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**STAFF REPORT REFLECTING THE RECOMMENDATION  
FROM THE FEBRUARY 8, 2016 PLANNING COMMISSION HEARING**

**MARIJUANA BUSINESS LAND USE REGULATION IN UNINCORPORATED  
MULTNOMAH COUNTY (PC-2015-4551)**

**1.0 INTRODUCTION**

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, further regulation of medical and recreational marijuana was adopted through Oregon Laws 2015, chapter 614 (hereinafter “HB 3400”).

Importantly, nothing in the foregoing state acts operates to legalize medical or recreational marijuana under federal law. Instead, under the federal Controlled Substances Act (CSA), anyone involved in the possession, growing or sale of marijuana continues to be subject to federal prosecution by the U.S. Government.

In recognition of the foregoing dichotomy in federal versus state law, 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. In other words, nothing in this proposal 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 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.

Of further note, while the authority to impose 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,

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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 those “reasonable regulations” (i.e., time, place, and manner) provided for in HB 3400.

Regarding the process of developing this proposal, the proposed regulations derive in large part from Staff’s research of a range of regulatory models used by other jurisdictions, both locally and around the country; interviews with industry experts; discussions with neighborhood groups and other constituents; consideration of existing Multnomah County code provisions and framework; and discussions with the Planning Commission.

Regarding the latter, Staff briefed the Multnomah County Planning Commission on October 5, 2015, and the Planning Commission held a work session on this topic on December 7, 2015. Copies of materials presented at the October 5<sup>th</sup> Briefing and the December 7<sup>th</sup> Work Session are available on-line: <https://multco.us/landuse/past-meetings>.

Based on the foregoing, this Planning Commission Hearing Staff Report now sets forth a proposal for “Marijuana Business” land use regulations applicable to marijuana-related commercial enterprises in the unincorporated (rural) portions of Multnomah County. **Nothing in this proposal regulates the personal use of marijuana.**

## **2.0 BACKGROUND ON MARIJUANA LAWS**

### **Federal Controlled Substances Act**

Marijuana is a Schedule I controlled substance under the federal Controlled Substances Act (CSA) of 1970. However, in August 2013, the United States Department of Justice (US DOJ) issued a memorandum, known as the “Cole Memo,” which outlined guidelines and the marijuana enforcement priorities of the US DOJ. The Cole Memo provides that the US DOJ will not prioritize enforcement of the CSA in states that have legalized marijuana where those states have strong and effective regulatory and enforcement systems. Instead, the federal enforcement priorities include:

- Preventing distribution of marijuana to minors;
- Preventing cannabis revenue from going to criminal enterprises, gangs, and cartels;
- Preventing diversion of marijuana from states where it is legal to other states;
- Preventing state-authorized activity from being used as a cover for illegal activity, including trafficking of other illegal drugs;
- Preventing violence and use of firearms in marijuana cultivation/distribution;
- Preventing drugged driving and exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands;

- Preventing marijuana possession or use on federal property

The US DOJ is less likely to enforce the CSA against those who comply with a strong state regulatory system, particularly where state law emphasizes the priorities outlined above.

### **Oregon Medical Marijuana Act and Measure 91, As Amended**

Despite marijuana's status as a Schedule I controlled substance under federal law, in 1998, Oregon voters passed the Oregon Medical Marijuana Act (OMMA) to provide state legal protections and a framework for the personal growing and use of medical marijuana. The OMMA delegated jurisdiction to the Oregon Health Authority (OHA) to oversee and administer the state medical marijuana program. In 2013, the State Legislature amended the OMMA and created a state registration system for medical marijuana dispensaries.

In the November 2014 general election, Oregon voters passed Ballot Measure 91, the *Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act*, which legalized 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%. Measure 91 decriminalized and regulated the use of recreational marijuana under state law, including growing marijuana from home and possessing small amounts of marijuana for personal use. The measure also designated the Oregon Liquor Control Commission (OLCC) as the lead government agency responsible for writing rules and licensing commercial production, processing, wholesaling, retailing and laboratory testing of recreational marijuana. Temporary rules have now been adopted and the OLCC began accepting license applications January 4, 2016.

During the 2015 Oregon Legislative session, five bills related to marijuana were passed. Only two bills, HB 3400 and Senate Bill 460A, related to marijuana land use regulation (HB 3400 & SB 460A).

The most prominent Bill passed, HB 3400, amended Measure 91 to incorporate and revise regulations for recreational marijuana and altered the OMMA governing medical marijuana. Some of the key provisions included in HB 3400 were:

- Defining marijuana grown for recreational sales as an agricultural crop for the purposes of "farm use" as defined in ORS 215.203.
  - However, marijuana farm uses cannot be used to qualify a dwelling in the Exclusive Farm Use (EFU) zone (primary farm dwelling, accessory farm dwelling or relative farm help dwelling), and;
  - Marijuana farm uses also cannot be used in conjunction with farm stands (sales or promotional activities) or commercial activity.
- Providing that counties may adopt "reasonable regulations" regarding marijuana uses including production, processing, wholesaling and retailing/dispensing and removing the requirement from Measure 91 that counties adopt findings in support of those regulations.
  - Definitions per state law include:

- Production - means the manufacture, planting, cultivation, growing or harvesting of recreational marijuana or planting, cultivation, growing, trimming or harvesting of medical marijuana in Oregon.
  - Processing - means the processing, compounding, or conversion of marijuana into cannabinoid products, concentrates or extracts; excludes packaging or labeling.
  - Wholesaling - means purchasing marijuana items in Oregon for resale to a person other than a consumer in Oregon.
  - Retailing/dispensing - means selling or otherwise transferring marijuana items to a consumer or cardholder in Oregon.
- Allowing for local opt out of any one or more of six categories of marijuana businesses (medical marijuana processing and dispensaries; recreational marijuana production, processing, wholesaling and retailing):
  - If the Multnomah County Board of Commissioners imposes a ban on one or more of the six categories of marijuana businesses, the ban is temporary until the next general election (November 2016) at which point a public vote would need to be conducted.
  - If Multnomah County opts out of any category of marijuana licensee or registration, it is prohibited from referring the local option tax. The local option tax may be imposed at a rate of up to 3% on the sale of recreational marijuana items if approved by local voters at a general election. Opting out would also disqualify the County from receiving any shared state marijuana tax revenue.
  - Existing medical marijuana processors and dispensaries that have successfully completed the local land use process and have met certain state registration requirements may continue to operate despite a local opt out.

Senate Bill 460A, also known as “early start,” allowed for medical marijuana dispensaries to sell limited recreational marijuana products (i.e. recreational marijuana seeds, leaves, flowers and non-flowering plants) beginning on October 1, 2015. However, the sale can only occur in medical marijuana dispensaries registered with the state. The bill also provided that the County could adopt an ordinance to prohibit the sale of limited recreational marijuana products from medical marijuana dispensaries. Multnomah County has not adopted such an ordinance.

The other three marijuana bills that were passed were House Bill 2041A, Senate Bill 844A and Senate Joint Memorial 12. HB 2041A addressed retail taxation and imposed a 17% point of sale state tax on recreational marijuana products, with a net distribution formula of:

- 40% to the Common School Fund,
- 25% to substance abuse treatment and prevention,
- 15% to the Oregon State Police,
- 10% to cities to help enforce Measure 91, and
- 10% to counties to help enforce Measure 91

Of the 10% allotted to counties, revenues will be distributed based on population until July 1, 2017, after which they will be distributed based on the number of licensees in the jurisdiction (50% based on the number of retail licensees and 50% based on all other licensees). Senate Bill 844A contained miscellaneous provisions to establish a research task force and other operative provisions for medical marijuana caregivers and cardholders. Senate Joint Memorial 12 urged the US Congress to declassify marijuana as a Schedule I drug under the federal Controlled Substances Act so issues relating to research and banking can be better accommodated.

### **OLCC and OHA Administrative Rules**

The OLCC adopted temporary rules on October 22, 2015 to regulate the production, processing, wholesaling and retail sales of marijuana. The rules regulate the various aspects of owning and operating a marijuana business in Oregon. This includes 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. Before the OLCC can issue a license, the County must issue a land use compatibility statement (LUCS). The LUCS process is a statewide requirement for the OLCC to confirm proposals meet local land use requirements before the OLCC issues a license. To satisfy that requirement, the County Planning Department must fill out a LUCS form confirming that the proposed land use either is prohibited or is not prohibited in the zone. Once the County receives a request for a LUCS, the County has 21 days to determine if the use (*i.e.* production, wholesale, processing, and retail sales) is prohibited under the zoning designation in the location that the applicant is requesting. For an outright permitted use (typically subject to a Type 1 land use permit review process), the County has 21 days from receipt of the request, whereas for a conditional use (typically subject to Type II and Type III land use permit review processes), the County has 21 days from final local permit approval to respond to the request.

The OHA also engaged in temporary rulemaking and is now in the process of adopting permanent rules governing medical marijuana growers, processors, and dispensaries. Although state law does not currently require a LUCS for medical marijuana growers, processors, and dispensaries, the OHA proposed rules require a LUCS for medical marijuana processors and dispensaries, as well as confirmation of the zoning designation for certain medical marijuana growers.

## **3.0 PROPOSED CODE AMENDMENTS**

This proposal creates a new “Marijuana Business” code section in Multnomah County Code chapters 33, 34, 35, 36 and 11.15 with the intent being to locate all marijuana-specific regulations in this section for purposes of efficiency and convenience. Amendments to chapter 38 clarify Marijuana Business activities are not allowed in the Columbia River Gorge National Scenic Area.

If the County does not impose regulations of its own, only the State’s regulations will apply. Staff is proposing reasonable “time, place and manner” restrictions to address potential health, safety and general community welfare impacts related to marijuana businesses. First, staff

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proposes code amendments to clarify how marijuana businesses authorized to operate under state law will be treated under existing County code. For example, the amendments limit the location of marijuana wholesaling and retailing to the County commercial, industrial and rural center zones and away from the County rural residential districts. The general philosophy is to direct commercial and industrial marijuana related activity to the appropriate zones and provide a reasonable buffer between these uses and residential communities.

In addition, because marijuana is a farm crop under state law, and farm crops are commonly grown in the rural areas, production (growing) fits into existing code in nearly all zones outside of the Columbia River Gorge National Scenic Area. Although state law prevents counties from imposing restrictions on farm uses in Exclusive Farm Use Zones, applicants seeking to establish a recreational production operation will need approval from the County in the form of a Land Use Compatibility Statement. Under the proposed OHA rules, certain medical marijuana producers also will need documentation from the County regarding local zoning. In addition, the County has imposed restrictions on production in other zones outside the EFU. For example, the amendments require production to occur wholly indoors within Rural Residential zones because the density of dwellings in Rural Residential zones is greater than in zones that are more oriented to farming and forestry practices. The growing of marijuana outdoors in a residential zoning district could create possible impacts, like odors, on the wider community.

Second, in addition to location restrictions, the proposed code amendments impose restrictions on certain aspects of the operation of all marijuana businesses, including restrictions aimed at curbing the impacts of odor and lighting. The proposed changes also prohibit a marijuana business as a home occupation due to OLCC's inability to enforce and seek compliance with their rules for any business that is located within a residence.

Third, the proposed code amendments prohibit all marijuana businesses from operating in the Columbia River Gorge National Scenic Area ("Scenic Area"). Under the Columbia River Gorge National Scenic Area Act, the County must submit land use ordinances for the Scenic Area to the Columbia River Gorge Commission ("Commission") for approval. The Commission will not approve those ordinances if they are inconsistent with the Commission's management plan for the area. Legal counsel for the Commission has advised that the management plan has the force and effect of federal law and that allowing marijuana businesses in the Scenic Area would create a conflict between the management plan and the federal Controlled Substances Act. The Commission's legal counsel has advised that that conflict would be resolved in favor of the Controlled Substances Act, meaning 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.

Lastly, HB 3400 references private or public research of cannabis as well as laboratories for the testing of marijuana items, but does not subject those activities to the LUCS requirement. Staff presumes that this approach was taken in recognition that such research and laboratory testing does not create any more risk of conflict with other proximate uses than any other form of research or laboratory testing. As such, with one caveat, this proposal does not subject such research and laboratory testing to the standards proposed herein, but, instead, anticipates that such research and laboratory testing would be reviewed under the standards applicable to other similar forms of research and laboratory testing. The one caveat to the foregoing statement is that

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this proposal makes clear that such research and laboratory testing will not be approved as a Home Occupation.

The proposed code amendments below are broken into the following sections. The content of each section is nearly identical, although some sections contain slight differences due to the code structure of that Chapter. The intent is to develop consistent countywide regulations, to the extent reasonable and possible.

Section 3.1	Chapter 33 (West Hills Rural Plan Area)
Section 3.2	Chapter 34 (Sauvie Island / Multnomah Channel Rural Plan Area)
Section 3.3	Chapter 35 (East of Sandy River Rural Plan Area)
Section 3.4	Chapter 36 (West of Sandy River Rural Plan Area)
Section 3.5	Chapter 11.15 (Urban Unincorporated Areas of Multnomah County Still Under County Land Use Planning Authority)
Section 3.6	Chapter 38 (Columbia River Gorge National Scenic Area)

*Staff Note: Unless otherwise noted, the following text formatting is used to differentiate existing, proposed and deleted language:*

Normal text = Existing language to remain

Double underline language = Proposed language

~~Strikethrough~~ = Text proposed for removal

\* \* \* = separates non-contiguous code sections

### **3.1 Zoning Amendments Proposed to Chapter 33 (West Hills Rural Plan Area)**

#### **PART 1 – GENERAL PROVISIONS**

#### **PART 2 – PLANNING AUTHORITY**

#### **PART 3 - ADMINISTRATION AND ENFORCEMENT – Permits and Certificates**

**33.0510- Temporary Permits.**

**33.0515 Temporary Health Hardship Permit.**

**33.0520 Historical Structures and Sites Permits.**

**33.0525 Certificate of Occupancy**

**33.0530 Bus Passenger Shelters**

**33.0535 Responses to an Emergency/Disaster Event**

**33.0540 Type A Home Occupation**

**33.0550 Type B Home Occupation**

**33.0560 Marijuana Business**

*Staff Note: The new section called Marijuana Business is added to PART 3 - ADMINISTRATION AND ENFORCEMENT - Permits and Certificates. This change would put all specific marijuana provisions in a central location following the framework and existing design of the code.*

#### **PART 4 – ZONES**

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## **PART 5 – SPECIAL DISTRICTS**

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## **PART 6 – STANDARDS FOR COMMUNITY SERVICES; CONDITIONAL USES**

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## **PART 7 – DESIGN REVIEW, NONCONFORMING USES, SIGNS, VARIANCES AND LAND DIVISIONS**

\* \* \*

## **PART 3 - ADMINISTRATION AND ENFORCEMENT - *Permits and Certificates***

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***Staff Note: Because all of the wording within section 33.0560 is new, no bold, underlining, or strikethrough is indicated for ease of reading.***

### **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

<b>Zoning District</b>	<b>Marijuana Production</b>	<b>Marijuana Processing</b>	<b>Marijuana Wholesaling</b>	<b>Marijuana Dispensing or Retailing</b>
(CFU zones)	Outdoor Production only			
CFU-1	33.2020(C)	X	X	X
CFU-2	33.2220(C)			
CFU-5	33.2420(C)			
EFU	33.2620(A)	33.2625(L)	X	X
MUA-20	33.2820(A)	33.2830(B)(2)	X	X

RR	Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet. 33.3120(A)	X	X	X
BRC	Indoor Production only 33.3320(A)	33.3330(B)(3)	X	33.3330(B)(1)

(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 lawfully established 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.

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(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 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.

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### **3.2 Zoning Amendments Proposed to Chapter 34 (Sauvie Island Multnomah Channel Rural Plan Area)**

#### **PART 1 – GENERAL PROVISIONS**

#### **PART 2 – PLANNING AUTHORITY**

#### **PART 3 - ADMINISTRATION and ENFORCEMENT – Permits and Certificates**

**34.0510 Temporary Permits.**

**34.0515 Temporary Health Hardship Permit.**

**34.0520 Historical Structures and Sites Permits.**

**34.0525 Certificate of Occupancy**

**34.0530 Bus Passenger Shelters**

**34.0535 Responses to an Emergency/Disaster Event**

**34.0540 Type A Home Occupation**

**34.0550 Type B Home Occupation**

**34.0560 Marijuana Business**

#### **PART 4 – ZONES**

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#### **PART 5 – SPECIAL DISTRICTS**

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#### **PART 6 –COMMUNITY SERVICE and CONDITIONAL USES**

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## **PART 7 – DESIGN REVIEW; NONCONFORMING USES; SIGNS; VARIANCES; LAND DIVISIONS**

\* \* \*

### **PART 3 - ADMINISTRATION AND ENFORCEMENT - *Permits and Certificates***

\* \* \*

#### **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.

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

(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.

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(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 lawfully established 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.

*Staff Contact: Adam Barber*

(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.

\* \* \*

### **3.3 Zoning Amendments Proposed to Chapter 35 (East of Sandy River Rural Plan Area)**

#### **PART 1 – GENERAL PROVISIONS**

#### **PART 2 – PLANNING AUTHORITY**

#### **PART 3 - ADMINISTRATION and ENFORCEMENT – Permits and Certificates**

- 35.0510 Temporary Permits.**
- 35.0515 Temporary Health Hardship Permit.**
- 35.0520 Historical Structures and Sites Permits.**
- 35.0525 Certificate of Occupancy**
- 35.0530 Bus Passenger Shelters**

*Staff Contact: Adam Barber*



<b>35.0535</b>	<b>Responses to an Emergency/Disaster Event</b>
<b>35.0540</b>	<b>Type A Home Occupation</b>
<b>35.0550</b>	<b>Type B Home Occupation</b>
<b><u>35.0560</u></b>	<b><u>Marijuana Business</u></b>

## **PART 4 – ZONES**

\* \* \*

## **PART 5 – SPECIAL DISTRICTS**

\* \* \*

## **PART 6 –COMMUNITY SERVICE and CONDITIONAL USES**

\* \* \*

## **PART 7 – DESIGN REVIEW; NONCONFORMING USES; SIGNS; VARIANCES; LAND DIVISIONS**

\* \* \*

## **PART 3 - ADMINISTRATION AND ENFORCEMENT - *Permits and Certificates***

\* \* \*

### **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.

*Staff Contact: Adam Barber*

(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

<b>Zoning District</b>	<b>Marijuana Production</b>	<b>Marijuana Processing</b>	<b>Marijuana Wholesaling</b>	<b>Marijuana Dispensing or Retailing</b>
(CFU zones)	Outdoor Production only			
CFU-3	35.2020(C)	X	X	X
CFU-4	35.2220(C)			
EFU	35.2620(A)	35.2625(L)	X	X
MUA-20	35.2820(A)	35.2830(B)(2)	X	X

RR	Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet. 35.3120(A)	X	X	X
SRC	Indoor Production only 35.3320(A)	35.3330(B)(3)	X	35.3330(B)(1)

(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 lawfully established 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 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.

\* \* \*

### **3.4 Zoning Amendments Proposed to Chapter 36 (West of Sandy River Rural Plan Area)**

#### **PART 1 – GENERAL PROVISIONS**

#### **PART 2 – PLANNING AUTHORITY**

#### **PART 3 - ADMINISTRATION and ENFORCEMENT – Permits and Certificates**

**36.0510 Temporary Permits.**

**36.0515 Temporary Health Hardship Permit.**

**36.0520 Historical Structures and Sites Permits.**

**36.0525 Certificate of Occupancy**

**36.0530 Bus Passenger Shelters**

**36.0535 Responses to an Emergency/Disaster Event**

**36.0540 Type A Home Occupation**

**36.0550 Type B Home Occupation**

**36.0560 Marijuana Business**

#### **PART 4 – ZONING DISTRICTS**

\* \* \*

#### **PART 5 – SPECIAL DISTRICTS**

\* \* \*

#### **PART 6 – STANDARDS FOR COMMUNITY SERVICE USES and CONDITIONAL USES**

\* \* \*

## **PART 7 – DESIGN REVIEW; NONCONFORMING USES; SIGNS; VARIANCES; LAND DIVISIONS**

\* \* \*

### **PART 3 - ADMINISTRATION AND ENFORCEMENT - *Permits and Certificates***

\* \* \*

#### **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>Zoning District</b>	<b>Marijuana Production</b>	<b>Marijuana Processing</b>	<b>Marijuana Wholesaling</b>	<b>Marijuana Dispensing or Retailing</b>
CFU	Outdoor Production only 36.2020(C)	X	X	X
EFU	36.2620(A)	36.2625(L)	X	X
MUA-20	36.2820(B)	36.2830(B)(2)	X	X
RR	Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet. 36.3120(B)	X	X	X
PH-RC	Indoor Production only 36.3320(A)	36.3330(B)(6)	36.3330(B)(4)	36.3330(B)(1)
OR	Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet. 36.3420(B)	X	X	X

OCI	Indoor Production only 36.3520(B)	36.3525(C)	36.3525(B)(3)	36.3525(A)
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(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 lawfully established 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.

\* \* \*

**3.5 Chapter 11.15 (Urban Unincorporated Areas of Multnomah County Still Under County Land Use Planning Authority)**

**11.15.0005-.0010 Definitions**

**11.15.1005-.1015 Classification of Districts, Zoning Map & References**

**11.15.2002-.2920 Residential Districts**

**11.15.4602-.4756 Commercial Districts Retained**

**11.15.5005-.5585 Manufacturing Districts**

**11.15.6002-.6795 Special Districts**

**11.15.6805-.6899 Solar Access**

**11.15.7005-.7072 Community Service**

**11.15.7105-.7640 Conditional Use**

**11.15.7705-.7760 Mobile Homes and Mobile Home Parks (MH)**

**11.15.7805-.7870 Design Review**

**11.15.7902-.7982 Signs**

**11.15.8005-.8010 Planning Director**

**11.15.8105-.8135 Hearings Officer**

**11.15.8205-.8295 Action Proceedings**

**11.15.8405-.8420 Amendments**

**11.15.8505-.8525 Variances**

**11.15.8605-.8645 Outdoor Advertising Signs**

**11.15.8705-.8725 Permits and Certificates**

## **11.15.8805-.8810 Non-Conforming Uses**

## **11.15.9005-.9040 Fees**

## **11.15.9045-.9055 Interpretations, Prior Permits, Violations, Enforcement and Savings Clause**

## **11.15.9105 Marijuana Business**

\* \* \*

### **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

*Staff Contact: Adam Barber*

(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>Zoning District</b>	<b>Marijuana Production</b>	<b>Marijuana Processing</b>	<b>Marijuana Wholesaling</b>	<b>Marijuana Dispensing or Retailing</b>
(CFU zones) CFU CFU-1 CFU-2 CFU-3 CFU-4 CFU-5	Outdoor Production only 11.15.2048(C)	X	X	X
EFU	11.15.2008(A)	X	X	X
RR	Indoor Production only and the total combined footprint of the Marijuana Business shall not exceed 2,500 square feet. 11.15.2208(A)	X	X	X
RC	Indoor Production only 11.15.2248(A)	11.15.2252(B)(4)	11.15.2252(B)(3)	11.15.2252(B)(1)
UF-20	11.15.2386(B)	11.15.2390(B)(2)	X	X
LR-5	X	X	X	X
LR-7	X	X	X	X
LR-10	X	X	X	X
All Other Zoning	X	X	X	X

*Staff Contact: Adam Barber*

Districts				
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(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 lawfully established 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

*Staff Contact: Adam Barber*

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
- (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.

\* \* \*

### **3.6 Zoning Amendments Proposed to Chapter 38 (Columbia River Gorge National Scenic Area)**

#### **§ 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.

<h4><b>4.0 SUMMARY OF AMENDMENTS APPROVED BY THE PLANNING COMMISSION AT THE CONTINUED FEBRUARY 8, 2016 HEARING</b></h4>
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The public Planning Commission hearing for project PC-2015-4551 was opened on February 1 and continued until February 8, 2016. The Commission was provided a summary of the proposed amendments by staff during the February 1<sup>st</sup> Hearing and public testimony was received. The February 8 hearing was dedicated to Planning Commission deliberation and vote. On February 8 2016, the Multnomah County Planning Commission unanimously voted to recommend approval of the proposed code amendments to the Board of County Commissioners with a few amendments, which have been incorporated into the code presented in Section 3.0 of this report.

Public testimony provided (both oral and written) ranged from advocating for stricter regulations, less strict regulations and support for the proposed regulations as drafted. Key points from those requesting stricter regulations included:

- Testimony against marijuana use in general citing health concerns including addiction;
- Medical and recreational marijuana should not be regulated the same way;
- Disagreement with state law distinction that marijuana is now defined as a farm crop;
- Fear property values will be impacted;

- Concerns about marijuana odor in the community;
- Potential for increase in crime, and general public safety concerns;
- The potential influence the marijuana industry could have on children, particularly related to how far businesses should be located from schools, and;
- Discomfort with the potential for a cluster of Marijuana Businesses in the rural community of Orient east of Gresham. Neighbors referred to this area during testimony as “the green mile”.

Key issues identified by those seeking less strict regulations included:

- Advocacy for adding flexibility for allowing multiple licenses of each type of Marijuana Business on a property, particularly on larger properties;
- Requests to adopt regulations supporting Marijuana Business development within the Orient community;
- Requests to not use state definitions in county code for outdoor and indoor production buildings which some find confusing;
- Desire to increase size of marijuana building size caps;
- Objection to the proposed prohibition of Marijuana Businesses in the National Scenic Area;
- Requests for the ability to have indoor production facilities on commercial forest zoned land; and
- Statements that marijuana should be regulated like other farm crops.

The Planning Commission agreed with some of the issues raised during public testimony and recommended amendments based on that information. The Planning Commission also recommended stronger sound control measures, more flexible setback requirements, and amendments allowing re-use of non-conforming buildings. Ultimately, the Commission’s deliberation on February 8, 2016 resulted in the following code amendments, which are provided within Section 3.0.

#### 1,000 foot buffer to schools

- The Commission voted to remove an exemption on EFU properties so that the 1,000 foot school buffer for all Marijuana Businesses would apply in all zones.
- The Commission voted to construct a different school buffer measurement for EFU properties to provide more flexibility to farmers owning large farm tracts.

#### 100 foot property line setback

- The Commission voted to remove the EFU exemption so that the 100-foot setback applies in all zones.



- The setback will apply to new Marijuana Business buildings and structures, but buildings and structures lawfully established prior to January 1, 2016 are not required to meet 100-foot setback.
- The Commission voted to remove language prohibiting setback relief through other land use processes including Variances and Adjustments, thus providing additional flexibility to consider on-site conditions.

#### Odor control

- The Commission decided all Marijuana Business buildings must be equipped with an air filtration system to control odor.

#### Sound control

- The Commission voted to defer to the existing sheriff's sound control standard, except in the RR district where no mechanical sound shall be detectible at the property line.

### **5.0 CONCLUSIONS**

The authority to establish and operate a marijuana business comes from state law. Multnomah County has the authority under its home rule charter to impose reasonable restrictions on those businesses, including the production, processing, wholesaling, retailing and dispensing of marijuana. In addition, the proposed regulations are intentionally designed to comply with ORS 215.253(2) as a "lawful exercise by [the County] of its power to protect the health, safety and welfare of the citizens of this state" and to fall within the category of those "reasonable regulations" (i.e., time, place, and manner) provided for in HB 3400.

The County's strong and effective proposed regulations also provide some degree of certainty and flexibility to the industry through application of clear and reasonable land use standards. The Planning Commission voted on February 8, 2016 to recommend approval to the Board of County Commissioners of the draft regulations in Section 3.0 of this report.

### **6.0 EXHIBITS**

- Exhibit A: Maps showing geographic extent of rural planning areas and base zoning designations.
- Exhibit B: Summary of OLCC rules that relate to Multnomah County Land Use Code
- Exhibit C: Multnomah County Vital Signs - Legalization of Marijuana: Potential Policy Directions for Public Health
- Exhibit D: December 8, 2015 Legal briefing paper for the Columbia River Gorge Commission regarding Washington I-502 and Oregon Measure 91

- Exhibit E: August 29, 2013 United States Department of Justice (USDOJ) memo from James A. Cole titled 'Guidance Regarding Marijuana Enforcement'
- Exhibit F: Written public testimony submitted after February 8, 2016 Planning Commission Hearing