

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

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

Amending MCC Chapters 11.15, 33, 34, 35 36, and 38 Relating to Marijuana Business Review Criteria 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 11.15.8405 through 11.15.8415, 33.0140, 34.0140, 35.0140, 36.0140, 37.0710, and 38.0710 and in ORS 215.110.
- b. Planning Commission Resolution No. PC 2015-4551 relates to Marijuana Businesses. This ordinance does not regulate the personal possession or use of marijuana.
- c. 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. In 2015, the state legislature amended existing laws regulating medical and recreational marijuana when it adopted Oregon Laws 2015, chapter 614 (hereinafter “HB 3400”).
- d. 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.
- e. In recognition of the foregoing dichotomy in federal and state law, this ordinance is limited to the imposition of *restrictions* on the siting and 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 *authorization* of any marijuana use or activity. Instead, the nature, extent, scope, and operation of what is referred to herein as “Marijuana Businesses” is 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.

- f. 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)), the proposed ordinance is designed to fall within the category of those "reasonable regulations" (i.e., time, place, and manner) provided for in HB 3400. 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.
- g. The County's authority to impose land use regulations in the Columbia River Gorge National Scenic Area ("Scenic Area") is limited by the Columbia River Gorge National Scenic Area Act, which requires the County to submit land use ordinances for that area to the Columbia River Gorge Commission ("Commission") for approval. The Commission's legal counsel has advised that marijuana's status as a schedule I controlled substance under federal law prevents the Commission (and in turn the County) from approving an ordinance applying current County zoning to marijuana businesses in the Scenic Area.
- h. Prior to the first Planning Commission hearing on this ordinance, the County mailed notices to individual property owners as required by ORS 215.503 ("Ballot Measure 56 notice"). Notice of the Planning Commission's hearing also was published in the Oregonian newspaper and on the website of the Multnomah County Land Use Planning Program. The Planning Commission held a public hearing on February 1, 2016, during which all interested persons were given the opportunity to appear and be heard. The Planning Commission continued that hearing until February 8, 2016 to allow the Commission to deliberate, and at that hearing, the Planning Commission recommended adoption of the Marijuana Business ordinance.
- i. 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 33.0560, 34.0560, 35.0560 and 36.0560 is added as follows:

#### **33.0560** **Marijuana Business**

(A) The purpose of this section is to protect and preserve the public health, safety and general welfare of the community by establishing restrictions on the siting and operation of Marijuana Businesses. The nature, extent, scope, and operation of Marijuana Businesses is authorized and prescribed by state law and administrative rule, not by this or any other County ordinance or act. No County ordinance or other act shall be interpreted as authorizing any person to engage in any activity prohibited by law nor shall any County ordinance or other act be applied in any manner that would authorize any person to engage in any activity prohibited by law. Accordingly, this section, through Table A and the other provisions of this section, imposes restrictions on the establishment and operation of Marijuana Businesses and does not constitute a separate source of authority for the establishment and operation of Marijuana Businesses. Nothing in this section regulates the personal use of marijuana.

(B) In construing this section, including the definitions of the terms given in paragraph (C), related provisions of state law and administrative rule provide relevant context.

(C) The following definitions apply to this section and to the implementation of this section through other provisions of the Multnomah County Code.

(1) The term “Marijuana Business” and its derivations means an enterprise authorized by state law involving medical or recreational marijuana production, medical or recreational marijuana processing, recreational marijuana wholesaling, medical marijuana dispensing, or retailing of recreational marijuana. Nothing in this section authorizes collocation of medical and recreational enterprises beyond that allowed under state law.

(2) The term “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.

(3) The term “Indoor Production” means producing marijuana in any manner:

(a) Utilizing artificial lighting on mature marijuana plants; or

(b) Other than “outdoor production,” as that is defined in this section.

(D) A proposal for establishing, altering, expanding or replacing a Marijuana Business will be reviewed as specified in Table A below and is subject to the specified criteria therein as well as the criteria set forth in paragraph E of this section. For purposes of MCC 33.7214, a proposal for the alteration or expansion of an existing building or structure by more than 400 square feet of floor area or ground coverage, or for replacement of a building or structure shall be deemed to have a greater adverse impact on the neighborhood. Where no review process for a particular Marijuana Business in a particular zoning district is specified in Table A, the Marijuana Business may not operate in that zoning district.

**Table A: Chapter 33**

X = Not allowed

<u>Zoning District</u>	<u>Marijuana Production</u>	<u>Marijuana Processing</u>	<u>Marijuana Wholesaling</u>	<u>Marijuana Dispensing or Retailing</u>
<u>(CFU zones)</u>	<u>Outdoor Production only</u>			
<u>CFU-1</u>	<u>33.2020(C)</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>CFU-2</u>	<u>33.2220(C)</u>			
<u>CFU-5</u>	<u>33.2420(C)</u>			
<u>EFU</u>	<u>33.2620(A)</u>	<u>33.2625(L)</u>	<u>X</u>	<u>X</u>

<u>MUA-20</u>	<u>33.2820(A)</u>	<u>33.2830(B)(2)</u>	<u>X</u>	<u>X</u>
<u>RR</u>	<u>Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet.</u> <u>33.3120(A)</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>BRC</u>	<u>Indoor Production only</u> <u>33.3320(A)</u>	<u>33.3330(B)(3)</u>	<u>X</u>	<u>33.3330(B)(1)</u>

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

(1) A Marijuana Business shall be located a minimum of 1,000 feet from a public or private school.

(a) The measurement in the Exclusive Farm Use zone shall be made using a straight line extending horizontally from the closest school property line to the closest part of any canopy area or building or structure used for marijuana production or marijuana processing.

(b) The measurement in all other zoning districts shall be made using a straight line extending horizontally from the closest point anywhere on the property line of the Marijuana Business property to the closest school property line.

(2) Outdoor marijuana canopies, buildings and structures used for indoor or outdoor marijuana production, and buildings and structures used for marijuana processing shall be located at least 100 feet from any property line, unless an adjustment or variance is approved. The distance shall be measured using a straight line extending horizontally from the closest part of the canopy area or building or structure used for marijuana production or marijuana processing to the closest property line. This 100 foot setback does not apply to a building or structure, or portion thereof, lawfully established within 100 feet of a property line prior to January 1, 2016.

(3) All Marijuana Business buildings must be equipped with an air filtration system designed and verified by an Oregon licensed mechanical engineer to ensure no marijuana odor at property lines. The system must be operated and maintained in the manner designed and instructed by the Oregon licensed mechanical engineer. Doors and windows shall remain closed, except for the minimum length of time needed for ingress to or egress from the building. The air filtration system requirement does not apply to a building used as part of outdoor production.

(4) A Marijuana Business in a Rural Residential (RR) zoning district shall not produce or permit to be produced sound that is detectable at the property line. 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.

(5) During the period commencing 30 minutes before sunset and ending 30 minutes after sunrise the following day, artificial lighting shall not be visible from outside a building or structure used for marijuana production.

(6) With respect to the establishment, alteration, expansion or replacement of a Marijuana Business supported by a building or other structure, MCC 33.4500 through MCC 33.4575 (Significant Environmental Concern) shall not apply to a building or structure lawfully established prior to January 1, 2016, but shall apply to all other buildings and structures in a Significant Environmental Concern subdistrict. The farm use exception in MCC 33.4515(A)(1) from Significant Environmental Concern permit requirements shall apply only to marijuana production in the Exclusive Farm Use Zoning District and shall not apply to a Marijuana Business in any other instance.

(7) Fences, walls or other barriers:

(a) Shall be limited in area by being located no more than 20-feet in any direction from the outer extent of all areas used for Marijuana Business activities, including but not limited to buildings, structures, outdoor marijuana canopies, and areas used for off-street parking, loading, and storage.

(b) Shall not be electrified, use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.

(c) Shall not include plastic sheeting, knitted polyethylene, woven polypropylene, vinyl coated polyester, or similar materials.

(d) No variance, adjustment, deviation or any other modification to these fencing standards is allowed.

(8) No more than one of each of the following Marijuana Businesses may be established on the same Lot of Record.

(a) Marijuana production

(b) Marijuana processing

(c) Marijuana retailing

(d) Marijuana dispensary.

(9) The following uses are not allowed as a Home Occupation: Marijuana Business, private or public research of cannabis, or laboratory for the testing of marijuana items.

(10) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses:

- (a) A new dwelling used in conjunction with a marijuana crop.
- (b) A farm stand, as described in ORS 215.213(1)(r) or 215.283(1)(o), used in conjunction with a marijuana crop.
- (c) A commercial activity, as described in ORS 215.213(2)(c) or ORS 215.283(2)(a), carried on in conjunction with a marijuana crop.

**Section 2.** MCC 34.0560 is added as follows:

**34.0560** **Marijuana Business**

(A) The purpose of this section is to protect and preserve the public health, safety and general welfare of the community by establishing restrictions on the siting and operation of Marijuana Businesses. The nature, extent, scope, and operation of Marijuana Businesses is authorized and prescribed by state law and administrative rule, not by this or any other County ordinance or act. No County ordinance or other act shall be interpreted as authorizing any person to engage in any activity prohibited by law nor shall any County ordinance or other act be applied in any manner that would authorize any person to engage in any activity prohibited by law. Accordingly, this section, through Table A and the other provisions of this section, imposes restrictions on the establishment and operation of Marijuana Businesses and does not constitute a separate source of authority for the establishment and operation of Marijuana Businesses. Nothing in this section regulates the personal use of marijuana.

(B) In construing this section, including the definitions of the terms given in paragraph (C), related provisions of state law and administrative rule provide relevant context.

(C) The following definitions apply to this section and to the implementation of this section through other provisions of the Multnomah County Code.

(1) The term “Marijuana Business” and its derivations means an enterprise authorized by state law involving medical or recreational marijuana production, medical or recreational marijuana processing, recreational marijuana wholesaling, medical marijuana dispensing, or retailing of recreational marijuana. Nothing in this section authorizes collocation of medical and recreational enterprises beyond that allowed under state law.

(2) The term “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.

(3) The term “Indoor Production” means producing marijuana in any manner:

(a) Utilizing artificial lighting on mature marijuana plants; or

(b) Other than “outdoor production,” as that is defined in this section.

(D) A proposal for establishing, altering, expanding or replacing a Marijuana Business will be reviewed as specified in Table A below and is subject to the specified criteria therein as well as the criteria set forth in paragraph E of this section. For purposes of MCC 34.7214, a proposal for the alteration or expansion of an existing building or structure by more than 400 square feet of floor area or ground coverage, or for replacement of a building or structure shall be deemed to have a greater adverse impact on the neighborhood. Where no review process for a particular Marijuana Business in a particular zoning district is specified in Table A, the Marijuana Business may not operate in that zoning district.

**Table A: Chapter 34**

X = Not Allowed

<b><u>Zoning District</u></b>	<b><u>Marijuana Production</u></b>	<b><u>Marijuana Processing</u></b>	<b><u>Marijuana Wholesaling</u></b>	<b><u>Marijuana Dispensing or Retailing</u></b>
<u>EFU</u>	<u>34.2620(A)</u>	<u>34.2625(L)</u>	<u>X</u>	<u>X</u>
<u>MUA-20</u>	<u>34.2820(A)</u>	<u>34.2830(B)(2)</u>	<u>X</u>	<u>X</u>
<u>RR</u>	<u>Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet.</u> <u>34.3120(A)</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>RC</u>	<u>Indoor Production only</u> <u>34.3320(A)</u>	<u>34.3330(B)(4)</u>	<u>34.3330(B)(3)(a)</u>	<u>34.3330(B)(1)</u>

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

(1) A Marijuana Business shall be located a minimum of 1,000 feet from a public or private school.

(a) The measurement in the Exclusive Farm Use zone shall be made using a straight line extending horizontally from the closest school property line to

the closest part of any canopy area or building or structure used for marijuana production or marijuana processing.

(b) The measurement in all other zoning districts shall be made using a straight line extending horizontally from the closest point anywhere on the property line of the Marijuana Business property to the closest school property line.

(2) Outdoor marijuana canopies, buildings and structures used for indoor or outdoor marijuana production, and buildings and structures used for marijuana processing shall be located at least 100 feet from any property line, unless an adjustment or variance is approved. The distance shall be measured using a straight line extending horizontally from the closest part of the canopy area or building or structure used for marijuana production or marijuana processing to the closest property line. This 100 foot setback does not apply to a building or structure, or portion thereof, lawfully established within 100 feet of a property line prior to January 1, 2016.

(3) All Marijuana Business buildings must be equipped with an air filtration system designed and verified by an Oregon licensed mechanical engineer to ensure no marijuana odor at property lines. The system must be operated and maintained in the manner designed and instructed by the Oregon licensed mechanical engineer. Doors and windows shall remain closed, except for the minimum length of time needed for ingress to or egress from the building. The air filtration system requirement does not apply to a building used as part of outdoor production.

(4) A Marijuana Business in a Rural Residential (RR) zoning district shall not produce or permit to be produced sound that is detectable at the property line. 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.

(5) During the period commencing 30 minutes before sunset and ending 30 minutes after sunrise the following day, artificial lighting shall not be visible from outside a building or structure used for marijuana production.

(6) With respect to the establishment, alteration, expansion or replacement of a Marijuana Business supported by a building or other structure, MCC 34.4500 through MCC 34.4575 (Significant Environmental Concern) shall not apply to a building or structure lawfully established prior to January 1, 2016, but shall apply to all other buildings and structures in a Significant Environmental Concern subdistrict. The farm use exception in MCC 34.4515(A) from Significant Environmental Concern permit requirements shall apply only to marijuana production in the Exclusive Farm Use Zoning District and shall not apply to a Marijuana Business in any other instance.

(7) Fences, walls or other barriers:

(a) Shall be limited in area by being located no more than 20-feet in any direction from the outer extent of all areas used for Marijuana Business activities, including but not limited to buildings, structures, outdoor marijuana canopies, and areas used for off-street parking, loading, and



storage.

(b) Shall not be electrified, use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.

(c) Shall not include plastic sheeting, knitted polyethylene, woven polypropylene, vinyl coated polyester, or similar materials.

(d) No variance, adjustment, deviation or any other modification to these fencing standards is allowed.

(8) No more than one of each of the following Marijuana Businesses may be established on the same Lot of Record.

- (a) Marijuana production
- (b) Marijuana processing
- (c) Marijuana wholesaling
- (d) Marijuana retailing
- (e) Marijuana dispensary.

(9) The following uses are not allowed as a Home Occupation: Marijuana Business, private or public research of cannabis, or laboratory for the testing of marijuana items.

(10) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses:

- (a) A new dwelling used in conjunction with a marijuana crop.
- (b) A farm stand, as described in ORS 215.213(1)(r) or 215.283(1)(o), used in conjunction with a marijuana crop.
- (c) A commercial activity, as described in ORS 215.213(2)(c) or ORS 215.283(2)(a), carried on in conjunction with a marijuana crop.

**Section 3.** MCC 35.0560 is added as follows:

**35.0560** **Marijuana Business**

(A) The purpose of this section is to protect and preserve the public health, safety and general welfare of the community by establishing restrictions on the siting and operation of Marijuana Businesses. The nature, extent, scope, and operation of Marijuana Businesses is authorized and prescribed by state law and administrative rule, not by this or any other County ordinance or act. No County ordinance or other act shall be interpreted as authorizing any person to engage in any activity prohibited by law nor shall any County ordinance or other act be applied in any manner that would authorize any person to engage in any activity prohibited by law. Accordingly, this section, through

Table A and the other provisions of this section, imposes restrictions on the establishment and operation of Marijuana Businesses and does not constitute a separate source of authority for the establishment and operation of Marijuana Businesses. Nothing in this section regulates the personal use of marijuana.

(B) In construing this section, including the definitions of the terms given in paragraph (C), related provisions of state law and administrative rule provide relevant context.

(C) The following definitions apply to this section and to the implementation of this section through other provisions of the Multnomah County Code.

(1) The term “Marijuana Business” and its derivations means an enterprise authorized by state law involving medical or recreational marijuana production, medical or recreational marijuana processing, recreational marijuana wholesaling, medical marijuana dispensing, or retailing of recreational marijuana. Nothing in this section authorizes collocation of medical and recreational enterprises beyond that allowed under state law.

(2) The term “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.

(3) The term “Indoor Production” means producing marijuana in any manner:

(a) Utilizing artificial lighting on mature marijuana plants; or

(b) Other than “outdoor production,” as that is defined in this section.

(D) A proposal for establishing, altering, expanding or replacing a Marijuana Business will be reviewed as specified in Table A below and is subject to the specified criteria therein as well as the criteria set forth in paragraph E of this section. For purposes of MCC 35.7214, a proposal for the alteration or expansion of an existing building or structure by more than 400 square feet of floor area or ground coverage, or for replacement of a building or structure shall be deemed to have a greater adverse impact on the neighborhood. Where no review process for a particular Marijuana Business in a particular zoning district is specified in Table A, the Marijuana Business may not operate in that zoning district.

**Table A: Chapter 35**

X = Not Allowed

<u><b>Zoning District</b></u>	<u><b>Marijuana Production</b></u>	<u><b>Marijuana Processing</b></u>	<u><b>Marijuana Wholesaling</b></u>	<u><b>Marijuana Dispensing or Retailing</b></u>
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<u>(CFU zones)</u>	<u>Outdoor Production</u> <u>only</u>			
<u>CFU-3</u> <u>CFU-4</u>	<u>35.2020(C)</u> <u>35.2220(C)</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>EFU</u>	<u>35.2620(A)</u>	<u>35.2625(L)</u>	<u>X</u>	<u>X</u>
<u>MUA-20</u>	<u>35.2820(A)</u>	<u>35.2830(B)(2)</u>	<u>X</u>	<u>X</u>
<u>RR</u>	<u>Indoor Production</u> <u>only and the total</u> <u>combined footprint</u> <u>of the Marijuana</u> <u>Business shall not</u> <u>exceed 2,500</u> <u>square feet.</u> <u>35.3120(A)</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>SRC</u>	<u>Indoor Production</u> <u>only</u> <u>35.3320(A)</u>	<u>35.3330(B)(3)</u>	<u>X</u>	<u>35.3330(B)(1)</u>

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

(1) A Marijuana Business shall be located a minimum of 1,000 feet from a public or private school.

(a) The measurement in the Exclusive Farm Use zone shall be made using a straight line extending horizontally from the closest school property line to the closest part of any canopy area or building or structure used for marijuana production or marijuana processing.

(b) The measurement in all other zoning districts shall be made using a straight line extending horizontally from the closest point anywhere on the property line of the Marijuana Business property to the closest school property line.

(2) Outdoor marijuana canopies, buildings and structures used for indoor or outdoor marijuana production, and buildings and structures used for marijuana processing shall be located at least 100 feet from any property line, unless an adjustment or variance is approved. The distance shall be measured using a straight line extending horizontally from the closest part of the canopy area or building or structure used for marijuana production or marijuana processing to the closest property line. This 100 foot setback does not apply to a building or structure, or portion thereof, lawfully established within 100 feet of a property line prior to January 1, 2016.

(3) All Marijuana Business buildings must be equipped with an air filtration system designed and verified by an Oregon licensed mechanical engineer to ensure no marijuana odor at

property lines. The system must be operated and maintained in the manner designed and instructed by the Oregon licensed mechanical engineer. Doors and windows shall remain closed, except for the minimum length of time needed for ingress to or egress from the building. The air filtration system requirement does not apply to a building used as part of outdoor production.

(4) A Marijuana Business in a Rural Residential (RR) zoning district shall not produce or permit to be produced sound that is detectable at the property line. 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.

(5) During the period commencing 30 minutes before sunset and ending 30 minutes after sunrise the following day, artificial lighting shall not be visible from outside a building or structure used for marijuana production.

(6) With respect to the establishment, alteration, expansion or replacement of a Marijuana Business supported by a building or other structure, MCC 35.4500 through MCC 35.4575 (Significant Environmental Concern) shall not apply to a building or structure lawfully established prior to January 1, 2016, but shall apply to all other buildings and structures in a Significant Environmental Concern subdistrict. The farm use exception in MCC 35.4515(A)(1) from Significant Environmental Concern permit requirements shall apply only to marijuana production in the Exclusive Farm Use Zoning District and shall not apply to a Marijuana Business in any other instance.

(7) Fences, walls or other barriers:

- (a) Shall be limited in area by being located no more than 20-feet in any direction from the outer extent of all areas used for Marijuana Business activities, including but not limited to buildings, structures, outdoor marijuana canopies, and areas used for off-street parking, loading, and storage.
- (b) Shall not be electrified, use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.
- (c) Shall not include plastic sheeting, knitted polyethylene, woven polypropylene, vinyl coated polyester, or similar materials.
- (d) No variance, adjustment, deviation or any other modification to these fencing standards is allowed.

(8) No more than one of each of the following Marijuana Businesses may be established on the same Lot of Record.

- (a) Marijuana production
- (b) Marijuana processing
- (c) Marijuana retailing

(d) Marijuana dispensary.

(9) The following uses are not allowed as a Home Occupation: Marijuana Business, private or public research of cannabis, or laboratory for the testing of marijuana items.

(10) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses:

(a) A new dwelling used in conjunction with a marijuana crop.

(b) A farm stand, as described in ORS 215.213(1)(r) or 215.283(1)(o), used in conjunction with a marijuana crop.

(c) A commercial activity, as described in ORS 215.213(2)(c) or ORS 215.283(2)(a), carried on in conjunction with a marijuana crop.

**Section 4.** MCC 36.0560 is added as follows:

**36.0560** **Marijuana Business**

(A) The purpose of this section is to protect and preserve the public health, safety and general welfare of the community by establishing restrictions on the siting and operation of Marijuana Businesses. The nature, extent, scope, and operation of Marijuana Businesses is authorized and prescribed by state law and administrative rule, not by this or any other County ordinance or act. No County ordinance or other act shall be interpreted as authorizing any person to engage in any activity prohibited by law nor shall any County ordinance or other act be applied in any manner that would authorize any person to engage in any activity prohibited by law. Accordingly, this section, through Table A and the other provisions of this section, imposes restrictions on the establishment and operation of Marijuana Businesses and does not constitute a separate source of authority for the establishment and operation of Marijuana Businesses. Nothing in this section regulates the personal use of marijuana.

(B) In construing this section, including the definitions of the terms given in paragraph (C), related provisions of state law and administrative rule provide relevant context.

(C) The following definitions apply to this section and to the implementation of this section through other provisions of the Multnomah County Code.

(1) The term “Marijuana Business” and its derivations means an enterprise authorized by state law involving medical or recreational marijuana production, medical or recreational marijuana processing, recreational marijuana wholesaling, medical marijuana dispensing, or retailing of recreational marijuana. Nothing in this section authorizes collocation of medical and recreational enterprises beyond that allowed under state law.

(2) The term “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.

(3) The term “Indoor Production” means producing marijuana in any manner:

(a) Utilizing artificial lighting on mature marijuana plants; or

(b) Other than “outdoor production,” as that is defined in this section.

(D) A proposal for establishing, altering, expanding or replacing a Marijuana Business will be reviewed as specified in Table A below and is subject to the specified criteria therein as well as the criteria set forth in paragraph E of this section. For purposes of MCC 36.7214, a proposal for the alteration or expansion of an existing building or structure by more than 400 square feet of floor area or ground coverage, or for replacement of a building or structure shall be deemed to have a greater adverse impact on the neighborhood. Where no review process for a particular Marijuana Business in a particular zoning district is specified in Table A, the Marijuana Business may not operate in that zoning district.

**Table A: Chapter 36**

X = Not Allowed

<b><u>Zoning District</u></b>	<b><u>Marijuana Production</u></b>	<b><u>Marijuana Processing</u></b>	<b><u>Marijuana Wholesaling</u></b>	<b><u>Marijuana Dispensing or Retailing</u></b>
<u>CFU</u>	<u>Outdoor Production only</u> <u>36.2020(C)</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>EFU</u>	<u>36.2620(A)</u>	<u>36.2625(L)</u>	<u>X</u>	<u>X</u>
<u>MUA-20</u>	<u>36.2820(B)</u>	<u>36.2830(B)(2)</u>	<u>X</u>	<u>X</u>
<u>RR</u>	<u>Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet.</u> <u>36.3120(B)</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>PH-RC</u>	<u>Indoor Production only</u> <u>36.3320(A)</u>	<u>36.3330(B)(6)</u>	<u>36.3330(B)(4)</u>	<u>36.3330(B)(1)</u>

<u>OR</u>	<u>Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet.</u> <u>36.3420(B)</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>OCI</u>	<u>Indoor Production only</u> <u>36.3520(B)</u>	<u>36.3525(C)</u>	<u>36.3525(B)(3)</u>	<u>36.3525(A)</u>

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

(1) A Marijuana Business shall be located a minimum of 1,000 feet from a public or private school.

(a) The measurement in the Exclusive Farm Use zone shall be made using a straight line extending horizontally from the closest school property line to the closest part of any canopy area or building or structure used for marijuana production or marijuana processing.

(b) The measurement in all other zoning districts shall be made using a straight line extending horizontally from the closest point anywhere on the property line of the Marijuana Business property to the closest school property line.

(2) Outdoor marijuana canopies, buildings and structures used for indoor or outdoor marijuana production, and buildings and structures used for marijuana processing shall be located at least 100 feet from any property line, unless an adjustment or variance is approved. The distance shall be measured using a straight line extending horizontally from the closest part of the canopy area or building or structure used for marijuana production or marijuana processing to the closest property line. This 100 foot setback does not apply to a building or structure, or portion thereof, lawfully established within 100 feet of a property line prior to January 1, 2016.

(3) All Marijuana Business buildings must be equipped with an air filtration system designed and verified by an Oregon licensed mechanical engineer to ensure no marijuana odor at property lines. The system must be operated and maintained in the manner designed and instructed by the Oregon licensed mechanical engineer. Doors and windows shall remain closed, except for the minimum length of time needed for ingress to or egress from the building. The air filtration system requirement does not apply to a building used as part of outdoor production.

(4) A Marijuana Business in a Rural Residential (RR) zoning district shall not

produce or permit to be produced sound that is detectable at the property line. 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.

(5) During the period commencing 30 minutes before sunset and ending 30 minutes after sunrise the following day, artificial lighting shall not be visible from outside a building or structure used for marijuana production.

(6) With respect to the establishment, alteration, expansion or replacement of a Marijuana Business supported by a building or other structure, MCC 36.4500 through MCC 36.4567 (Significant Environmental Concern) shall not apply to a building or structure lawfully established prior to January 1, 2016, but shall apply to all other buildings and structures in a Significant Environmental Concern subdistrict. The farm use exception in MCC 36.4520(A) from Significant Environmental Concern permit requirements shall apply only to marijuana production in the Exclusive Farm Use Zoning District and shall not apply to a Marijuana Business in any other instance.

(7) Fences, walls or other barriers:

- (a) Shall be limited in area by being located no more than 20-feet in any direction from the outer extent of all areas used for Marijuana Business activities, including but not limited to buildings, structures, outdoor marijuana canopies, and areas used for off-street parking, loading, and storage.
- (b) Shall not be electrified, use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.
- (c) Shall not include plastic sheeting, knitted polyethylene, woven polypropylene, vinyl coated polyester, or similar materials.
- (d) No variance, adjustment, deviation or any other modification to these fencing standards is allowed.

(8) No more than one of each of the following Marijuana Businesses may be established on the same Lot of Record.

- (a) Marijuana production
- (b) Marijuana processing
- (c) Marijuana wholesaling
- (d) Marijuana retailing
- (e) Marijuana dispensary.

(9) The following uses are not allowed as a Home Occupation: Marijuana Business, private or public research of cannabis, or laboratory for the testing of marijuana items.



(10) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses:

- (a) A new dwelling used in conjunction with a marijuana crop.
- (b) A farm stand, as described in ORS 215.213(1)(r) or 215.283(1)(o), used in conjunction with a marijuana crop.
- (c) A commercial activity, as described in ORS 215.213(2)(c) or ORS 215.283(2)(a), carried on in conjunction with a marijuana crop.

**Section 5.** MCC 38.0025 is amended as follows:

**38.0025 Prohibited Land Uses and Activities**

The following land uses and activities shall not be allowed within the Columbia River Gorge National Scenic Area:

- (A) Solid waste disposal sites or sanitary landfills within the Special Management Area.
- (B) New industrial development outside of the Urban Areas as designated by the Columbia River Gorge National Scenic Area Act.
- (C) Marijuana Business, private or public research of cannabis, or laboratory for the testing of marijuana items.

(1) The term “Marijuana Business” and its derivations means an enterprise authorized by state law involving medical or recreational marijuana production, medical or recreational marijuana processing, recreational marijuana wholesaling, medical marijuana dispensing, or retailing of recreational marijuana.

**Section 6.** MCC 11.15.9105 is added as follows:

**11.15.9105 Marijuana Business**

(A) The purpose of this section is to protect and preserve the public health, safety and general welfare of the community by establishing restrictions on the siting and operation of Marijuana Businesses. The nature, extent, scope, and operation of Marijuana Businesses is authorized and prescribed by state law and administrative rule, not by this or any other County ordinance or act. No County ordinance or other act shall be interpreted as authorizing any person to engage in any activity prohibited by law nor shall any County ordinance or other act be applied in any manner that would authorize any person to engage in any activity prohibited by law. Accordingly, this section, through Table A and the other provisions of this section, imposes restrictions on the establishment and operation of Marijuana Businesses and does not constitute a separate source of authority for the establishment and operation of Marijuana Businesses. Nothing in this section regulates the personal use of marijuana.

(B) In construing this section, including the definitions of the terms given in paragraph (C), related provisions of state law and administrative rule provide relevant context.

(C) The following definitions apply to this section and to the implementation of this section through other provisions of the Multnomah County Code.

(1) The term “Marijuana Business” and its derivations means an enterprise authorized by state law involving medical or recreational marijuana production, medical or recreational marijuana processing, recreational marijuana wholesaling, medical marijuana dispensing, or retailing of recreational marijuana. Nothing in this section authorizes collocation of medical and recreational enterprises beyond that allowed under state law.

(2) The term “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.

(3) The term “Indoor Production” means producing marijuana in any manner:

(a) Utilizing artificial lighting on mature marijuana plants; or

(b) Other than “outdoor production,” as that is defined in this section.

(D) A proposal for establishing, altering, expanding or replacing a Marijuana Business will be reviewed as specified in Table A below and is subject to the specified criteria therein as well as the criteria set forth in paragraph E of this section. For purposes of MCC 11.15.8810, a proposal for the alteration or expansion of an existing building or structure by more than 400 square feet of floor area or ground coverage, or for replacement of a building or structure shall be deemed to have a greater adverse impact on the neighborhood. Where no review process for a particular Marijuana Business in a particular zoning district is specified in Table A, the Marijuana Business may not operate in that zoning district.

**Table A: Chapter 11.15**

X = Not Allowed

<b><u>Zoning District</u></b>	<b><u>Marijuana Production</u></b>	<b><u>Marijuana Processing</u></b>	<b><u>Marijuana Wholesaling</u></b>	<b><u>Marijuana Dispensing or Retailing</u></b>
<u>(CFU zones)</u> <u>CFU</u> <u>CFU-1</u>	<u>Outdoor Production</u> <u>only</u> <u>11.15.2048(C)</u>	<u>X</u>	<u>X</u>	<u>X</u>

<u>CFU-2</u> <u>CFU-3</u> <u>CFU-4</u> <u>CFU-5</u>				
<u>EFU</u>	<u>11.15.2008(A)</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>RR</u>	<u>Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet.</u> <u>11.15.2208(A)</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>RC</u>	<u>Indoor Production only</u> <u>11.15.2248(A)</u>	<u>11.15.2252(B)(4)</u>	<u>11.15.2252(B)(3)</u>	<u>11.15.2252(B)(1)</u>
<u>UF-20</u>	<u>11.15.2386(B)</u>	<u>11.15.2390(B)(2)</u>	<u>X</u>	<u>X</u>
<u>All Other Zoning Districts</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

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

(1) A Marijuana Business shall be located a minimum of 1,000 feet from a public or private school.

(a) The measurement in the Exclusive Farm Use zone shall be made using a straight line extending horizontally from the closest school property line to the closest part of any canopy area or building or structure used for marijuana production or marijuana processing.

(b) The measurement in all other zoning districts shall be made using a straight line extending horizontally from the closest point anywhere on the property line of the Marijuana Business property to the closest school property line.

(2) Outdoor marijuana canopies, buildings and structures used for indoor or outdoor marijuana production, and buildings and structures used for marijuana processing shall be located at least 100 feet from any property line, unless an adjustment or variance is approved. The distance shall be measured using a straight line extending horizontally from the closest part of the canopy area or building or structure used for marijuana production or marijuana processing to the closest property line. This 100 foot setback does not apply to a building or structure, or portion thereof, lawfully established within 100 feet of a property line prior to January 1, 2016.

(3) All Marijuana Business buildings must be equipped with an air filtration system designed and verified by an Oregon licensed mechanical engineer to ensure no marijuana odor at property lines. The system must be operated and maintained in the manner designed and instructed by the Oregon licensed mechanical engineer. Doors and windows shall remain closed, except for the minimum length of time needed for ingress to or egress from the building. The air filtration system requirement does not apply to a building used as part of outdoor production.

(4) A Marijuana Business in a Rural Residential (RR) zoning district shall not produce or permit to be produced sound that is detectable at the property line. 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.

(5) During the period commencing 30 minutes before sunset and ending 30 minutes after sunrise the following day, artificial lighting shall not be visible from outside a building or structure used for marijuana production.

(6) With respect to the establishment, alteration, expansion or replacement of a Marijuana Business supported by a building or other structure, MCC 11.15.6400 through MCC 11.15.6429 (Significant Environmental Concern) shall not apply to a building or structure lawfully established prior to January 1, 2016, but shall apply to all other buildings and structures in a Significant Environmental Concern subdistrict. The farm use exception in MCC 11.15.6406(A) from Significant Environmental Concern permit requirements shall apply only to marijuana production in the Exclusive Farm Use Zoning District and shall not apply to a Marijuana Business in any other instance.

(7) Fences, walls or other barriers:

(a) Shall be limited in area by being located no more than 20-feet in any direction from the outer extent of all areas used for Marijuana Business activities, including but not limited to buildings, structures, outdoor marijuana canopies, and areas used for off-street parking, loading, and storage.

(b) Shall not be electrified, use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.

(c) Shall not include plastic sheeting, knitted polyethylene, woven polypropylene, vinyl coated polyester, or similar materials.

(d) No variance, adjustment, deviation or any other modification to these fencing standards is allowed.

(8) No more than one of each of the following Marijuana Businesses may be established on the same Lot of Record.

(a) Marijuana production

- (b) Marijuana processing
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(9) The following uses are not allowed as a Home Occupation: Marijuana Business, private or public research of cannabis, or laboratory for the testing of marijuana items.

(10) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses:

- (a) A new dwelling used in conjunction with a marijuana crop.
- (b) A farm stand, as described in ORS 215.213(1)(r) or 215.283(1)(o), used in conjunction with a marijuana crop.
- (c) A commercial activity, as described in ORS 215.213(2)(c) or ORS 215.283(2)(a), carried on in conjunction with a marijuana crop.

**Section 7.** 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: March 31, 2016

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury, Chair

REVIEWED:

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

By Jed Tomkins, Assistant County Attorney

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