE OF A PROPOSED LAND  
USE REGULATION

DESCHUTES COUNTY  
MARIJUANA TEXT AMENDMENTS

PROPOSAL

Amend Deschutes County Code:

- Chapter 9.12, Right to Farm
- Chapter 18.24, Redmond Urban Reserve Area Combining Zone
- Chapter 18.116, Supplementary Provisions
- Chapter 18.124, Site Plan Review
- Chapter 22.24, Land Use Action Hearings
- Chapter 22.32, Appeals

BACKGROUND

Following the passage of Ballot Measure 91 (2014), legalizing the sale and recreational use of marijuana, and HB 3400 (2015), refining the implementation of marijuana legalization, the Board of County Commissioners adopted marijuana regulations in June 2016. Throughout the adoption process, the Board committed to evaluating the regulations after they had been in place for a year to determine if they were working as intended. The Board reiterated this commitment to the 2017 Legislature. Since the release of the Marijuana Regulatory Assessment on April 2, 2018, the Board conducted eight work sessions to discuss changes to the regulations and enforcement of marijuana production on rural lands.

Based on the issues discussed during the work sessions, the Board of County Commissioners will consider substantive changes to certain sections of Deschutes County Code (DCC), specific to marijuana production. The proposed amendments are more restrictive than Deschutes County's existing marijuana regulations.

WHY AM I RECEIVING  
THIS NOTICE?

State law (Oregon Revised Statute 215.503) requires a notice like this one be mailed to landowners when a change in land use laws might limit the use of their property. The law requires this wording and wording below in all such notices. Despite the cautionary language, not all property owners in Deschutes County will be affected by the proposed notice.

This is to notify you that Deschutes County has proposed a land use regulation that may affect the permissible use of your property and other properties.

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.

Board of Commissioners Public Hearing

When: Tuesday, August 28, 2018,  
2:00 - 5:00 p.m., reconvening at 6:00 p.m.

Where: Deschutes Services Center, Barnes & Sawyer Rooms, 1300 Wall Street, Bend

MEETING LOCATION

The meeting will take place at the Deschutes Services Center, Barnes & Sawyer Rooms (first floor) at 1300 NW Wall Street, Bend.

Although this notice has been mailed to landowners whose land is zoned EFU or MUA-10 whose properties are larger than five acres, any interested person may attend, be represented by counsel, or submit written signed comments (testimony).

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.

View the Text Amendments at:  
[www.deschutes.org/marijuana](http://www.deschutes.org/marijuana)

Deschutes County Community Development Department  
117 NW Lafayette Ave., Bend, OR 97703

For questions concerning the amendments, call  
(541) 617-4738  
Contact: Tanya Saltzman, Associate Planner  
[tanya.saltzman@deschutes.org](mailto:tanya.saltzman@deschutes.org)

- Ballot Measure 56 (1998) requires cities and counties to notify property owners in affected zones where uses may be limited
- August 8: Mailed to approximately 5,000 property owners with properties 5 acres or larger in EFU and MUA-10 zones
- Text amendments available on website
- Dedicated phone line for Q&A



# Proposed Amendments

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Deschutes County Code (DCC) chapters with proposed changes:

- 9.12, Right to Farm
- 18.24, Redmond Urban Reserve Area Combining Zone
- 18.116, Supplementary Provisions
- 18.124, Site Plan Review
- 22.24, Land Use Action Hearings
- 22.32, Appeals



# Proposed Amendments: Highlights

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- **Removes** marijuana production and processing from the Multiple Use Agricultural Zone
- **Increases minimum separation distances** between production sites and certain types of other uses
- **Increases requirements** for odor and noise mitigation
- **Increases requirements** for documentation of water usage
- **Increases public notifications** to surrounding property owners
- **Increases time to appeal** decisions



# Proposed Amendments: Right to Farm

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## DCC Chapter 9.12, Right to Farm

DCC 9.12.020 - Clarified that the 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.



**Proposed Amendments:  
Redmond Urban Reserve Area Combining Zone**

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**DCC Chapter 18.24, Redmond Urban Reserve Area  
Combining Zone**

DCC 18.24.030 – Prohibits marijuana production and processing in the Redmond Urban Reserve Area Combining Zone.



# Proposed Amendments: MUA-10 Zone

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## **Current code**

Allows marijuana production and processing in MUA-10 zone

## **Proposed code**

Does not allow marijuana production and processing in MUA-10 zone



# Proposed Amendments: Separation Distances

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## Current code

Requires 1,000-foot separation distance from:

- Public and private schools
- Child care/preschool
- Youth activity centers
- National monuments
- State parks
- Public lands

## Proposed code

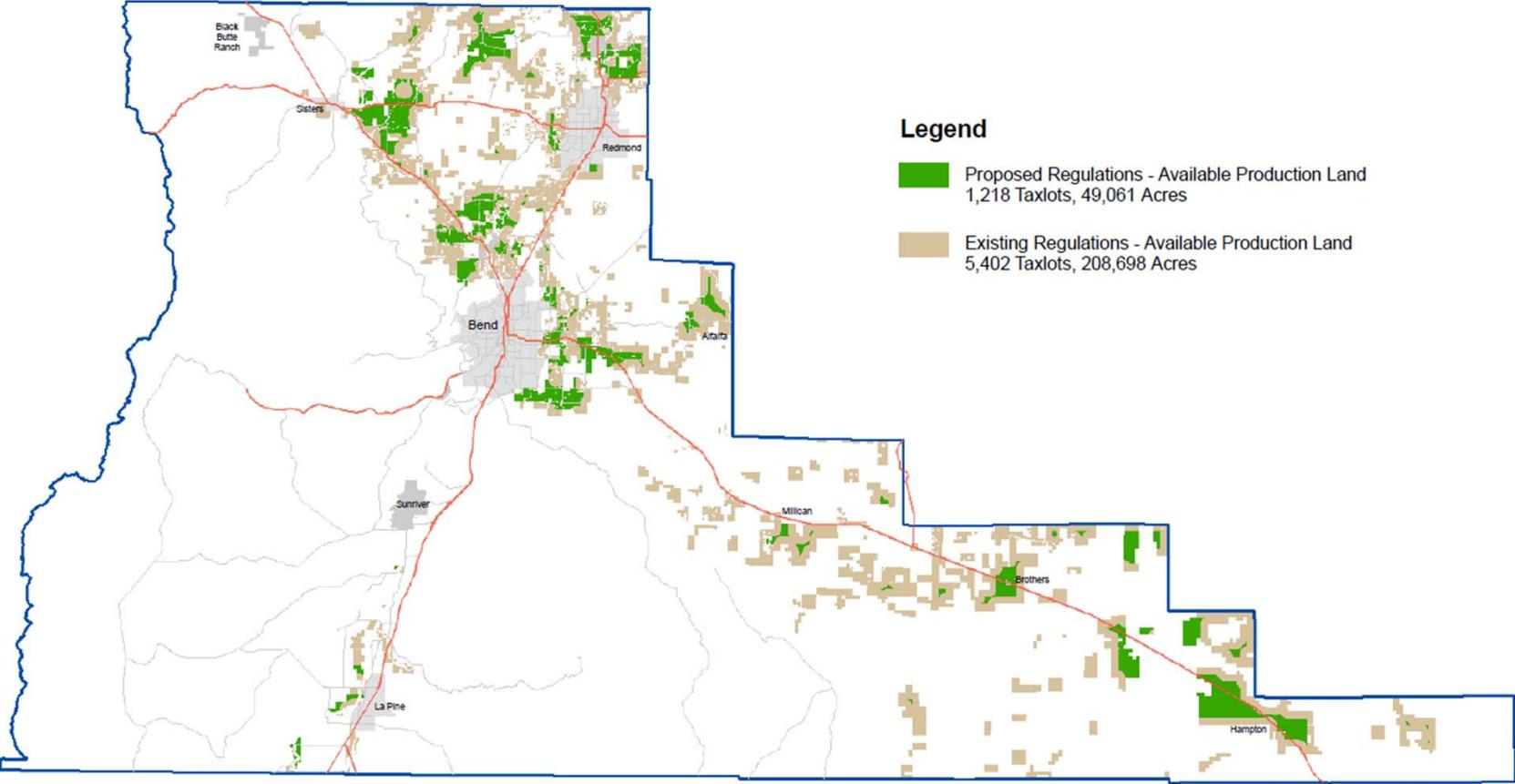
Changes separation distance to one-half mile (2,640 feet)

Adds to the separation distances:

- Redmond Urban Reserve Area
- Federal lands
- Local governments that have opted out
- Existing production sites



# Change in Number of Potential Production Sites



### Legend

- Proposed Regulations - Available Production Land  
1,218 Taxlots, 49,061 Acres
- Existing Regulations - Available Production Land  
5,402 Taxlots, 208,698 Acres



# Proposed Amendments: Setback Distances

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## Current code

- 100-foot setback from lot line
- 300-foot setback from off-site dwelling

## Proposed code

- 200-foot setback from lot line
- 500-foot setback from off-site dwelling
- Removed setback exception for demonstrating that reduced setbacks provide equal/greater mitigation.



# Proposed Amendments: Lighting

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## Current code

Indoor lighting shall not be visible from 7:00 p.m. to 7:00 a.m.

## Proposed code

Indoor lighting shall not be visible from sundown to sunup



# Proposed Amendments: Odor

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## Current code

- Requires odor control system to have report submitted by licensed OR mechanical engineer demonstrating efficacy of system
- Specifies fans' cubic feet per minute (CFM) and filters



# Proposed Amendments: Odor

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## Proposed code

- Requires odor control methodology to be independently researched and tested
- Requires documentation of maintenance, testing, contingency protocols, responsible parties



# Proposed Amendments: Noise

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## Current code

Sustained noise shall not exceed 30 dB(A) at property line between 10:00 p.m. and 7:00 a.m.



# Proposed Amendments: Noise

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## Proposed code

- Clarifies definition of “sustained noise” – noise lasting more than two continuous minutes in one-hour period
- Requires documentation of noise control plan’s methodology, maintenance, testing, contingency protocols, responsible parties, mechanical engineer qualifications



# Proposed Amendments: Water Usage

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## Current code

Requires:

- Copy of a water right permit, certificate or other water use authorization; or
- Statement that water is supplied from a public or private provider; or
- Proof from OWRD (Oregon Water Resources Department) that water to be used does not require water right



# Proposed Amendments: Water Usage

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## Proposed code

Requires:

- OWRD certificate, permit, or other authorization;
- Provider Will Serve statement referencing certificated water right to be utilized, and Will Haul statement from water hauler; or
- Proof from OWRD that a certificated water right is not required



# Proposed Amendments: Water Usage

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## Proposed code, continued

- Sites with 5,000 square feet or more of mature canopy require water meter for on-site commercial wells
- Requires statement of annual water use for annual reporting



# Proposed Amendments: Utilities

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## Current code

Requires statements from utility companies stating they are able and willing to serve the operation

## Proposed code

- Requires utility to state whether system upgrades will be required
- If so, use may not be served until upgrades are completed



# Proposed Amendments: Waste Disposal

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## Current code

Requires marijuana waste to be stored in secured receptacle

## Proposed code

Adds required statement describing how water runoff is being addressed



# Proposed Amendments: Inspections

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## Current code

Requires annual report documenting:

- Compliance with land use permits
- Fire/health/safety/wastewater/building codes
- State of Oregon licensing requirements



# Proposed Amendments: Inspections

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## Proposed code

- County may randomly inspect site 4 times per year to ascertain effectiveness of odor control and compliance with conditions of approval
- One of the four inspections must be prior to initiation of use
- Statement of annual water use is required as part of annual report



# Proposed Amendments: Inspections

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## **Marijuana production registered by OHA prior to June 1, 2016**

Properties licensed before June 1, 2016 are subject to the annual inspection regulations from 18.116.330(D)(8) once site locations are identified or otherwise disclosed by the State of Oregon



# Proposed Amendments: Sites licensed by OHA

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## **Marijuana production registered by OHA on or after June 1, 2016**

Requirements of DCC 18.116.330(A-B) (odor, noise, water, etc.) apply to new production registered by OHA on or after June 1, 2016



# Proposed Amendments: Site Plan Review

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## DCC Chapter 18.124, Site Plan Review

DCC 18.124.060 – Added a provision that 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.



# Proposed Amendments: Land Use Action Hearings

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## Current code

Written notice of a land use application must be sent to property owners within 750 feet when subject property is in a farm or forest zone

## Proposed code

Added required notice to property owners within 1,000 feet of marijuana production or processing



# Proposed Amendments: Appeals

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## Current code

Notice of appeal and appeal fee must be received no later than the **twelfth day** following mailing of the decision

## Proposed code

Allows **fifteen days** for an appeal of a marijuana production or processing decision.



# Public Input

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As of August 28, 2018:

- Eight in support (three with additional suggestions)
- One in opposition
- Two with general comments



# Thank You

## Options for Next Steps:

- Continue the hearing to a date certain;
- Close the hearing and leave the written record open to a date certain; or
- Close the hearing, and commence deliberations.

