

**STAFF REPORT FOR THE PLANNING COMMISSION BRIEFING
OCTOBER 5, 2015**

**IMPACTS OF MEDICAL AND RECREATION MARIJUANA ON LAND USE WITHIN
UNINCORPORATED MULTNOMAH COUNTY**



1.0 INTRODUCTION

This briefing staff report provides background information on recent changes to state laws concerning medical and recreational marijuana, particularly as those changes relate to land uses in unincorporated (rural) Multnomah County. Multnomah County has yet to enact regulations governing the growing, processing and dispensing of medical marijuana or the production, processing and sale of recreational marijuana.

With the adoption of House Bill 3400 (HB 3400) during the 2015 legislative session, some of the regulations concerning “time, place and manner” for marijuana uses have been resolved at the state level although local governments have been discretion to tailor land use regulations, in some circumstances, to guide where and how marijuana uses occur. Many communities in Oregon are amending land use codes in response to marijuana legalization and, at this point at least, other communities appear to be taking the view that land use amendments are not necessary and marijuana uses can simply be reviewed under current regulations.

Our hope is that this briefing conversation will help the Commission articulate the most important future land use policy choices to so that staff can then focus research time on drafting targeted code amendments, assuming code amendments are recommended. The Planning

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Commission will have an opportunity to review, discuss and vote on any proposed code amendments at a future Planning Commission hearing.

2.0 BACKGROUND ON MARIJUANA LAWS IN OREGON

In 1998, the Oregon Medical Marijuana Act (OMMA) was passed to provide legal protections and a framework for the processing and dispensing of medical marijuana. The Act delegated to the Oregon Health Authority (OHA) to oversee and administer the state program. In 2014, Senate Bill 1531 altered the OMMA to give local governments the authority to impose “time, place and manner” regulations for medical marijuana dispensaries.

***Sidebar:** A building where medical marijuana is administered to patients is most often referred to as a “dispensary”. A building selling recreational marijuana to a recreational user is commonly referred to as a “retail” store. Therefore, dispensary and retail related marijuana uses are similar but different. Complicating things is the fact that certain dispensaries will be selling recreational marijuana beginning October 1. Although this distinction isn’t critical it is one which staff initially found confusing.*

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. 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 authorized and regulated the use of recreational marijuana, allowed for the ability to grow marijuana from home and possess small amount of marijuana for personal use. The bill also designated the Oregon Liquor Control Commission (OLCC) as the lead government agency responsible for writing rules and provisions to allow commercial production, processing, wholesaling and retailing of recreational marijuana. Those rules and provisions are to be adopted no later than January 1, 2016 and OLCC will begin accepting applications January 4, 2016.

During the 2015 Oregon Legislative session, the legislature approved five bills related to marijuana. Only two bills, HB 3400 and Senate Bill 460A related to marijuana land use regulation. House Bill 3400 amended Measure 91 to incorporate regulations for recreational marijuana and altered rules governing medical marijuana. Some of the key provisions included in HB 3400 were:

- Defining marijuana grown for recreational sales as a crop for the purposes of “farm use” as defined in ORS 215.203
 - Marijuana farm uses cannot be used to qualify a dwelling in the EFU zone (primary farm dwelling, accessory farm dwelling or relative farm help dwelling). Marijuana farm uses also cannot be used in conjunction with farm standards (sales or promotional activities) or commercial activity in conjunction with marijuana crops.
- Allowing for local opt out of any one or more of six categories of marijuana facilities:

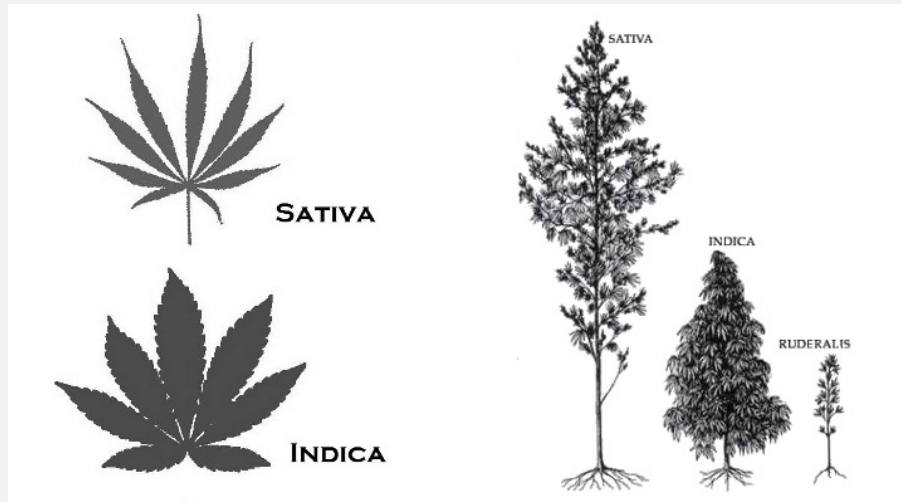
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- Medical Marijuana
 - Processing
 - Dispensing
- Recreational
 - Growing
 - Processing
 - Wholesaling
 - Retail sale
- If a county or city governing body imposes a moratorium, the moratorium is temporary until the next general election (November 2016) at which point a public vote would need to be conducted.
- If a county or city opts out of any category, it is prohibited from the local option tax and disqualified from receiving any shared state tax revenue (The local option tax, not to exceed 3%, may be imposed on the sale of recreational marijuana items if approved by local voters at a general election).
- Provides county authority to adopt “reasonable regulations” regarding marijuana uses including production, processing, wholesaling and retail/dispensaries.
 - Definitions per state law include:
 - **Production** means the manufacture, planting, cultivation, growing or harvesting of 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
 - **Retail/dispensary** means selling marijuana items to a consumer in Oregon
 - Grandfathering existing medical processors and dispensaries that have successfully completed the local land use process.

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 in October 1, 2015. However, the sale can only occur in existing licensed medical marijuana facilities that are already authorized. At this point Multnomah County has not issued a land use permit for any medical marijuana dispensaries in unincorporated Multnomah County. The bill also gave the County the authority to adopt ordinances to prohibit the sale of limited recreational marijuana products on October 1, 2015

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Sidebar: *There are two main strains of marijuana, with hundreds of hybrids.*



Plants of the Indica strain typically grow short and wide and are better suited to indoor growing because of their more compact nature. The plants of the Sativa strain grow tall and thin, often reaching over 25-feet in height.

The other three 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, and
- 10% to cities to help enforce Measure 91
- 10% to counties to help enforce Measure 91

Senate Bill 844A contained miscellaneous provisions to establish a research task force and other operative provisions for medical marijuana caregivers and cardholders and Senate Joint Memorial 12 urged the US Congress to declassify marijuana so issues relating to research and banking can be addressed.

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Currently, the OLCC is in the process of rulemaking, which will continue until the end of 2015. This rule making will result in applicable statutory and administrative rule language required to be in place before business licenses for growing, processing, wholesaling and retail sales of marijuana can be issued. Beginning January 1st, the OLCC is required to begin taking in applications those four types of business activities, at which point, the OLCC will review the application and request a land use compatibility statement (LUCS) from the County.

The LUCS process is a statewide requirement for relevant state agencies to first confirm proposals meet local land use requirements before a state agency issues a permit. This is accomplished through the county filling out a LUCS form confirming that either land use permitting requirements have been met, that the use is not allowed in the zoning district, or that the use could be allowed once certain local land use permits are issued. Once a request for a LUCS is made, the County has 21 days to determine on the LUCS form if the use (i.e. production, wholesale, processing, and retail sales) is appropriate for the location that the applicant is requesting.

4.0 EXISTING COUNTY REGULATIONS

The County Land Use Planning Division has been routinely receiving inquiries regarding marijuana and other associated land use regulations and permitting requirements. The County has yet to enact regulations for either medical or recreational marijuana. Current state statute and rules will not permit the approval of a production, wholesaling, processing or retail sales marijuana facility until the OLCC completes their rulemaking and accepts marijuana applications. For a medical marijuana processing facility or dispensary, County staff does have the ability to review the permit based on Multnomah County Code (MCC).

Staff has analyzed the MCC to see whether current regulations in the MCC will permit the approval of production, wholesaling, processing and retail sales marijuana facility, in anticipation of LUCS request from OLCC. Based on staff review, the production, wholesaling, processing and retail sale of marijuana are similar to other land use currently in the MCC (see Exhibit C and D). However, the County can elect to implement additional “time, place and manner” regulations and other general development standards including setbacks, fencing design and heights, etc.).

Staff has also researched other counties progress on addressing marijuana issues and uses. At this time, both Washington County and Clackamas County have yet to enact regulations governing the growing, processing and sale of recreational marijuana. Both counties have adopted code provisions to regulate medical marijuana. Clackamas County adopted code provisions to establish “Time, Place and Manner” regulations for medical marijuana dispensaries in 2015 and Washington County adopted code provisions in 2014.

Sidebar: Even though marijuana is now legal in Oregon, the Federal Controlled Substances Act still lists marijuana as a Schedule 1 drug, making it illegal to buy, sell or possess. This federal listing has complicated the ability for business owners to obtain bank loans and get

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assistance for other professional services such as tax preparation.

Clackamas County is currently working towards adopting regulations and anticipates establishing “Time, Place and Manner” regulations by December 2, 2015, in anticipation for land use applications for recreational marijuana businesses. To accomplish this work, the Clackamas County Planning and Zoning Department suspended their proposed 2015 work program to focus on marijuana issues. Washington County is proposing to expand their existing medical marijuana regulations to cover both medical and recreational marijuana. Washington County staff will address the remaining production, processing and wholesaling of recreational marijuana throughout the remainder of the year and into 2016.

3.0 CONCLUSIONS

Staff asks the Planning Commission to consider the following questions and to provide feedback and direction to staff accordingly.

1. Should medical marijuana and recreational marijuana uses be treated differently than other land uses? If so, why? These answers will help define the scale of code amendments and also help staff understand the main intent for future code changes.
2. Under what circumstances should marijuana producers, processors, wholesalers and retailer operations be allowed outright, permitted as a review or conditional use or prohibited in the County?
 - a. Local governments have **limited** authority to regulate the production, processing, and wholesaling of recreation marijuana in Exclusive Farm Use zones.
 - As “farm use,” as defined in ORS 215.203, the County may not restrict farm uses and practices in farm resource zones and therefore may not be able to regulate production, processing and wholesaling in EFU zones.
 - b. Local governments **may allow** the production of marijuana Commercial Forest Use zones, but is not required to permit the use.
 - c. Local governments do have the authority to regulate the production, processing, wholesaling and retailing of recreation marijuana in exception Multiple Use Agriculture-20 acres (MUA-20), Rural Residential (RR) and Rural Center (RC, i.e. BRC, PH-RC, OCI, OR, SRC) zones.
 - The County allows some farm uses (i.e. raising/harvest of crops, raising of livestock and honeybees, any other agricultural or horticultural purpose or animal husbandry purpose) in MUA-20, RR and RC zones. Can or should the growing of marijuana as a farm use in these zones be limited and treated differently than other farm uses or prohibited?

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- To what extent does the County want to limit the production, processing, wholesaling and retailing of recreation marijuana in all exception zones (MUA-20, RR, RC Zones, OCI)?
3. Are there “time, place, and manner” or other general development standards (setbacks, fencing designs and heights, odor control, etc.) that should be considered to address the impacts of marijuana uses?

4.0 NEXT STEPS

It is unclear whether marijuana uses are allowable in the Columbia River Gorge National Scenic Area and this will be researched further. Staff can also evaluate current urban unincorporated codes (chapter 11.15) to assess how the range of marijuana uses may or may not be allowed in urban unincorporated areas.

Staff can begin to prepare code amendments addressing the processing and dispensing of medical marijuana and the growing, processing, wholesaling and retail sale of recreational marijuana in the unincorporated Multnomah County if desired by the Commission. The exhibits in section 5 are intended to provide additional background information in order to provide a foundation for furthering the discussion. Commissioners may find Exhibit C and D, in particular, helpful in understanding zoning allowances and policy choices.

As for dates to be aware of; by January 1, 2015 OLCC must adopt rules related to production, processing, delivery, sale and purchase of recreational marijuana. By January 4, 2015 OLCC will begin receiving license applications for recreational marijuana uses with the intent of retail sales beginning late 2016.

***Sidebar:** About half of all marijuana licenses issued in Denver, Colorado the first year of legalization were for dispensaries (411 out of 941 permits). The number was lower in Washington State the first year (334 out of 7000 licenses).*

5.0 EXHIBITS

- Exhibit A: Status of Marijuana Regulation and Condensed Version of House Bill 3400
- Exhibit B: Introduction to Cannabis Production and Processing
- Exhibit C: Marijuana Uses and Land Use Zoning in Unincorporated Multnomah County
- Exhibit D: Maps of School Locations and Possible Allowed Zones for Marijuana Uses in Unincorporated Multnomah County

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