



MULTNOMAH COUNTY AGENDA PLACEMENT REQUEST

(Revised: 09/23/13)

Board Clerk Use Only

Meeting Date: 3/31/16
Agenda Item #: R.2
Est. Start Time: 9:35 am
Date Submitted: 3/10/16

Agenda Title: Ordinance Amending MCC Chapters 11.15, 33, 34, 35 36, and 38 Relating to Marijuana Business Review Criteria and Declaring an Emergency

Note: Title should not be more than 2 lines but sufficient to describe the action requested. Title on APR must match title on Ordinance, Resolution, Order or Proclamation.

Requested

Meeting Date: March 31, 2016 **Time Needed:** 1 hour

Department: Community Services **Division:** Land Use Planning

Contact(s): Adam Barber, Senior Planner

Phone: 503.988.0168 **Ext.** 80168 **I/O Address:** 455/1/116

Presenter

Name(s) &

Title(s): Adam Barber, Senior Planner; Jed Tomkins, Assistant County Attorney

General Information

1. What action are you requesting from the Board?

Conduct a public hearing and approve proposed amendments to Multnomah County Zoning Code Chapters 11.15, 33, 34, 35 36, and 38. These amendments have been recommended to the Board for approval by Multnomah County's Planning Commission.

2. Please provide sufficient background information for the Board and the public to understand this issue. Please note which Program Offer this action affects and how it impacts the results.

In the November 1998 general election, Oregon voters passed Ballot Measure 67, the *Oregon Medical Marijuana Act*, which decriminalized medical marijuana under state law. The Oregon Health Authority administers Oregon's medical marijuana program. In the November 2014 general election, Oregon voters passed Ballot Measure 91, the *Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act*, which decriminalized recreational marijuana under state law. In Multnomah County, Measure 91 passed by a vote of 71.38% in favor (213,137) to 28.62% in opposition (85,474), with a voter turnout of 68.59%. The Oregon Liquor Control Commission (OLCC) administers Oregon's recreational marijuana program.

The OLCC adopted temporary Marijuana Business rules on October 22, 2015, to regulate the production, processing, wholesaling and retail sales of recreational marijuana. The rules regulate the various aspects of owning and operating a marijuana business in Oregon. Among other things, the OLCC rules address the OLCC license application process,

residency requirements, compliance measures and various site requirements including regulation of canopy size, fencing, security and other health and safety measures. Beginning January 4, 2016, the OLCC began accepting license applications for marijuana business activities. The Oregon Health Authority is also engaged in rulemaking and is now in the process of adopting permanent rules governing medical marijuana growers, processors, and dispensaries.

Given those changes in state law, this proposal is intended to reconcile state marijuana laws and local land use laws. The authority to impose local land use regulations derives from the County's home rule authority and charter; this proposal 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. Accordingly, this proposal contains regulations pertaining to both medical and recreational marijuana production (growing), medical and recreational processing, recreational wholesale, and medical marijuana dispensary and recreational retail business operations. Further, 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 regulations are intentionally designed to fall within the category of local "reasonable regulations" (i.e., time, place, and manner) contemplated in 2015 legislation amending Oregon's medical and recreational marijuana laws (House Bill 3400).

The proposed regulations identify appropriate zones in the unincorporated (rural) portions of Multnomah County for marijuana business activities, directing the most intensive uses towards commercial and industrial zones and away from residential zoning districts. The regulations clarify that all Marijuana Business activities are prohibited within the Columbia River Gorge National Scenic Area. The regulations are intended to minimize community conflicts and reduce the potential for public harm by imposing setbacks to schools and neighboring property lines; providing building type and size limitations; offering odor, light and noise control measures; and outlining design standards for fencing, walls and other barriers. Additionally, no more than one of each type of Marijuana Business may locate on a particular property, maintaining the rural character of the area.

Nothing in the proposed amendments regulates the personal use of marijuana.

3. Explain the fiscal impact (current year and ongoing).

None.

4. Explain any legal and/or policy issues involved.

Marijuana remains a Schedule I controlled substance under the federal Controlled Substances Act. As a result, nothing in this proposal *authorizes* any marijuana use or activity. Instead, the nature, extent, scope, and operation of what is referred to in this proposal as "Marijuana Businesses" is authorized and prescribed *solely* by state law and administrative rule. As such, the regulations proposed herein are purposefully 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. Accordingly, neither this proposal nor any other County act shall be interpreted as authorizing any person to engage in any activity prohibited by law nor shall this proposal or any other County act be applied in any manner that would authorize any person to engage in any activity prohibited by law.

Under the federal law, the County must submit land use ordinances for the Columbia River Gorge National Scenic Area to the Columbia River Gorge Commission ("Commission") for approval. Given the status of marijuana under the federal Controlled Substances Act, legal counsel for the Columbia River Gorge Commission has advised that the Commission, and in

turn the County, will not and cannot approve an ordinance applying current County zoning to Marijuana Businesses in the Scenic Area, as the County is doing in its other zoning districts. Proposed regulations clarify this prohibition on Marijuana Businesses within the Columbia River Gorge National Scenic Area.

This ordinance is appropriate for emergency adoption because state law allows applications for Marijuana Businesses to be filed now.

5. Explain any citizen and/or other government participation that has or will take place.

Multnomah County's Planning Commission considered the proposed revisions at a work session December 7, 2015, followed by a public hearing held on January 1, 2016, which was continued to and closed on January 8, 2016. Notice of each Planning Commission meeting was placed in the Oregonian newspaper and notice of the meeting and the staff report explaining the proposal was posted on the County's Land Use Planning webpage. Each meeting was open to the public to attend and the Planning Commission accepted testimony from members of the public during the public hearing.

Regulations are being proposed that affect the permissible uses of property. Multnomah County mailed notices to individual property owners as required by state law ("Ballot Measure 56 notice").

Required Signature

**Elected
Official or
Department
Director:**

Kim Peoples /s/

Date:

3.9.16

Note: Please submit electronically. Insert names of your approvers followed by /s/ - we no longer use actual signatures. Please insert date approved.