

## SUMMARY OF PUBLIC TESTIMONY RELATING TO:

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

A summary of public testimony on PC-2015-4551 as of February 1, 2016, is presented in this document. This summary does not capture every specific comment, suggestion or question raised during the February 1 hearing. Such specifics are available in the meeting minutes and audio and the other components of the record in this matter.

This summary is presented in the form of two tables that, together, present an overview of the issues of concern raised through public testimony as of the close of the February 1, 2016, Planning Commission Hearing on this matter:

- Table 1 lists issues which are either addressed by state law or beyond the scope of this proposal.
- Table 2 lists issues involving policy choices to be made by the Planning Commission.

**TABLE 1. ISSUES ADDRESSED BY STATE LAW OR BEYOND THE SCOPE OF THIS PROPOSAL.**

<i>Issue</i>	<i>Staff Comment</i>
<i>Marijuana should not be legal. Marijuana Businesses should not be allowed in the unincorporated areas.</i>	Oregon voters have decriminalized medical and recreational marijuana and provided for various categories of marijuana businesses. Multnomah County cannot recriminalize marijuana use or the operation of marijuana businesses. Multnomah County is able to adopt reasonable time, place, and manner regulations (e.g., siting, design, etc.) to minimize community conflicts as discussed within Table 2.
<i>Marijuana defined as a farm use (i.e. a farm crop)</i>	Under state law, recreational marijuana is defined as a “farm crop” for “farm use” purposes. ORS 475B.370. State law is ambiguous on this point with respect to medical marijuana. This proposal is intended to avoid the complexities arising from that ambiguity by regulating production of either kind of marijuana in a general and reasonable way. Staff firmly believes that this will ultimately prove most efficient for both the Planning Division and the public.
<i>Exempting production on EFU land from certain standards</i>	The county generally does not have authority to place additional land use restrictions on farm uses authorized by state law within the Exclusive Farm Use (EFU) zone. Marijuana Production is a farm use under state law and, as a result, the county does not have authority to impose the 1,000-foot buffer to schools standard, the 100-foot property line setback, or the Significant Environmental Concern provisions on marijuana production on EFU land.

	<p>ORS 215.253(1). The county does have the ability to require processing in the EFU to meet the same requirements as other zones because processing is not defined in state law as a farm use.</p>
<p><i>Concerns about children seeing marijuana</i></p>	<p>OLCC rules require all marijuana production to be obscured from public view, through indoor production, fences at least eight feet high, or similar measures. OAR 845-025-1470. OHA is considering similar requirements.</p>
<p><i>Existing land use regulations in Orient (the 51% standard)</i></p>	<p>The Commission heard testimony around past difficulties developing within the Orient Community due to the “51% standard” and also heard references to the “green mile” as interest in marijuana businesses has recently grown.</p> <p>State land use rules for new commercial and industrial uses applicable to the Orient Community east of Gresham require such uses to <u>primarily support the needs of residents of the rural area or tourists visiting the area</u>. The ‘primarily support’ provision has been interpreted as meaning at least 51% of business activities and is informally referred to as the 51% rule. This standard will more than likely not apply to a marijuana production operation but would likely apply to any new processing, wholesale, dispensing or retail operation.</p> <p>Testimony was provided that the current 51% standard is too strict and has resulted in re-development challenges. Amending the primarily support standard is far outside of the scope of this Marijuana Business project but the policy issue is being contemplated as part of the on-going Comprehensive Plan Update. This standard was discussed during testimony as an example of how existing rules make development within the Orient Community difficult and that any additional restrictions beyond minimum state law requirements will further complicate redevelopment efforts related to Marijuana Businesses, particularly related to the 1,000 foot school setback standard.</p> <p>The planning program understands that a currently undetermined number of marijuana businesses may be operating in or near the Orient area. The County’s code compliance team is actively investigating complaints received.</p>
<p><i>Prohibition in the National Scenic Area</i></p>	<p>Staff and legal counsel for the Columbia River Gorge Commission have indicated Multnomah County does not have authority to regulate Marijuana Businesses in the Columbia River Gorge National Scenic Area due to a conflict with the federal Controlled Substances Act. See Exhibit D of the 2.1.16 Planning Commission staff report for more information. Although staff will continue to work with the Columbia River Gorge Commission to address marijuana businesses in the National Scenic Area, at this time, the Planning Commission need not debate regulation of Marijuana Businesses in the National Scenic Area because passing an ordinance regulating in that area would require further coordination with the Columbia River Gorge Commission.</p>

**TABLE 2. ISSUES INVOLVING POLICY CHOICES TO BE MADE BY THE PLANNING COMMISSION.**

Issue	Staff Comment
<i>Grouping medical and recreational marijuana together under one set of rules</i>	<p>It was suggested that the two uses be separated because medical marijuana is a needed medicinal product whereas recreational marijuana is not.</p> <p>Regulating both together in one ordinance section is the approach recommended by Staff because it will be easier to understand and more efficient to implement. From a land use planning perspective the potential impacts to the community from medical and recreational marijuana uses seem nearly, if not completely, identical.</p>
<i>Licenses limited to one of each type of Marijuana Business per lot of record.</i>	<p>The Commission heard that the one of each type of license approach is too strict and perhaps a tiered system could be considered providing an increased number of licenses in accordance with property acreage. Staff's recommendation is to limit to no more than one of each type of Marijuana Business on each Lot of Record to help preserve the rural character. It is Staff's opinion that a business model involving multiple licensees per property is more appropriate in an urban setting.</p>
<i>1,000-foot setback from schools</i>	<p>State law requires retail and dispensary operations be located at least 1,000 feet from a private or public school. Multnomah County has the ability to increase this setback but cannot adopt a lesser standard. The Planning Commission can consider whether production, processing, and wholesaling should also be subject to the 1,000 foot setback or some other setback more or less restrictive than 1,000 feet. The draft ordinance presented to the Commission 2.1.16 would require all Marijuana Businesses to be located at least 1,000 feet from a public or private school.</p> <p>It was also discussed during testimony that a 1,000 foot setback for Marijuana Businesses is not protective enough and the Commission should increase this distance.</p>
<i>100-foot setback to property lines</i>	<p>Concern was raised that the 100-foot setback to property lines from production operations is too large, particularly on smaller properties. Marijuana odor seemed to also drive suggestions that the 100-foot setback should be increased. The proposed ordinance offers flexibility for buildings and structures to encroach into that setback in certain circumstances.</p>
<i>Outdoor only production in CFU zones</i>	<p>Testimony was provided that indoor production should be allowed within the Commercial Forest Use (CFU) zones and that terms like "non-rigid" within the outdoor definition will cause confusion.</p> <p>The proposed ordinance uses the state definitions of indoor and outdoor in an attempt to align county code with terms used by OLCC and the industry. The Commission could consider allowing outdoor and indoor production in the CFU but limit buildings or structures to a certain size. Allowing indoor production within the CFU would also address concerns raised about the need for indoor grow lights for mature marijuana production.</p>
<i>2,500 square foot footprint cap in residential zones</i>	<p>Some members of the public advocated increasing the 2,500 square footprint cap for indoor production in the Rural Residential (RR) zone. This threshold was selected as an appropriate maximum footprint within the RR and OR zones recognizing that the vast majority of accessory structures in Multnomah County are less than 2,500 square feet. The proposed ordinance would allow up to roughly 5,000 square feet of interior space for a two story structure. The Commission could alternatively consider a tiered</p>

	<p>structure cap based on property acreage.</p> <p>The Commission also heard testimony that production buildings are not appropriate and should not be allowed in residential zoning districts.</p>
<i>Ability to treat marijuana differently than other agricultural products</i>	<p>State law recognizes that marijuana is a different type of agricultural product. For example, the state imposes prohibitions on selling marijuana in conjunction with farm stands and using sales to qualify a new farm dwelling. These prohibitions do not apply to any other agricultural products grown in Oregon. The externalities of Marijuana are different than flowers or tomatoes, for example, and the county has authority to regulate this use differently through application of standards controlling light pollution, odor control, setbacks, etc.</p>
<i>Processing allowed in rural area</i>	<p>It was questioned why Multnomah County would allow processing in a rural area. Processing of products is already allowed in multiple rural zones as well as agricultural production, wholesaling and retailing of goods. Multnomah County is not creating new use allowances for Marijuana Businesses in the rural areas, but rather is applying existing code to the uses authorized by state law.</p>