

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: 11/10/15

Approximate Start Time: 2:30 p.m.

Approximate Length: 90 minutes

Presentation Title: Planning Commission Recommendations on ZDO-254, Proposed Zoning and Development Ordinance Amendments on Marijuana-Related Land Uses

Department: Department of Transportation and Development, Planning and Zoning Division

Presenters: Mike McCallister, Planning Director; Jennifer Hughes, Principal Planner; Nate Boderman, County Counsel

Other Invitees: Barb Cartmill, DTD Director; Dan Chandler, Strategic Policy Administrator; Ellen Rogalin, Community Relations Specialist

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Staff is requesting that the Board of County Commissioners (BCC) review and discuss the Planning Commission's recommendations for ZDO-254, Marijuana-Related Land Uses.

EXECUTIVE SUMMARY:

The Planning Commission held a public hearing on ZDO-254, Marijuana-Related Land Use Issues, at 6 p.m. on Monday, October 26, at Abernethy Center in downtown Oregon City. Approximately 400 people attended, nearly 100 signed up to testify and 53 did testify that evening.

The hearing was continued at 6 p.m., Monday, November 2, for people who had signed up on the 26th but not had a chance to speak. Approximately 45 people attended the November 2 meeting and eight people testified. After the testimony, the hearing was closed and the Planning Commission began deliberating.

Those deliberations are scheduled to be completed at the second continuation of the hearing, set for 6:30 p.m., Monday, November 9, in the Development Services Building. No additional testimony is being accepted by the Planning Commission.

Because the Planning Commission will not complete its work until late on November 9, staff will not be able to share the Planning Commission's recommendations with the BCC until November 10. However, the following attached documents provide background information that informed the Planning Commission recommendations:

- *Staff Report to the Planning Commission, Oct. 20, 2015*
- *Overview of Second Draft of Proposed Marijuana Land Use Regulations for Clackamas County, Oct. 14, 2015*
- *File ZDO-254, Proposed Zoning and Development Ordinance Amendments: 841 Marijuana Production, Processing, and Retailing, Oct. 14, 2015*
- List and brief summary of exhibits included in the Planning Commission public hearing record, Nov. 2, 2015

At the study session on November 10, we will provide an updated overview of the draft marijuana land use regulations based on the Planning Commission's recommendations and a concise list of the key issues in the regulations, including the staff recommendation and the Planning Commission recommendation for each.

FINANCIAL IMPLICATIONS:

None at this time. In the future, there is the potential for additional costs related to enforcement and public safety; and the potential for additional revenue from the county's share of state tax revenue from marijuana sales.

LEGAL/POLICY REQUIREMENTS:

The draft regulations have been reviewed by county counsel and considered in light of other county ordinances, state laws and proposed marijuana regulations being drafted by the Oregon Liquor Control Commission (for recreational marijuana) and the Oregon Health Authority (for medical marijuana).

PUBLIC/GOVERNMENTAL PARTICIPATION:

The county's process, documents and actions related to developing draft marijuana-related land use regulations have been shared extensively with the public, cities in the county and the state through a dedicated website, social media, news releases, emails, presentations at community meetings, and articles in *Citizen News* and the county's e-newsletter.

OPTIONS:

1. Discuss the Planning Commission's recommendations and direct staff to publicize them to the public to respond to through written and oral public testimony.
2. Discuss the Planning Commission's recommendations, propose amendments to those recommendations, and direct staff to publicize both the Planning Commission's recommendations and the BCC amendments to the public to respond to through written and oral public testimony.
3. Discuss the Planning Commission's recommendations, propose amendments to those recommendations, and direct staff to publicize the draft regulations with the

BCC amendments to the public to respond to through written and oral public testimony.

RECOMMENDATION:

Staff recommends Option 2: Discuss the Planning Commission's recommendations, propose amendments to those recommendations, and direct staff to publicize both the Planning Commission's recommendations and the BCC amendments to the public to respond to through written and oral public testimony.

ATTACHMENTS:

- A. *Staff Report to the Planning Commission, Oct. 20, 2015*
- B. *Overview of Second Draft of Proposed Marijuana Land Use Regulations for Clackamas County, Oct. 14, 2015*
- C. *File ZDO-254, Proposed Zoning and Development Ordinance Amendments: 841 Marijuana Production, Processing, and Retailing, Oct. 14, 2015*
- D. List and brief summary of exhibits included in the Planning Commission public hearing record, Nov. 2, 2015

SUBMITTED BY:

Division Director/Head Approval Mike McCallister 11-4-15
Department Director/Head Approval M.B. Cartmell 11-4-15
County Administrator Approval _____

For information on this issue or copies of attachments, please contact Mike McCallister @ 503-742-4522.



MIKE McCALLISTER
PLANNING AND ZONING DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

STAFF REPORT

TO: Planning Commission

FROM: Jennifer Hughes, Principal Planner

DATE: October 20, 2015

RE: File ZDO-254, Proposed Zoning and Development Ordinance Amendments—
Marijuana-Related Land Uses

BACKGROUND

The growing and processing of medical marijuana has been permitted in Oregon since the effective date of the Oregon Medical Marijuana Act, passed by the voters in 1998. Retail medical marijuana dispensaries have been permitted since 2014. In November 2014, Oregon voters approved Measure 91, legalizing the use of marijuana for recreational purposes. In 2015, the State Legislature approved five bills that relate to recreational and medical marijuana, the most significant of which from a land-use perspective is House Bill 3400. In July, the Board of County Commissioners agreed to proceed with considering new or amended land use regulations for recreational and medical marijuana facilities, to be effective by January 2016.

Recreational marijuana became legal for personal use in Oregon on July 1, 2015. The Oregon Liquor Control Commission (OLCC) is required to adopt administrative rules by January 1, 2016, to administer and implement the law to regulate recreational marijuana purchase, sale, production, processing, transportation and delivery. The OLCC will begin receiving license applications by January 4, 2016, to produce, process, wholesale and retail recreational marijuana. Medical marijuana production, processing and retailing are regulated by the Oregon Health Authority (OHA) with changes to the existing state law in these areas set to take effect on March 1, 2016.

State law provides for four categories of OLCC-licensed, marijuana-related uses—recreational marijuana production, recreational marijuana processing, recreational marijuana wholesaling and recreational marijuana retailing—and three categories of OHA-registered, marijuana-related uses—medical marijuana production, medical marijuana processing and medical marijuana dispensaries.

The county may not completely prohibit any of the defined types of marijuana-related land uses without a vote of the people. However, state law gives the county the authority to adopt “reasonable regulations” regarding these uses.

The county is responsible for regulating land uses, including those related to recreational and medical marijuana, pursuant to the Zoning and Development Ordinance (ZDO). Currently, marijuana production, processing and sale are no different than any other land use when it comes to administering the ZDO because no standards specific to marijuana-related uses have been adopted. As with other land uses, the zoning districts where marijuana-related uses may locate are identified based on characteristics of the use (growing, processing, wholesaling, retailing or a combination thereof). Medical marijuana-related uses have been regulated in the same manner as other similar uses under the ZDO since medical marijuana was legalized in the late 1990s. Recreational marijuana-related use, while they may be permissible under the construct of the ZDO, cannot legally operate until such time as the OLCC issues a license for each facility.

Following the legalization of medical marijuana dispensaries in Oregon in 2014, the county adopted a “time, place and manner (TPM)” ordinance for marijuana retailers in April 2015. This ordinance is part of the business regulations of the County Code, rather than part of the ZDO. It is anticipated that the TPM ordinance will be repealed if related regulations are added to the ZDO as proposed under File ZDO-254. Many of the TPM standards are proposed to be moved to the ZDO, though editing of the text and some substantive changes are proposed.

PROPOSAL

This is a legislative text amendment to the Clackamas County Zoning and Development Ordinance (ZDO).

The proposal is to define four types of marijuana-related land uses and to specify whether these uses are primary, limited, conditional, or prohibited in 49 residential, natural resource, commercial and industrial zones in unincorporated Clackamas County. In some of the zones where permitted, these uses would be subject to standards specific to the use. The four uses generally are defined as follows:

- ***Production*** -- manufacture, planting, cultivation, growing, trimming, harvesting or drying of marijuana
- ***Processing*** -- processing, compounding or conversion of marijuana into cannabinoid products, concentrates, or extracts
- ***Wholesaling*** -- purchasing marijuana items for resale to a person other than a consumer
- ***Retailing*** -- selling marijuana items to a consumer

The proposed ZDO amendments are to Sections 106 (Authorization of Similar Uses), 202 (Definitions), 315 (Urban Low Density Residential, Village Standard Lot Residential, Village Small Lot Residential, Village Townhouse, Planned Medium Density Residential, Medium Density Residential, Medium High Density Residential, High Density Residential, Village Apartment, Special High Density Residential, and Regional Center High Density Residential Districts), 316 (Rural Area Residential 1-Acre, Rural Area Residential 2-Acre, Recreational Residential, Rural Residential Farm Forest 5-Acre, Farm Forest 10-Acre, and Future Urban 10-Acre Districts), 317 (Mountain Recreational Resort and Hoodland Residential Districts), 401 (Exclusive Farm Use District), 406 (Timber District), 407 (Ag/Forest District), 510 (Neighborhood Commercial, Community Commercial, Regional Center Commercial, Retail Commercial, Corridor Commercial, General Commercial, Planned Mixed Use, Station Community Mixed Use, Office Apartment, Office Commercial, and Regional Center Office Districts), 511 (Village Community Service District), 512 (Village Office District), 513 (Rural Tourist Commercial and Rural Commercial Districts), 601 (Campus Industrial District), 602 (Business Park, Light Industrial, and General Industrial Districts), 604 (Rural Industrial District), 822 (Home Occupations) and 1307 (Procedures). Section 801 (General Provisions) would be repealed. A new Section 841 (Marijuana Production, Processing, and Retailing) would be added.

Key elements of the proposal are:

- The regulations would *not* apply to personal recreational marijuana or personal medical marijuana, as allowed by state law.
- The regulations *would* apply to recreational marijuana businesses licensed by the OLCC.
- The regulations *would* apply to medical marijuana businesses and to those growing medical marijuana for a medical marijuana cardholder at an address other than the address where the cardholder resides *or* at an address where more than 12 mature marijuana plants are produced.
- **None** of the **regulated** marijuana-related land uses (production, processing, wholesaling, retailing) would be permitted in the following zones:
 - Urban Residential Districts
 - Future Urban 10-Acre (FU-10)
 - High Density Residential (HDR)
 - Medium Density Residential (MR-1)
 - Medium High Density Residential (MR-2)
 - Planned Medium Density Residential (PMD)
 - Regional Center High Density Residential (RCHDR)
 - Special High Density Residential (SHD)
 - Urban Low Density Residential (R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, R-30)
 - Village Standard Lot Residential (VR-5/7)
 - Village Small Lot Residential (VR-4/5)
 - Village Townhouse (VTH)
 - Village Apartment (VA)

- **Rural Residential Districts**
 - Hoodland Residential (HR)
 - Mountain Recreational Resort (MRR)
 - Recreational Residential (RR)
 - Rural Area Residential 1-Acre (RA-1)
 - Rural Area Residential 2-Acre (RA-2)
- **Urban Commercial Districts**
 - Office Apartment (OA)
 - Village Community Service (VCS)
- **Urban Industrial District**
 - Campus Industrial (CI)
- **Natural Resource Districts:** Marijuana production (growing) would be a primary use in the Exclusive Farm Use (EFU), Ag/Forest (AG/F) and Timber (TBR) Districts. Processing would be a primary use in the EFU and AG/F Districts, subject to limits in state law for agricultural processing (maximum 10,000 square feet of floor area; minimum of 25% of processed crops grown on-site). Wholesaling and retailing would be prohibited. Production and processing would be subject to special development standards for minimum setbacks, access, odor, lighting, security cameras, water, and secure disposal; however, medical marijuana production and processing would have some of these standards waived if a larger minimum setback of 200 feet were maintained.
- **Rural Residential Farm Forest 5-Acre (RRFF-5) and Farm Forest 10-Acre (FF-10) Districts:** Marijuana production (growing) would be a primary use, processing a conditional use, and wholesaling and retailing prohibited uses. Production and processing would be subject to special development standards for minimum setbacks, access, odor, lighting, security cameras, water, secure disposal, noise, property owner residency onsite, minimum lot size of five acres, operations limited to enclosed buildings, and maximum building size; however, medical marijuana production and processing would have some of these standards waived if a larger minimum setback of 200 feet were maintained.
- **Urban and Rural Industrial Districts:** Marijuana production, processing and wholesaling would be primary uses in the Business Park (BP), Light Industrial (LI), General Industrial (GI) and Rural Industrial (RI) Districts consistent with other manufacturing and wholesaling uses. Operations would be required to be indoors; otherwise, the uses would be subject to the same development standards as other similar uses in those zones. Retailing would be prohibited.
- **Rural Commercial Districts:** Marijuana wholesaling would be a primary use in the Rural Tourist Commercial (RTC) and Rural Commercial (RC) Districts consistent with other wholesaling of agricultural products. Operations would be required to be indoors; otherwise, the use would be subject to the same development standards as other similar uses in those zones. Production (growing), processing and retailing would be prohibited.

- **Urban Commercial Districts:** Marijuana retailing would be a primary use in the Corridor Commercial (CC), General Commercial (C-3), Station Community Mixed Use (SCMU), Office Commercial (OC), Neighborhood Commercial (NC), Community Commercial (C-2), Regional Center Commercial (RCC), Retail Commercial (RTL), Planned Mixed Use (PMU) and Regional Center Office (RCO) Districts consistent with similar retailing uses. Retailing would be subject to special development standards for operating hours, odor, prohibitions on drive-up and walk-up window service, secure disposal, restrictions on minors onsite, restrictions on co-location of related activities and uses, and minimum separation distances between medical marijuana retailers, between recreational retailers, and between marijuana retailers and schools, public parks, libraries, light-rail transit stations, public housing units, daycare facilities and, in certain circumstances, residentially-zoned property. Many of these standards are already part of the County Code for marijuana retailers. Note that the separation distances significantly limit the number of sites that could be developed with a marijuana retailer. However, the separation distance between retailers is proposed to be reduced from the current 2,500-foot standard in the County Code to 1,000 feet. This is because new state legislation prohibits the County from applying a standard greater than 1,000 feet between recreational retailers. Processing (excluding primary processing) would be a primary use in the CC, C-3, SCMU, OC and Village Office (VO) districts consistent with other processing uses. Processing operations would be required to be indoors; otherwise, the use would be subject to the same development standards as other similar uses in those zones. Production (growing) and wholesaling would be prohibited.
- **Miscellaneous Amendments:** Other related amendments are proposed as follows:
 - Add marijuana-related definitions to Section 202, *Definitions*.
 - Amend definitions of farmers' market, mobile vending unit, and produce stand to exclude marijuana. Adopt a definition of community garden and exclude marijuana.
 - Amend the home occupation provisions to prohibit marijuana-related land uses as home occupations. Instead, the use would be permitted only if otherwise listed in the applicable zone and subject to any relevant development standards particular to marijuana-related uses.
 - Repeal the general language in Section 801, which is partially inconsistent with other ZDO provisions. Replace this language with a provision in Section 106 that prohibits using the Authorization of Similar Uses process to permit a use specifically listed as a special use in Section 800.
 - Make housekeeping edits where warranted (e.g., formatting, terminology).

SIGNIFICANT ISSUES

Staff has identified four significant policy issues.

1. *Should marijuana production (growing) be permitted in industrial zones?*

The proposed ZDO amendments would allow marijuana production as a primary use in four of the county's five industrial districts: Business Park, Light Industrial, General Industrial and Rural Industrial. The fifth district, Campus Industrial, applies to only one property and does not currently allow the types of industrial uses that are most consistent with marijuana production.

Under the current ZDO, medical marijuana production has been approved as a primary use in industrial zoning districts. The description of manufacturing that applies in the Business Park, Light Industrial, General Industrial and Rural Industrial Districts seems to encompass growing of plants and in staff's opinion permits marijuana production as well as other horticultural uses such as the growing of orchids or hydroponic tomatoes. In addition, the Rural Industrial District permits "ornamental and horticultural nurseries."

With legal recreational marijuana production about to come online, however, concerns have been raised about the industry's potential to deplete the county's already scarce industrial land. Also, it has been argued that the legalization of recreational marijuana in Colorado, and the resulting demand for industrial space, has driven land prices and building rents to levels too high for other small businesses to afford.

On the other hand, with concerns about marijuana production focused on security, intrusive grow lights, odor, noise and high water and energy usage, it may be appropriate to allow this use to locate in industrial areas where other uses with similar impacts are permitted and where public services are often available. In addition, this approach has the advantage of allowing growing to occur on the same industrial site as processing and wholesaling, both of which are proposed to be primary uses in the BP, LI, GI and RI Districts.

2. *Should marijuana production (growing), processing and wholesaling be permitted in rural residential districts?*

In the Rural Residential Farm Forest 5-Acre and Farm Forest 10-Acre Districts, the proposed ZDO amendments would allow marijuana production as a primary use and marijuana processing as a conditional use. Marijuana wholesaling would be prohibited. In addition to the discretionary conditional use approval criteria applying to marijuana processing, clear and objective development standards would be applied to both production and processing to address impacts. The proposal is to prohibit marijuana production, processing and wholesaling in the other rural residential districts, which are RA-1, RA-2 and RR.

Under the current ZDO, both “raising, harvesting, and selling crops” and “any other agricultural or horticultural use . . .” are primary uses in the RRFF-5 and FF-10 Districts, and no development standards specific to those uses exist in the ZDO. (Both of these categories of farm use are permitted in RA-2 also. Raising, harvesting, and selling crops is permitted in RR on lots larger than five acres and in RA-1.) Processing and wholesaling of farm crops are permitted as conditional uses in RRFF-5 and FF-10 under the category of “commercial or processing activities that are in conjunction with farm or forest uses.” However, concerns have been raised that the impacts of marijuana growing, processing and wholesaling are unique and impose particular burdens on neighbors (e.g., security, outdoor grow lights, noise from ventilation systems, odor).

3. *Should marijuana retailing be permitted in the Rural Commercial and Rural Tourist Commercial Districts?*

In adopting the existing TPM ordinance, the county prohibited marijuana retailers outside the Portland Metropolitan Urban Growth Boundary. The underlying reason for this decision appears to have been concern about insufficient law enforcement resources in rural areas. However, during the development of the current proposal, this policy choice has been questioned. One argument in favor of allowing retailing in rural commercial areas is that it would prevent the need for rural residents to drive long distances to purchase marijuana items. Options for Planning Commission consideration include:

- Allow marijuana retailing in the Rural Commercial and Rural Tourist Commercial Districts. (Other retailing uses are permitted in these zones.)
- Allow marijuana retailing only in those Rural Commercial and Rural Tourist Commercial areas that are inside an unincorporated community. There are eight unincorporated communities that include commercial zoning: Government Camp, Wemme/Welches, Rhododendron, Boring, Mulino, Colton, Beavercreek and Redland. Other rural commercial areas in the county are somewhat randomly located because they reflect historical commercial uses. In contrast, unincorporated communities include concentrations of commercial uses as well as more dense rural residential areas and, in some cases, rural industrial areas as well.
- Allow marijuana retailing only inside Rural Tourist Commercial areas in the urban unincorporated community of Government Camp. This would provide for marijuana retailing along the Highway 26 corridor in a community with urban levels of zoned residential density and a distinct commercial core.
- Retain the prohibition on marijuana retailing in rural areas.

4. *Do the development standards proposed in ZDO Section 841 for marijuana-related uses adequately address the anticipated impacts of these uses?*

Refer to the draft of ZDO Section 841 for standards that would be applied to production, processing and retailing to mitigate the impacts of these uses.

For recreational marijuana, most of the production and processing standards would apply in the EFU, TBR and AG/F Districts (except that processing is not permitted in TBR under state law), and all of them would apply in the RRFF-5 and FF-10 Districts. For medical marijuana, there are two options proposed: comply with the same standards as recreational marijuana or provide a larger setback of 200 feet in lieu of complying with several of the other standards. The reason for the distinction is that state law does not appear to provide for the county to apply “reasonable regulations” to the *manner* in which medical marijuana is produced or processed; however, location can be regulated. Staff is not proposing to apply the standards of Section 841 to production, processing or wholesaling in those commercial and industrial districts where these uses would be permitted.

The retailing standards would apply in all zones where retailing would be permitted. In large part, the standards for retailing derive from the county’s existing “time, place, and manner (TPM)” ordinance adopted as part of the County Code earlier this year. Staff is proposing to replace the existing discretionary odor standard with a more technical one and to edit several standards (retailing hours, waste management, minors on the premises) to mirror the draft OLCC rules. Also, House Bill 3400 prohibits the county from applying a separation distance of greater than 1,000 feet between recreational retailers. Staff’s proposal is to replace the existing 2,500-foot buffer in the TPM ordinance with a 1,000-foot standard between recreational retailers and between medical dispensaries.

ANALYSIS AND FINDINGS

1. The proposed text amendments are legislative. Section 1400 of the ZDO establishes procedural requirements for legislative amendments, which have been or are being followed in this case. However, the ZDO contains no review criteria that must be applied when considering an amendment to the text of the ZDO.
2. Chapter 11 of the Plan contains a section entitled City, Special District and Agency Coordination. The Oregon Department of Transportation, the Oregon Department of State Lands, Clackamas River Water District, Oak Lodge Sanitary District, North Clackamas Parks and Recreation District, Clackamas County Service District No. 1 and all cities within the county are on a standing list to receive notice of all proposed amendments. This level of notification furthers the goals and policies of this section of the Plan.

Chapter 11 of the Plan also contains a section entitled Amendments and Implementation. This section contains procedural standards for Plan amendments, requires the Plan and the ZDO to be consistent with Statewide Planning Goals and Guidelines and Metro’s Urban Growth Management Functional Plan, and requires the ZDO to be consistent with the Plan. Policy 3.0 establishes the procedural standards. The process followed for ZDO-254 is compliant with these standards. Specifically, notice was sent to all recognized Community Planning Organizations, Hamlets and Villages at least 35 days before the scheduled public hearing and the Department of Land Conservation and Development and Metro were provided with an opportunity to review and comment on the proposed amendments.

Advertised public hearings are scheduled before the Planning Commission and the Board of County Commissioners to consider the proposed amendments. The Statewide Planning Goals and Guidelines and the Urban Growth Management Functional Plan are addressed below.

3. Statewide Planning Goals and Guidelines

- a. Goal 1: Citizen Involvement: The text amendment does not propose to change the structure of the county's citizen involvement program. Notice of the proposed amendment was provided to Community Planning Organizations, Hamlets and Villages and a list of interested parties. Also, notice of the Planning Commission and Board of County Commissioners hearings was published in the newspaper.
- b. Goal 2: Land Use Planning: Not applicable because the text amendment does not propose to change the county's land use planning process. The county will continue to have a comprehensive land use plan and implementing regulations that are consistent with the plan. No exceptions from the Goals are required.
- c. Goal 3: Agricultural Lands: House Bill 3400 specifies that marijuana is a crop for purposes of the definition of farm use in ORS 215.203 and clearly permits the production and small-scale processing of marijuana in Exclusive Farm Use zones. House Bill 3400 also prohibits marijuana-related farm dwellings, farm stands and commercial activities in conjunction with farm use. The proposed amendments to the ZDO are consistent with these provisions of state law and are therefore consistent with Goal 3.
- d. Goal 4: Forest Lands: House Bill 3400 specifies that marijuana is a crop for purposes of the definition of farm use in ORS 215.203 and explicitly provides for marijuana production on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones. The AG/F District is a mixed farm and forest zone and therefore allows all of the uses permitted in the EFU District. TBR is a forest zone and allows farm use but not agricultural processing. The proposal to allow marijuana production in AG/F and TBR and small-scale processing in AG/F is consistent with House Bill 3400 and is therefore consistent with Goal 4.
- e. Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. Not applicable because the text amendment does not propose to change the county's Plan policies or implementing regulations for Goal 5 open spaces, scenic and historic areas, and natural resources.
- f. Goal 6: Air, Water and Land Resources Quality. Not applicable because the text amendments do not propose to change the county's Plan policies or implementing regulations for compliance with Goal 6.

- g. Goal 7: Areas Subject to Natural Disasters and Hazards: Not applicable because the text amendment does not propose to change the county's Plan or implementing regulations regarding natural disasters and hazards.
- h. Goal 8: Recreational Needs: Not applicable because the text amendment does not propose to change the county's Plan or implementing regulations regarding recreational needs.
- i. Goal 9: Economy of the State: Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans. The proposed amendments apply to commercial and industrial lands but do not propose to amend the Comprehensive Plan. Goal 9 does identify land use controls and ordinances as one of a suite of economic development tools. The proposal includes allowing specified marijuana-related uses in certain commercial and industrial zones; however, these uses are already permitted in these zones as part of other more general use categories (e.g., manufacturing, wholesaling, retailing).
- j. Goal 10: Housing: Not applicable because the text amendments do not propose to change the county's Plan or implementing regulations regarding housing.
- k. Goal 11: Public Facilities and Services: Not applicable because the text amendments do not propose to change the county's Plan or implementing regulations regarding public facilities and services.
- l. Goal 12: Transportation: Goal 12 is implemented by Oregon Administrative Rules Chapter 660, Division 12. Local governments are required to adopt a Transportation System Plan and land use regulations to implement the TSP. This proposal does not include amendments to the county's TSP or transportation-related land use regulations. However, Plan and land use regulation amendments must be evaluated under OAR 660-012-0060. The proposal includes allowing specified marijuana-related uses in certain zones; however, these uses are already permitted in these zones as part of other more general use categories (e.g., growing of crops, manufacturing, retailing). There is no greater impact to the transportation system by more specifically identifying these uses in the zones where they are permitted.
- m. Goal 13: Energy Conservation: Not applicable because the text amendments do not propose to change the county's Plan or implementing regulations regarding energy conservation.
- n. Goal 14: Urbanization: Not applicable because the text amendments do not propose to change the county's Plan or implementing regulations regarding urbanization.
- o. Goal 15: Willamette River Greenway: Not applicable because the text amendments do not propose to change the county's Plan or implementing regulations regarding the Willamette River Greenway.

The Department of Land Conservation and Development (DLCD) was notified of this proposal, but no response has been received.

4. Urban Growth Management Functional Plan:

- a. Title 1. Housing Capacity. Not applicable because the proposed text amendments would not reduce zoned housing capacity, amend minimum density standards, or prohibit accessory dwelling units.
- b. Title 2. Regional Parking Policy: This title was repealed and moved to the Regional Transportation Functional Plan.
- c. Title 3. Water Quality and Flood Management: Not applicable because the proposed text amendments would not change the county's Plan or implementing regulations regarding water quality and flood management.
- d. Title 4. Industrial and Other Employment Areas: Not applicable because the proposed text amendments would not change the county's Plan or implementing regulations regarding industrial and other employment areas. Industrial areas are subject to a 5,000-square-foot per use/20,000-square-foot per property limit on retail uses, which the County has implemented in the urban industrial districts. However, this proposal is to prohibit marijuana retailing entirely in the urban industrial districts, which is also compliant with Title 4. The County's commercial zoning districts, where marijuana retailing would be permitted, are exempt from the Metro limits on retail square footage.
- e. Title 5. Neighbor Cities and Rural Reserves: This title was repealed.
- f. Title 6. Centers, Corridors, Station Communities and Main Streets: Not applicable because Title 6 establishes voluntary actions that a local jurisdiction can take to become eligible for a regional investment, lower mobility standards and lower trip generation rates; sets recommended activity levels for centers, corridors, station communities and main streets; and prescribes the process for revising the boundaries of centers, corridors, station communities and main streets.
- g. Title 7. Housing Choice: Not applicable because the proposed text amendments would not change the county's Plan or implementing regulations concerning housing choices.
- h. Title 8. Compliance Procedures: Not applicable. This Title is administrative and relates to Metro's process for ensuring local governments comply with the Functional Plan.
- i. Title 9. Performance Measures: This title was repealed.
- j. Title 10. Functional Plan Definitions: Not applicable. This Title contains definitions only.

- l. Title 11. Planning for New Urban Areas: Not applicable because the proposed text amendment would not change the county's Plan or implementing regulations concerning planning for new urban areas.
- m. Title 12. Protection of Residential Neighborhoods: Not applicable because the proposed text amendment would not change the county's Plan or implementing regulations concerning residential density, designation of neighborhood centers or access to parks and schools.
- n. Title 13. Nature in Neighborhoods: Not applicable because the proposed text amendment would not change the county's Plan or implementing regulations regarding Habitat Conservation Areas, the regulation of which is required by Title 13.
- o. Title 14. Urban Growth Boundary: Not applicable because the proposed text amendment would not change the county's Plan or implementing regulations regarding the Portland Metropolitan Urban Growth Boundary.

Metro was notified of this proposal, but no response has been received.

RECOMMENDATION

Staff recommends approval of the proposed amendments.

File ZDO-254
Proposed Zoning and Development Ordinance Amendments
Draft Date 10/14/15

Text to be added is underlined.

841 MARIJUANA PRODUCTION, PROCESSING, AND RETAILING

841.01 APPLICABILITY

Section 841 applies to:

- A. Marijuana production in the AG/F, EFU, FF-10, RRF-5, and TBR Districts;
- B. Marijuana processing in the AG/F, EFU, FF-10, and RRF-5 Districts; and
- C. Marijuana retailing in the C-2, C-3, CC, NC, OC, PMU, RCC, RCO, RTL, and SCMU Districts.

841.02 PROCEDURE

Marijuana production, marijuana processing, and marijuana retailing require review as Type I applications pursuant to Section 1307, Procedures, except:

- A. In the AG/F and EFU Districts, marijuana processing requires review as a Type II application pursuant to Section 1307; and
- B. In the FF-10 and RRF-5 Districts, marijuana processing is a conditional use that requires review as a Type III application pursuant to Section 1307.

841.03 MARIJUANA PRODUCTION AND MARIJUANA PROCESSING

Marijuana production and marijuana processing shall be subject to the following standards and criteria:

- A. Minimum Yard Depth. No land area or structure used for marijuana production or marijuana processing shall be located closer than 100 feet from any lot line.
- B. Access. The subject property shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject property. If property takes access via a private road or easement which also serves other properties, evidence must be provided by the applicant, in the form of a petition, that all other property owners who have access rights to the private road or easement agree to allow the specific marijuana production or marijuana processing described in the application. Such evidence shall include any conditions stipulated in the agreement.

- C. 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 licensing requirements of the Oregon Liquor Control Commission or registration requirements of the Oregon Health Authority.
- D. Odor. A building used for marijuana production or marijuana processing shall be equipped with a carbon filtration system for odor control.
1. The system shall consist of one or more fans and filters.
 2. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square foot of building floor space).
 3. The filter(s) shall be rated for the applicable CFM.
 4. The filtration system shall be maintained in working order and shall be in use.
 5. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required.
- E. Lighting. Lighting shall be regulated as follows:
1. Light cast by light fixtures inside any building used for marijuana production or marijuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
 2. Outdoor marijuana grow lights shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day.
 3. Light cast by exterior light fixtures other than marijuana grow lights (e.g., security lights, driveway lights) shall not spill onto adjacent lots.
- F. Water. The applicant shall submit proof of a water right for the proposed marijuana production or marijuana processing, or a statement that water is supplied from a public water system as that is defined in Oregon Administrative Rules 333-061-0020 or from an irrigation district, along with the name of the water system or irrigation district.
- G. Waste Management. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the licensee.
- H. Rural Residential Zoning Districts. In the FF-10 and RRFF-5 Districts, marijuana production and marijuana processing shall be subject to the following additional standards and criteria:

1. The subject property shall be a minimum of five acres.
 2. Marijuana production and marijuana processing shall be located entirely within one or more completely enclosed buildings.
 - a. A maximum of 5,000 square feet of building space may be used for all activities associated with marijuana production on the subject property.
 - b. A maximum of 3,000 square feet of building space may be used for all activities associated with marijuana processing on the subject property.
 - c. If only a portion of a building is authorized for use in marijuana production or marijuana processing, a partition wall at least seven feet in height, or a height as required by the County Building Codes Division, whichever is greater, shall separate the marijuana production or marijuana processing space from the remainder of the building. A partition wall may include a door, capable of being closed, for ingress and egress between the marijuana production or marijuana processing space and the remainder of the building.
 3. An owner of the subject property shall reside in a dwelling unit on the subject property.
 4. The applicant shall submit a noise study by an acoustic engineer licensed in the State of Oregon. The study shall demonstrate that mechanical equipment used for heating, ventilating, air conditioning, or odor control will not produce sound that, when measured at any lot line of the subject property, exceeds 50 dB(A).
- I. Exceptions. Marijuana production or marijuana processing, provided such production or processing is done pursuant to registration with the Oregon Health Authority, is not required to comply with Subsections 841.03(D), (E)(3), (F), (G) and (H)(4), provided that no land area or structure used for marijuana production or marijuana processing shall be located closer than 200 feet from any lot line.

841.04 MARIJUANA RETAILING

Marijuana retailing shall be subject to the following standards and criteria:

- A. Hours. A marijuana retailer may only sell to consumers between the hours of 8:00 a.m. and 10 p.m. and may only permit consumers to be present in the building space occupied by the marijuana retailer between the hours of 8:00 a.m. and 10 p.m.
- B. Odor. A building used for marijuana retailing shall be equipped with a carbon filtration system for odor control.
 1. The system shall consist of one or more fans and filters.

2. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to one-third of the square footage of the building floor space (i.e., one CFM per three square feet of building floor space).
 3. The filter(s) shall be rated for the required CFM.
 4. The filtration system shall be maintained in working order and shall be in use.
 5. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required.
- C. Window Service. The use shall not have a walk-up window or drive-thru window service.
- D. Waste Management. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the licensee.
- E. Minors. No one under the age of 21 shall be permitted to be present in the building space occupied by the marijuana retailer, except as allowed by state law.
- F. 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 of record or within the same building with any marijuana social club or marijuana smoking club.
- G. Minimum Separation Distances. Minimum separation distances shall apply as follows:
1. The use shall be located a minimum of:
 - a. 2000 feet from a public elementary or secondary school for which attendance is compulsory under Oregon Revised Statutes 339.020, including any parking lot appurtenant thereto and any property used by the school; or 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;
 - b. 1500 feet from a public park, public playground, government-owned recreational use, public library, licensed treatment center, light rail transit station, or a multifamily dwelling owned by a public housing authority.
 - c. 500 feet from a licensed daycare facility or licensed preschool, including any parking lot appurtenant thereto and any property used by the daycare facility or preschool;

- d. 100 feet from a residentially zoned property; however, this provision shall not apply if the subject property has street frontage on a principal interstate, principal expressway, principal arterial, or major arterial, as identified on Comprehensive Plan Map 5-4a, Road Functional Classification Urban.
2. If the use is licensed by the Oregon Liquor Control Commission (OLCC) pursuant to [insert reference from Oregon Laws], it shall be located a minimum of 1,000 feet from any other marijuana retailer so licensed by the OLCC.
3. If the use is registered with the Oregon Health Authority (OHA) pursuant to [insert reference from Oregon Laws], it shall be located a minimum of 1,000 feet from any other marijuana retailer so registered with the OHA.
4. For purposes of Subsection 841.04(G)(1), distance shall be measured from the lot line of the affected property (e.g., a school) to the closest point of the building space occupied by the marijuana retailer. For purposes of Subsections 841.04(G)(2) and (3), 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.
5. A change in use (including a zone change) to another property to a use identified in Subsection 841.04(G) after a complete Type I application for marijuana retailing has been filed shall not result in the marijuana retailer being in violation of Subsection 841.04(G).
6. Subsection 841.04(G) does not apply to:
- a. Any marijuana retailer that applied for a registration with the Oregon Health Authority on or before March 3, 2014, and subsequently obtained full, unconditional approval on or before May 31, 2014; or
 - b. Any marijuana retailer operating in a building space that was approved for operation by the Oregon Health Authority on or before May 31, 2014, and where approved marijuana retailing activities have been continuously occurring in that building space since May 31, 2014, except during the effective dates of the Medical Marijuana Facility Moratorium adopted pursuant to Clackamas County Ordinance 01-2014 and as modified by Clackamas County Ordinance 01-2015.
7. In case of a conflict under Subsection 841.04(G)(2) or (3), any person who has received approval of a Type I land use permit for marijuana retailing, shall be deemed to have established marijuana retailing at the approved location, so long as the marijuana retailer begins operation within one year of the date of the County's final decision on the Type I land use permit application. If more than one Type I application is in process with the County at one time, the

County shall issue decisions in the order in which complete applications were filed.

841.05 APPROVAL PERIOD

A. Approval of a permit under Subsection 841.03 is valid for four years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.

1. Implemented means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, implemented means all other necessary County development permits (e.g., grading permit, building permit for an accessory structure) shall be obtained and maintained. A major development permit is:

a. A building permit for a new primary structure that was part of the approved development; or

b. A permit issued by the County for parking lot or road improvements required by the approved development.

B. Approval of a permit under Subsection 841.04 is valid for one year from the date of the County's final decision. During this one-year period, the approval shall be implemented, or the approval will become void. Implemented means that the marijuana retailer has begun operation. Notwithstanding this one-year implementation period, a complete application for a marijuana retailing license shall be filed with the Oregon Liquor Control Commission, or a complete application for a medical marijuana dispensary registration shall be filed with the Oregon Health Authority, within three months of the date of the County's final decision, or the approval will become void.

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1	8/10/2015	Joyce Parker, Secretary; Clackamas County Pomona Grange #1	Email (8/10/2015). Attached Resolution of Grange (7/25/2015): Opposes marijuana grow in rural residential areas; requests BCC to put an OPT OUT referendum on Nov. 3, 2016 ballot to give rural residential voters the opportunity to opt out of having grow sites and processing sites within rural areas of Clackamas County. (2 pages)
2	8/19/2015	Shirley Morgan; Citizens for Public Safety, Quality of Life, Property Values	Executive Summary (no date) about need to recognize public health and safety impacts of marijuana legalization. Information submitted includes Clackamas County rural precinct vote tally on M91; letters from Colorado agency reps; six case studies of impacts of grow and processing facilities (Boring; Sandy; Beavercreek/ Clackamas; and Deschutes and Josephine Counties). (47 pages)
3	8/24/2015	Dave Morgan	Email (8/24/2015). Encourages Board to <u>not</u> allow unrestricted production and processing of marijuana on Ag/Forest lands that are less than ten acres. (1 page)
4	10/01/2015	James Nice	Email (10/01/2015). Supports draft regulations, recommends <u>no</u> marijuana production/processing within one mile of Hwy 26, and supports "opt-out" option. (1 page)
5	9/21/2015	Peter Sansone	Email (9/21/2015). Requests Board to consider rules for marijuana processors. Attached draft rules prepared by OLCC Rules and Advisory Committee (RAC) from a Sept. 2015 meeting. (9 pages)
6	10/05/2015	Thomas Boyd	Email (10/04/2015). Endorses proposed amendments to regulate marijuana businesses in his area, an R10 zone. Proposes adding language to require such businesses to comply with rules for home-based businesses. (1 page)
7	10/05/2015	Dyann Peterson	Email (10/04/2015). Opposes allowing growing marijuana in area along SE Brooks Road, an RRF-5 area, in Boring. (1 page)
8	10/05/2015	Steve Hilde	Email (10/05/2015). Opposes allowing growing marijuana in the area near Sandy. His residence is at 42245 SE Coleman Rd, Sandy, in RRF-5 zone. (1 page)
9	10/06/2015	Kim Tinker	Email (10/05/2015). Opposes allowing growing and processing of marijuana in the rural area southeast of Sandy due to devaluing property, security issues, use of limited water sources, and detrimental effects of pesticide and herbicide usage. Marijuana uses should be in industrial zones. Residence is at 22041 SE 442 nd , RRF-5 zone, and adjacent to EFU and TBR zones. (1 page)

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10	10/06/2015	Ed Mura	Email (10/01/2015). Commented on two greenhouses at 25251 S. Elwood Rd (FF-10 zone) which house an "industrial marijuana grow." Concerned about noise of exhaust fans, odor, and safety issues. Requests Board to consider these issues in the land use rules. (2 pages)
11	10/06/2015	Vincent Sliwoski	Email/letter to Board (09/28/2015). Speaking "on behalf of industry participants," opposes development standards proposed for marijuana production and processing in the RRFF-5 and FF-10 zones. Attached 2015 permit information for 29450 SE Lariat Lane (RRFF-5 zone; former equine facility converted to medical marijuana grow). (10 pages)
12	10/7/2015	Peter Sansone	Email proposes alternatives for the following standards. For minimum yard depth: certain types of existing agriculture buildings that are closer than 100' to neighboring property line would be grandfathered. For odor: alternative means to filter and eliminate all odors and particulates; proposed fan and filtering size is unreasonable. For lighting: limit light emission to between "sunrise to sunset" timetables (NOAA). For water: permit exempt sources of water to be used. Attached Oregon Water Law excerpt. (3 pages)
13	10/7/2015	Amy Margolis	Opposes limiting marijuana vending facility to within the UGB "where law enforcement is better equipped [County Code Sections 8.09.040(B)(1)]." States, "There is no evidence linking crime rates ... to marijuana dispensaries." Other requirements are in place for surveillance, distance from schools and daycare facilities. Dispensaries create jobs, spend money locally, promote tourism, and generate tax revenue.
14	10/7/2015	Jan Johnson	Neighbor is "way over the legal limit of marijuana plants; they "do not have a medical grow permit;" 6' high board-to-board fence; offensive odor invades her house so she has to close doors and windows. (1 page)
15	10/13/2015	Ramona Notz	Lives in EFU zone; opposes adding marijuana production, growing, processing, wholesaling, retailing or dispensing in her farm community. (1 page)
16	10/13/2015	Peter C. Wight	Does not support or favor any marijuana-related activities in the County. (1 page)
17	10/15/2015	Lloyd Griffin	Email to the BCC. Confused by proposal to limit medical marijuana growing to no more than 12 mature plants per address; proposes that policy permits OMMP rules as they are currently written -- to grow for 4 patients even not residing at grower's address. (1 page)

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18	10/15/2015	Lila Reed	Email. Has two-acre parcel zoned EFU; concerned that grow operation could be adjacent to them; could lower property value. Wants a policy protecting existing owners' property values; proposes that a grow site be located at least 10 miles from any existing municipality. (1 page)
19	10/15/2015	Peter Sansone	Copy of email to Katherine Daniels (DLCD) requesting opinion on proposed Section 841.03 (100' setback), 841.03 (water supply). 3 attachments: Guide to Recreational Marijuana in EFU zones; definition of nuisance or trespass; attorney fees and costs. (8 pages)
20	10/17/2015	Sue Browne	Email. Concerned about adjacent marijuana grow and inability to find out if it is an authorized medical grow facility. Want to be able to know status of production & processing sites with OHA and OLCC. Believes it affects property value; that current grower is a violation of 841.03. Urges strong enforcement. (1 page)
21	10/19/2015	William A Berdan	Letter to Planning & Zoning. Marijuana farm on EFU land currently licensed under OHA & OMMP. Carbon filtration removes odor. Concerned about and proposes changes to some proposed standards: the lot is smaller than the required 5 acres; the barn is less than 100' from property line. Site plan and photos are attached. (10 pages)
22	10/12/2015	Shirley Morgan	Draft of testimony to be given 10-26-15: Concerned about: impacts of marijuana in EFU land without land use review; 100' setbacks are too small; removal of large numbers of trees; illegal pond excavation. Proposes no marijuana wholesaling in RC and RTC zones on Hwy 26. Attached maps of rural communities; news article about smoke shop in Hoodland; excerpt of Oregon marijuana regulations. (4 pages)
23	10/15/2015	Shirley Morgan	Email to BCC. Follow-up information to previous emails. Lists time, place and manner concerns about wholesaling provisions of Oregon marijuana law. Includes excerpts from HB 3400 and M91. 3 attachments: HB 3400, M91, and updated draft of testimony to be delivered on 10-26-15. (174 pages)
24	10/14/2015	Kathrine R. Martin	Email. Are neighborhood covenants and restrictions allowed to limit marijuana activities? If not, they should be. (1 page)
25	10/14/2015	Shirley Morgan	Email to BCC. Follow-up information to previous email. Opposed to marijuana's being permitted outright as an agricultural product. Several attachment: description and photos of an equestrian center in Boring that has been converted to a grow site; testimony on negative impacts on property value, information letters from Planning Director; op-ed piece on

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			property value impacts; description & photos of grow operations near Bend, in Washington state, in Beaver creek, Colton, Grants Pass; OMMP Growers by ZIP Codes; letter from Denver District Attorney on impacts of marijuana; email from Colorado Rocky Mountain High Intensity Drug Trafficking Area re why CO does not permit outdoor growing of recreational marijuana; article by Shirley Morgan about impacts of marijuana legalization. (54 pp)
26	10/21/2015	Wesley Row	Email. Opposed to land use regulations permitting production, processing and/or wholesaling of marijuana in Clackamas County rural zones. Attracts crime and stresses resources. (1 page)
27	10/21/2015	Sue Browne	Email. Rural areas, where law enforcement and fire protection are a minimum, should have the same consideration regarding production /grow and processing facilities as those living in less rural areas. (1 page)
28	10/22/2015	Katherine Moore	Email. Forbid marijuana-related activities on her Recreational Residential zoned land or the RR area around it. (1 page)
29	10/23/2015	Bill Neuwerth	Email. Currently has medical marijuana grow operation with measures to reduce impact to neighbors (filter, fans, minimum traffic). Concerned that he would not be in compliance with proposed regulations. (1 page)
30	10/23/2015	Robert Morris	Email and attachment from www.whitehouse.gov : <i>The Public Health Consequences of Marijuana Legalization</i> . (3 pages)
31	10/24/2015	Clifford Spencer	Email. Mr. Spencer, founder of a co-op assisting people in residential care facilities and on end of life care with medical marijuana, is concerned that proposed amendments go beyond time, place and manner per HB 3400. Proposed code addresses medical and recreational aspects with same broad approach, such as same equipment and property requirements for a 200 sq. ft. OMMA garden as a 10,000 sq. ft. recreational facility. Noncommercial OMMA gardeners cannot afford this. Problems with OMMA gardens could be mediated instead of broad approach. Proposes that Subsection 841.03(H)(3) be amended to permit renters, lessors and LLC's, and make person responsible for the garden be responsible for compliance with ordinance. Opposes Subsection 841.03(H)(2) [locating productions/processing entirely within enclosed building]: many low-income rural patients grow a year's supply outdoors - requiring buildings would be too expensive. Opposes Subsection 841.03(B) [access on a public road or exclusive easement]; this restriction is not necessary for a small OMMA garden. (3 pages)
32	10/24/2015	Linda Cody	Email. Little concern about growing in rural areas; does have

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			concern about processing and retail sale. Traffic, odor, noise, would impact quiet, clean area east of Estacada. In that area a former nursery with multiple greenhouses was sold to grow marijuana. Now no-trespassing signs have changed the friendly feel of the area. Also concerned about devaluation of their property. (1 page)
33	10/25/2015	Karen Hill	Email. Does not want marijuana grown, processed or sold anywhere, let alone in her (AGF) neighborhood (1 page)
34	10/26/2015	Jo Becker	Email. Against any growing, selling, distribution or recreational marijuana in Clackamas County. The decision should not be revenue driven; potential addiction and related problems; roads are more dangerous with drivers on marijuana. (1 page)
35	10/26/2015	Justin Page	Email. His company owns RRF-5 "commercial" [sic] property that has gone unused for over a decade; he is considering an indoor production & processing facility. The property is less than 2 acres so wouldn't meet proposed 5-acre minimum. Believes minimum lot size is excessive given OLCC rules for security and building improvements. Additional acreage will not increase security. OLCC rules seem to prohibit a cannabis business from also being a residence; if so, then that is in direct conflict with County proposal. This is not required for any other industry and would not increase security. Requiring so many resources from a business encourages more out of state investment and domination of Oregon's market. Do not give more power to out of state investors. (1 pg)
36	10/14/2015	Shirley Morgan	Update of previous draft testimony to be delivered 10-26-15 (3 pages plus duplicates of attachments that were previously sent).
37*	10/26/2015	Victor Dunton	Hearing/written testimony: Opposed to grow operations in Mulino area. (1 pg)
38*	10/26/2015	David Morgan and Susan Tate	Hearing/written testimony: Small acreages in AF/F zones should be regulated the same as small acreages in RRF-5 and FF-10 zones. (5 pp)
39*	10/26/2015	Marie and George Gassner	Hearing/written testimony: Opposes production and sale of marijuana. (1 pg)
40*	10/26/2015	Braxton Creef, Cannalogix Foundation	Hearing/written testimony: Opposes proposed regulations that would limit & control medical marijuana the same as recreational marijuana. Recommends delaying new rules for medical marijuana for further discussion. (1 pg)
41*	10/26/2015	Mike Hickey	Hearing/written testimony: Supports growing commercial marijuana in the EFU zone. (1 pg)
42	10/26/2015	Bradley Steinman	Email. Represents one of the registered medical marijuana

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			growers in the county. Opposes proposed regulations that impact medical marijuana production and processing. (6 pp)
43*	10/26/2015	Bernard Merrill	Hearing/written testimony: Concerned that proposed regulations apply only where there are more than 12 mature plants; 12 plants affect neighborhood livability. (2 pp)
44*	10/26/2015	Jean Roberts	Hearing/written testimony: Recommends revote on marijuana in Nov. 2016. Opposes marijuana growing, processing, wholesaling or retailing in rural residential, rural or rural tourist commercial areas. (1 pg)
45*	10/26/2015	Rocky Roberts	Hearing/written testimony: Opposes marijuana growing, processing, wholesaling or retailing in rural residential, rural or rural tourist commercial areas. Should refer Opt Out option to voters. (1 pg)
46*	10/26/2015	Laura Underwood	Hearing/written testimony: Opposes any medical or recreation marijuana grow, processing, wholesaling or retailing in rural residential communities. Cites issues with activities in her area. (2 pages)
47*	10/26/2015	Shirley Morgan	Hearing/written testimony: Opposes marijuana growing, processing, wholesaling or retailing in rural residential, rural commercial or rural tourist commercial area, or along Hwy 26 in Mt. Hood area. Comments on safety, quality of life and property value issues. (2 pages)
48*	10/26/2015	Sarah Bennett	Hearing/written testimony: Currently has an indoor, medical marijuana facility and is concerned that proposed rules will make them lose their facility. Rules should allow for some medical marijuana facilities on 2 to 5 acres, and within buildings. (2 pages)
49*	10/26/2015	Gerrick Latta	Hearing/written testimony: Recommends that rules make clear distinction between medical and recreational marijuana facilities. Provided pictures of impact of proposed setback lines. (5 pp)
50*	10/26/2015	Kathleen Zinno	Hearing/written testimony: Opposes regulations that could limit or possibly eliminate medical marijuana production. (1 pg)
51*	10/26/2015	Peter Sansone	Hearing/written testimony: Opposes proposed regulations as unreasonable restrictions on marijuana related actions. (2 pp)
52	10/26/2015	Bryan Garfinkel	Email. Thinks that anyone permitted to produce marijuana should be able to process it. Recommends regulations to support processing of marijuana crops, instead of banning processing in certain zones. (1 pg)
53	10/27/2015	C.D. Walpole	Email. Supports allowing a discrete marijuana dispensary to provide what Oregon law allows. (Brightwood area). (1 pg)
54	10/27/2015	Kurt Kessler	Letter to BCC (dated 10/26/2015). Opposes any marijuana processes east of the City of Sandy. (1 pg)

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55	10/28/2015	Brad Troutner	Email. Opposes 100-ft. setback. Recommends defining different setbacks for three categories: air-tight buildings; greenhouses; open-air growing. (2 pp)
56	10/27/2015	Commissioner Ludlow	Letter to Rebecca Bunting re Commissioner's support to allow dispensaries only in the metro urban area. (1 pg)
57	10/27/2015	Kevin	Email. Operates a summer camp. Recommends restricting retail locations also in relation to camps. (1 pg)
58	10/28/2015	Tanya Stricker	Email. Opposes all marijuana related activities in RRF-5. Small acreages are insufficient to deal with security and other issues. (1 pg)
59	10/28/2015	havencottage@canby.com	Email. Opposes all marijuana related activities in rural area due to insufficient law enforcement, safety and criminal element. (1 pg)
60	10/28/2015	Steve Chianillo	Email. Disappointed in meeting on 10/26/2015. (1 pg)
61	20/27/2015	Bruce and Martha Webb	Email. Concerns with impacts of outdoor production as already experienced where they live. Proposes that either a Type III permit be required for production on parcels less than 20 acres, or require production to be indoors, even in AG/F zone. Re proposed section 841: if no county permit is required in AG/F zone, then how will requirement for water right be tracked? If no county permit is required in RRF-5 or FF-10 zones, how will the county confirm that the required noise study is completed? (2 pp)
62	10/27/2015	Rose Briggs	Letter. Questioned whether medical marijuana groups had determined how marijuana may hinder judgment and cause impairment, whether there is a legal limit on drivers, and about sales to minors. (1 pg)
63	10/29/2015	Jeff Simonson	Email. He has licensed medical marijuana facility, and has questions about proposed requirements for signatures of all users of shared easement. Proposes ways to resolve issues with neighbors who have indentified impacts of the facility. (2 pp)
Comments #64 and higher were received after Exhibit packet assembled for the PC hearing on Nov. 2, 2015			
64	10/30/2015	Frank Elmer	Email. Recommends changing rules on water usage: require application for water rights only if water needs of the marijuana use exceed a certain number of gallons per day. (1 pg)
65	10/30/2015	Tyson Lewis	Email. Opposes the 100-ft. yard setback and proposes different setbacks for open air grows and for indoor operations which can be controlled for noise, odor and lighting. (1 pg)
66	10/30/2015	Bill Neuwerth	Email. Opposes the 5-acres minimum, the proposed 100-ft. and 200-ft. setbacks, and the 5,000 sq. ft. limit on production area [note: a state requirement]. Supports carbon filter system, 50 decibel noise restriction and light restrictions. (3 pages)

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67	10/30/2015	Justin Bearden	Email. Opposes 100-ft. minimum yard depth in RRF-5 and FF-10 zones. (1 page)
68	11/2/2015	Janey & D. Christopher Oke	Email. Opposes the reduction in number of plants permitted for OMMP. Describes their current OMMP grow operation as odor free. Proposes exempting all legal marijuana grow operations from land use regulations. (1 page)
69	10/30/2015	Cindy Zimmerman	Email. The decision about where marijuana is grown should be left to the voters. Does not want a grow operation 100 feet from her property; concerned about water usage in the rural area and about decrease in property values. (1 page)
70	10/30/2015	Tyson Lewis	Email. Proposed 100 feet minimum yard depth does not distinguish between indoor and outdoor grows; too large for indoor grows. Should be different setbacks for indoor and outdoor grows. Proposes 50' setback for indoor grows that control odor, noise. (1 page)
71	11/2/2015	"Mr. Fox"	Email with 2 attachments: Attachment 1 references 18 US Code 2384 about seditious conspiracy; 9-131.000 The Hobbs Act; definition of property; theft by extortion; theft by deception; theft in the first degree; ORS.646.725 (Prohibited acts) 646.535 (Unfair trade practices prohibited; "restraint of trade," and interference with a contract. (8 pages)
72	11/1/2015	Shannon Hansen	Email. Main concerns are smell, excessive water use, potential contamination of water and soil, public safety, regulation and enforcement, and devaluation of adjoining properties.(2 pages)
73	11/1/2015	David Tooze	Email. Cultivation and processing should not take place within 500' of an existing residential or commercial structure; 5,000' from a public or private school, education facility, community center, day care or house of worship. Retail sales should have design standards, green + symbol less prominent, paved off-street parking. (1 page)
74	11/2/2015	Nick Layton	Email. RE 100' and 200' setback – suggests that a grower get written permission from the neighbor to grow closer than the required yard depth.
75	11/2/2015	Andrew Peters	Mail. Very concerned about pollution caused by grow operations. His military experience included criminal investigations related to drug (marijuana) problems. Supports good, solid "opt out" areas to have freedom from drugs. (1 page)
76	11/2/2015	Rocky Roberts	Rural resident. Supports proposed 100' (or 200') setback; comments that there are difference in location standards for retail marijuana and liquor; opposed to recreational retail outlets

- * Exhibits received during hearing
- ** Exhibits received during open record after hearing
- *** Oversized exhibits

**EXHIBIT LIST
ZDO-254**

<i>Ex. No.</i>	<i>Date Received</i>	<i>Author or source</i>	<i>Subject & Date of document</i>
			operating 8 a.m. to 10 pm. Other comments that are not related to land use: new state rules are confusing; illegal behavior is rewarded with "grandfather" clauses; law enforcement will have difficulty protecting us. (2 pages)
77	11/2/2015	Braxton Creel, Cannalogix Foundation	<p>Proposes solutions to potential impacts on Clackamas County OMMP growers.</p> <ul style="list-style-type: none"> • Building permit: Multi-Trade/Craft Building Permit to address electrical, mechanical, building, with 2nd, final inspection coinciding with crop prior to harvest to insure odor issues are addressed. To apply to current grows & must be w/in one year of passage. • Zoning Restrictions – OMMP per ORS 475.320; however outdoor grows to be limited to 5 or more acres, or greenhouses w/ adequate odor control + approval of neighbors for <0.5 acre site and >2 OMMP grow cards, or shared access. • Residency Requirement – OMMP carded resident on-site unless zoning does not allow dwellings or overnight stays; if not owner of property, obtain written permission from at least one owner. • Nuisance Complaints -- Violation pays \$50.00 per day civil penalty until violation is corrected. • Grandfathering of Existing Grows – All grows must be permitted under the new permit process; however, grows in production at time new law takes effect will be exempt. Rights will not transfer to a new owner unless permits are secured and upgrade to current standards and code. • Light/Noise Pollution – Light from greenhouses not permitted to be visible outside after dusk. Fan noise limited to reasonable decibel level; any noise level that exceeds dryer or range hood limited to 8 a.m. to 8 p.m. in populated areas or neighborhoods. <p>Building permits and violations revenue would support code compliance officer; growers and patients could care for other patients; close neighbors would have some say about their environment; noise and light pollution would be controlled. (2 pp)</p>
78	11/2/2015	John Massimilla	Hearing/written testimony. Opposes rules that could negatively affect medical marijuana production and so devastate hundreds of lives. Believes proposed rules will only facilitate big money and corporate interests. (1 page)
79	11/2/2015	Aaron Burns	Aerial photo with notation of home and surrounding neighbors. Several homes share and maintain Old Well Rd., a one-way road

- * Exhibits received during hearing
- ** Exhibits received during open record after hearing
- *** Oversized exhibits



Overview of *Second* DRAFT of Proposed Marijuana Land Use Regulations for Clackamas County

UPDATED: October 14, 2015

The Clackamas County Board of Commissioners is considering amending the county Zoning and Development Ordinance (ZDO) to add land use regulations for businesses that grow, process, wholesale or retail recreational or medical marijuana. Planning and Zoning Division staff drafted regulations and sent them to the Oregon Department of Land Conservation and Development on Sept. 21, 2015, as required, and issued amended draft regulations Oct. 14, based on direction from the County Planning Commission. The draft amendments can be reviewed by clicking on *DRAFT County Regulations* at www.clackamas.us/planning/marijuana.html.

This document provides a brief overview of where marijuana businesses would be allowed in unincorporated Clackamas County based on the second draft of proposed regulations as of Oct. 14, 2015. This is for informational purposes only, and is not intended as legal guidance. In addition to new marijuana land use regulations, marijuana businesses will also have to comply with the same building, fire and other codes that apply to businesses in Clackamas County, as well as to requirements from the Oregon Liquor Control Commission (OLCC) for recreational marijuana and the Oregon Health Authority (OHA) for medical marijuana. The draft county regulations are likely to be revised as the county goes through the Planning Commission and Board of County Commissioner public hearings process.

The second draft of proposed marijuana land use regulations that were sent to the state on Oct. 14, 2015...

... Apply only to unincorporated Clackamas County, and set limits on where and how various marijuana businesses can operate;

... Do *not* apply to: Noncommercial growing or processing of recreational marijuana, as allowed by state law without a license from OLCC

- Growing medical marijuana by a medical marijuana cardholder at the cardholder's residence as long as no more than 12 mature plants are grown at that address (up to 6 mature plants per cardholder are permitted by state law)
- Processing of medical cannabinoid products or concentrates by a medical marijuana cardholder, or a designated primary caregiver for a cardholder

... Do apply to: Recreational marijuana businesses (growing, processing, wholesaling or retailing) licensed by the OLCC

- Growing medical marijuana for a medical marijuana cardholder at an address other than the address where the cardholder resides or at an address where more than 12 mature marijuana plants are produced
- Processing of medical marijuana *except* for processing of medical cannabinoid products or concentrates by a medical marijuana cardholder, or a designated primary caregiver for a cardholder
- Retailing medical marijuana

The draft regulations allow recreational and medical marijuana facilities – production/grow, processing, wholesaling and retailing -- in zones shown below.

ZONING DISTRICT	MARIJUANA BUSINESS			
	Production/Grow	Processing	Wholesaling	Retailing
URBAN ZONES				
Business Park (BP), Light Industrial (LI), General Industrial (GI)	Primary use ^{##}	Primary use ^{##}	Primary use ^{##}	PROHIBITED
Village Office (VO)	PROHIBITED	Primary use ^{##} (not primary processing)	PROHIBITED	PROHIBITED
Corridor Commercial (CC), General Commercial (C-3), Station Community Mixed Use (SCMU), Office Commercial (OC)	PROHIBITED	Primary use ^{##} (not primary processing)	PROHIBITED	Primary use ^{***}
Neighborhood Commercial (NC), Community Commercial (C-2), Regional Center Commercial (RCC), Retail Commercial (RTL), Planned Mixed Use (PMU), Regional Center Office (RCO)	PROHIBITED	PROHIBITED	PROHIBITED	Primary use ^{***}
RURAL ZONES				
Exclusive Farm Use (EFU), Ag/Forest (AG/F)	Primary use [*]	Primary use [*]	PROHIBITED	PROHIBITED
Timber (TBR)	Primary use [*]	PROHIBITED	PROHIBITED	PROHIBITED
Rural Residential Farm Forest 5 Acre (RRFF5) and Farm Forest 10 acre (FF10)	Primary use ^{**}	Conditional use ^{***}	PROHIBITED	PROHIBITED
Rural Commercial (RC), Rural Tourist Commercial (RTC)	PROHIBITED	PROHIBITED	Primary use ^{##}	PROHIBITED
Rural Industrial (RI)	Primary use ^{##}	Primary use ^{##}	Primary use ^{##}	PROHIBITED

^{*}Conditions for production and processing are set for minimum yard depth (set-back from lot line), access, odor, lighting, security cameras, water and secure disposal. For medical marijuana production and processing, an exception to some of the standards will be granted if a 200-foot lot line setback is maintained. (details in ZDO Section 841)

^{**}Conditions for production and processing in rural residential zones include those mentioned above, as well as requirements that the owner lives on the property, that property be at least 5 acres in size, that the business be confined to completely enclosed buildings, specified building size limits and submission of a noise study. For medical marijuana production and processing, an exception to some of the standards will be granted if a 200-foot lot line setback is maintained. (details in ZDO Section 841)

^{***}Conditions for retailing include operating hours, odor, window service (not allowed), secure disposal, minors (not allowed on premises unless allowed by state law), no co-location of related activities and uses, and minimum separation distances between marijuana retailers, schools, public parks, libraries, light-rail transit stations, public housing units, daycare facilities and, in certain circumstances, residentially-zoned property. (details in ZDO Section 841)

^{*}Conditional use requires a public hearing

^{**}Use must be confined to completely enclosed buildings



The second draft of proposed regulations does *not* permit any recreational or medical marijuana businesses – production, processing, wholesaling or retailing – in any of the following zoning districts:

Urban Residential Districts

- Future Urban 10-Acre (FU-10)
- High Density Residential (HDR)
- Medium Density Residential (MR-1)
- Medium High Density Residential (MR-2)
- Planned Medium Density Residential (PMD)
- Regional Center High Density Residential (RCHDR)
- Special High Density Residential (SHD)
- Urban Low Density Residential (R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, R-30)

- Village Standard Lot Residential (VR-5/7)
- Village Small Lot Residential (VR-4/5)
- Village Townhouse (VTH)
- Village Apartment (VA)

Rural Residential Districts

- Hoodland Residential (HR)
- Mountain Recreational Resort (MRR)
- Recreational Residential (RR)
- Rural Area Residential 1-Acre (RA-1)
- Rural Area Residential 2-Acre (RA-2)

Urban Commercial Districts

- Office Apartment (OA)
- Village Community Service (VCS)

Urban Industrial Districts

- Campus Industrial (CI)

FOR MORE AND UPDATED INFORMATION:

- Marijuana Land Use Laws and Regulations (www.clackamas.us/planning/marijuana.html)
- Contact Planning and Zoning Division staff at zoninginfo@clackamas.us or 503-742-4500

TO GIVE INPUT OR PROVIDE TESTIMONY ON THE PROPOSED DRAFT REGULATIONS:

Interested members of the public who would like to comment or submit testimony on proposed draft marijuana land use regulations in Clackamas County are welcome and encouraged to do so in writing:

- By email to: sharig@clackamas.us
- By mail to: Shari Gilevich, Planning & Zoning Division, 150 Beaver Creek, Oregon City, OR 97045

The public is also welcome to provide verbal and written testimony at public hearings (listed below).

PUBLIC HEARINGS

- Planning Commission -- 6 p.m., Monday, Oct. 26; Abernethy Center, 606 15th St, Oregon City
- Planning Commission (*continued, if necessary*) – 6 p.m., Monday, Nov. 2; Abernethy Center, 606 15th St, Oregon City
- Board of County Commissioners -- 9:30 a.m., Monday, Nov. 23; BCC Hearing Room, Public Services Building 4th floor
- Board of County Commissioners (*continued, if necessary*)-- 9:30 a.m., Wednesday, Dec. 2; BCC Hearing Room, Public Services Building 4th floor

The County Commission plans to have new regulations in place by January 2016, which is when the Oregon Liquor Control Commission (OLCC) is required to begin accepting applications for licenses related to marijuana businesses.

STATE BACKGROUND: In November 2014, Oregon voters approved Measure 91, legalizing the use of marijuana for personal recreational use. In 2015, the State Legislature approved five bills that amend and provide regulations related to recreational and medical marijuana. State law gives the county the authority to adopt “reasonable regulations” regarding recreational and medical marijuana. The law defines four types of marijuana business:

- *Production:* manufacture, planting, cultivation, growing or harvesting of marijuana in Oregon
- *Processing:* processing, compounding or conversion of marijuana into cannabinoid products, concentrates, or extracts; excluding packaging or labeling
- *Wholesaling:* purchasing marijuana items in Oregon for resale to a person other than a consumer in Oregon
- *Retailing:* selling marijuana items to a consumer in Oregon