841 MARIJUANA PRODUCTION, PROCESSING, AND RETAILING

841.01 APPLICABILITY

Section 841 applies to:

A. Marijuana production in the AG/F, EFU, FF-10, RRFF-5, and TBR Districts;

B. Marijuana processing in the AG/F and EFU Districts; and

C. Marijuana retailing in the C-2, C-3, CC, NC, OC, PMU, RC, RCC, RCO, RTC, RTL, and SCMU Districts.

841.02 PROCEDURE

Marijuana production and marijuana retailing require review as Type I applications pursuant to Section 1307, *Procedures*. Marijuana processing requires review as a Type II 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 Lot Size. A minimum lot size standard shall apply as follows:

1. In the FF-10 and RRFF-5 Districts, the subject property shall be a minimum of five acres, except that if the majority of abutting properties are equal to or greater than two acres, the subject property shall be a minimum of two acres. Abutting properties include properties that are contiguous to the subject property, as well as properties directly across any access drive, or private, public, or county road, provided the functional classification of the road is below that of a collector.

2. In the AG/F, EFU, and TBR Districts, the subject property shall be a minimum of two acres, except that if outdoor production is proposed, the subject property shall be a minimum of five acres. Outdoor production means producing marijuana:

   a. In an expanse of open or cleared ground; or

   b. In a greenhouse, hoop house, or similar non-rigid structure that does not utilize any artificial lighting on mature marijuana plants, including but not limited to electrical lighting sources. A mature marijuana plant is a marijuana plant that is flowering.

B. Minimum Yard Depth/Distance from Lot Lines. In the FF-10 and RRFF-5 Districts, the minimum front, rear, and side yard depths for any structure used for marijuana production shall be 50 feet. In the AG/F, EFU, and TBR Districts, outdoor production, as defined in Subsection 841.03(A)(2), shall be a minimum of 100 feet from all lot lines.

C. Indoor Production and Processing. In the FF-10 and RRFF-5 Districts, marijuana production shall be located entirely within one or more completely enclosed buildings. In the AG/F and EFU Districts, marijuana processing shall be located entirely within one or more completely enclosed buildings.

D. Maximum Building Floor Space. The following standards apply in the FF-10 and RRFF-5 Districts:

1. A maximum of 5,000 square feet of building floor space may be used for all activities associated with marijuana production on the subject property.

2. If only a portion of a building is authorized for use in marijuana production, a partition wall at least seven feet in height, or a height as required by the County Building Codes Division, whichever is greater, shall separate the marijuana production space from the remainder of the building. A partition wall may include a door, capable of being closed, for ingress and egress between the marijuana production space and the remainder of the building.

E. 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. However, this standard will be waived if the property takes access via a private road or easement which also serves other properties and evidence is provided by the applicant, in the form of a petition, that all other property owners who have access rights to the private road or easement agree to allow the specific marijuana production or marijuana processing described in the application. Such evidence shall include any conditions stipulated in the agreement.

F. 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 be directed skyward and shall be directed within the boundaries of the subject property.

G. Odor. As used in Subsection 841.03(G), building means the building, or portion thereof, used for marijuana production or marijuana processing. However, Subsection 841.03(G) does not apply to a building approved as part of outdoor production pursuant to Subsection 841.03(A)(2)(b).

1. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.

2. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.

3. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.

4. Negative air pressure shall be maintained inside the building.

5. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.

6. The filtration system shall be designed by a mechanical engineer licensed in the State of Oregon. The engineer shall stamp the design and certify that it complies with Subsection 841.03(G).

7. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.

H. Noise. The applicant shall submit a noise study by an acoustic engineer licensed in the State of Oregon. The study shall demonstrate that generators as well as mechanical equipment used for heating, ventilating, air conditioning, or odor control will not produce sound that, when measured at any lot line of the subject property, exceeds 50 dB(A).

I. Security Cameras. If used, security cameras shall be directed to record only the subject property and may be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the Oregon Liquor Control Commission (OLCC) or registration requirements of the Oregon Health Authority (OHA).

J. Water. The applicant shall submit:

1. A water right permit or certificate number for the proposed marijuana production or marijuana processing;

2. A statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or

3. Proof from the Oregon Water Resources Department that the water to be used for marijuana production or marijuana processing is from a source that does not require a water right.

K. Waste Management. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.

L. Residency. In the FF-10 and RRFF-5 Districts, a minimum of one of the following shall reside in a dwelling unit on the subject property:

1. An owner of the subject property;

2. A holder of an OLCC license for marijuana production, provided that the license applies to the subject property; or

3. A person registered with the OHA as a person designated to produce marijuana by a registry identification cardholder, provided that the registration applies to the subject property.

M. Exceptions. Marijuana production or marijuana processing, provided such production or processing is done pursuant to registration with the OHA, is not required to comply with Subsections 841.03(F)(3) and (G) through (L), provided that the minimum front, rear, and side yard depths for any structure used for marijuana production or marijuana processing shall be 100 feet.

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 10:00 a.m. and 9 p.m. and may only permit consumers to be present in the building space occupied by the marijuana retailer between the hours of 10:00 a.m. and 9 p.m.

B. Odor. As used in Subsection 841.04(B), building means the building, or portion thereof, used for marijuana retailing.

1. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.

2. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.

3. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.

4. Negative air pressure shall be maintained inside the building.

5. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.

6. The filtration system shall be designed by a mechanical engineer licensed in the State of Oregon. The engineer shall stamp the design and certify that it complies with Subsection 841.04(B).

7. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.

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 OLCC licensee or OHA registrant.

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*, or 5-4b, *Road Functional Classification Rural*.

2. If the use is licensed by the Oregon Liquor Control Commission (OLCC) pursuant to Section 22, Chapter 1, Oregon Laws 2015, 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 ORS 475.314, 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 any marijuana retailer that obtained full, unconditional approval of a registration from the OHA on or before March 31, 2015, that is operating in a building space where marijuana retailing activities approved by the OHA 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.

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 marijuana production or marijuana processing, or if no major development permits are required to complete the development contemplated by the approved marijuana production or marijuana processing, 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.

[Added by Ord. ZDO-254, 1/4/16; Amended by Ord. ZDO-254, 3/1/16]