

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON**

**ORDINANCE NO. \_\_\_\_\_**

Amending MCC Chapters 11.15.9105, 33.0560, 34.0560, 35.0560 and 36.0560 Relating to Sound Control Criteria for Marijuana Businesses and Declaring an Emergency.

(Language ~~stricken~~ is deleted; underlined language is new.)

**The Multnomah County Board of Commissioners Finds:**

- a. Periodically, there is a need to amend County land use policies or regulations to address a change in law or circumstance; to implement elements of the Multnomah County Comprehensive Plan; or to make technical corrections for, among other things, clarification and consistency (commonly referred to as “housekeeping amendments”). Having identified such need, the Multnomah County Planning Commission recommended the adoption of this ordinance to the Board of County Commissioners. The Planning Commission made such recommendation through adoption of the resolution described below and pursuant to its authority in MCC 33.0140, 34.0140, 35.0140, 36.0140, 37.0710, and in ORS 215.110.
- b. Planning Commission Resolution No. PC 2017-9804 relates to sound control criteria of approval for Marijuana Business activities. In 2016, Multnomah County adopted Marijuana Business regulations, which established standards for marijuana production, processing, wholesaling, dispensing and retailing in the unincorporated areas of the County (Ordinance 1232). Generally, these regulations identified appropriate base zones for various Marijuana Business activities; established setback, fencing, lighting, odor, and sound control requirements; and established other standards designed to balance business opportunities with the need to protect communities from off-site impacts.
- c. The regulations adopted in 2016 prohibit a Marijuana Business in a Rural Residential (RR) zone from producing sound that is detectable at the property line; sound generated from a Marijuana Business in other zones must comply with the Multnomah County Sound Control Code (MCC 15.265 – 15.274) administered by the Multnomah County Sheriff’s office. Community members have raised concerns about Marijuana Business sound impacts outside of the Rural Residential zones.
- d. This ordinance removes reference to the County Sound Control Code and extends the sound control standard for Marijuana Businesses in the Rural Residential zone to Marijuana Businesses in all other zones by prohibiting Marijuana Businesses from producing sound detectable at or beyond the property line. The ordinance also clarifies the sound control standard, including defining what qualifies as a “detectable” sound. The Multnomah County Land Use Planning Division will implement and enforce the sound control standard for Marijuana Businesses in all applicable zones.

- e. State law authorizes the production, processing, sale, and use of marijuana for medical and recreational purposes. In 1998, Oregon voters approved Ballot Measure 67 providing state authorization for the personal growing and use of medical marijuana. In 2014, Oregon voters approved Ballot Measure 91 providing state authorization for the personal use and commercial production, processing and sale of recreational marijuana. Since their enactment, the state legislature has repeatedly amended the laws regulating medical and recreational marijuana.
- f. Marijuana remains a schedule I controlled substance under the federal Controlled Substances Act, and nothing in state law immunizes a person from federal prosecution for the production, processing, sale, or use of marijuana.
- g. In recognition of the foregoing dichotomy in federal and state law, this ordinance is limited to the imposition of *restrictions* on the operation of marijuana businesses for purposes of protecting and preserving the public health, safety and general welfare of the community. In other words, nothing in this ordinance operates as an *authorization* of any marijuana use or activity. Instead, the nature, extent, scope, and operation of what is referred to in this ordinance as “Marijuana Businesses” are authorized and prescribed *solely* by state law and administrative rule; neither this ordinance nor any other County act shall be interpreted as authorizing any person to engage in any activity prohibited by law nor shall this ordinance or any other County act be applied in any manner that would authorize any person to engage in any activity prohibited by law.
- h. The authority to impose land use regulations derives from the County’s home rule authority and charter. Although the County has its own inherent power to “protect the health, safety and welfare of the citizens of this state” (*see, e.g.,* ORS 215.253(2)), this ordinance is designed to fall within the category of those “reasonable regulations” (*i.e.,* time, place, and manner) provided for in ORS 475B.486 and ORS 475B.928. This ordinance capitalizes on the efficiency, including clarity to the public, gained by aligning the regulations herein with the framework set forth in state law and administrative rule with respect to the regulation of marijuana-related activities.
- i. The Planning Commission held a public hearing on April 2, 2018 during which all interested persons were given the opportunity to appear and be heard. Notice of the Planning Commission’s hearing was published in the Oregonian newspaper and on the website of the Multnomah County Land Use Planning Program. In addition, the written individual notice required in ORS 215.503 (commonly referred to as “Ballot Measure 56 notice”) was mailed on March 9, 2018.
- j. The Planning Commission’s recommendation is sound and derives from the proper execution of its duties and authority.

### **Multnomah County Ordains as Follows:**

**Section 1.** MCC 11.15.9105, 33.0560, 34.0560, 35.0560 and 36.0560 are amended as follows:

**§ 11.15.9105 MARIJUANA BUSINESS.**  
**§ 33.0560 MARIJUANA BUSINESS.**  
**§ 34.0560 MARIJUANA BUSINESS.**  
**§ 35.0560 MARIJUANA BUSINESS.**

§ 36.0560 MARIJUANA BUSINESS.

\* \* \*

(E) A Marijuana Business is required to meet the criteria referenced in Table A and must comply with the following:

\* \* \*

(4) A Marijuana Business ~~in a Rural Residential (RR) zoning district~~ shall not produce or permit to be produced sound that is detectable at or beyond the property line of the lot or parcel on which the Marijuana Business is located. For purposes of this subsection, a sound is detectable if it can be detected by a reasonable person of ordinary sensitivities using the person's unaided hearing faculties. ~~A Marijuana Business in all other zoning districts shall comply with the county Sound Control Law, MCC 15.265-15.274. A Marijuana Business is not eligible for a variance as prescribed in MCC 15.271 of the county Sound Control Law.~~

**Section 2.** This ordinance being necessary for the health, safety, and general welfare of the people of Multnomah County, an emergency is declared and the ordinance takes effect upon its signature by the County Chair.

FIRST READING AND ADOPTION: \_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

\_\_\_\_\_  
Deborah Kafoury, Chair

REVIEWED:

JENNY M. MADKOUR, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By \_\_\_\_\_  
Katherine Thomas, Assistant County Attorney

SUBMITTED BY: Kim Peoples, Director, Department of Community Services