



MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Tanya Saltzman, AICP, Senior Planner

DATE: July 15, 2021

SUBJECT: Public Hearing: Marijuana Retail Hours and Annual Reporting Text Amendments

The Planning Commission will hold a July 22 public hearing concerning legislative amendments to 1) extend the permitted hours for marijuana retail businesses and 2) modify marijuana annual reporting requirements. Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on June 9, 2021. Staff initially brought these issues to the Planning Commission for a preliminary discussion on May 13,¹ and had a subsequent discussion with the Board of County Commissioners on May 24,² at which time the Board directed staff to initiate the text amendment process. Staff presented the proposed amendments to the Planning Commission at a work session on July 8, 2021.³

I. BACKGROUND

Both components of the proposed legislative amendments initially began with requests from Deschutes County property owners.

The Board received a request from a marijuana retailer to adjust marijuana retail hours of operation in rural Deschutes County. Deschutes County Code 18.116.330(C)(1) currently permits hours of operation from 9 a.m. to 7 p.m. for marijuana retail; however, the OLCC permits hours of operation from 7 a.m. to 10 p.m. This discrepancy may put these businesses at a competitive disadvantage, as retail operations within Bend and La Pine city limits generally adhere to OLCC guidelines.⁴ As one local business owner has described, the more restrictive hours may be having an impact on profit

¹ https://deschutescountyor.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2770

² https://deschutescountyor.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2701

³ https://deschutescountyor.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2790

⁴ <https://potguide.com/oregon/marijuana-dispensaries/bend/>. Operating hours for dispensaries in Bend range from 8:00 a.m. to 8:00 p.m.; 8:00 a.m. to 9:00 p.m., 8:00 a.m. to 9:50 p.m., 8:00 a.m. to 10:00 p.m., 9:00 a.m. to 9:00 p.m. 9:00 a.m. to 10:00 p.m., 10:00 a.m. to 6:00 p.m., 12:30 to 8:30 p.m., and various times in between. There are three dispensaries in La Pine; operating hours range from 9:00 a.m. to 9:00 p.m., 9:00 a.m. to 10:00 p.m., and 10:00 a.m. to 9:00 p.m.

and opportunities to hire more staff. There are currently two marijuana retail businesses in unincorporated Deschutes County—one near La Pine and the other just outside of Sunriver.

The Board also received a request from a marijuana producer to modify or remove annual reporting and inspection requirements for marijuana-related businesses beginning in 2022 to reduce redundancies for business owners and operational capacity strains on staff.

In its current form, annual reporting by marijuana establishments—which requires applicants to document their satisfaction of their conditions of land use approval—is submitted to the Community Development Department (CDD) by February 1 of each year, including the applicable fee (\$796 in 2020) for those businesses with licenses, and a fully executed Consent to Inspect Premises form. Staff then reviews and logs those annual reports and uses them as a basis for a site visit in the summer/fall to verify observable conditions of approval, such as odor and noise mitigation systems, water source, and other criteria. For 2021, staff anticipates conducting site visits for approximately 34 businesses throughout the county. In reporting years 2018, 2019, and 2020, staff observed 100 percent compliance with observable conditions of approval, and for those with local approval but still in the queue for their OLCC license, staff verified that none of them were producing marijuana.

OLCC, the licensing authority for recreational marijuana, performs its own scheduled “proactive compliance inspections” of marijuana businesses, which address some of the same land use conditions that Deschutes County monitors, as well as items such as harvest weight and worker compliance.

II. PROPOSAL

The proposed text amendments are as follows:

- DCC 18.116.330(C)(1): Changes hours of operation for marijuana retailing from 9:00 a.m. – 7:00 p.m. to 7:00 a.m. – 10:00 p.m., in line with OLCC hours.
- DCC 18.116.330(D)(1): Adds text to state “An annual report shall be submitted, **if requested,** to the Community Development Department...” (new text indicated in bold type).
 - Staff notes that during the Planning Commission work session, some commissioners discussed the option of providing more clarity in this added phrase; the Planning Commission may choose to address this during deliberations.

The applicant, in this case Deschutes County Community Development, has submitted findings summarizing the amendments and stating that the text amendments are in compliance with the Statewide Planning Goals, and applicable policies of the Deschutes County Comprehensive Plan.

III. NEXT STEPS

At the conclusion of the public hearing, the Planning Commission can:

- Continue the hearing to a date certain;
- Close the oral record and leave the written record open to a date certain;
- Close the oral record and the written record and set a date for deliberations; or
- Close the hearing and begin deliberations.

Attachments:

1. Proposed Text Amendments – DCC Chapter 18.116.330
2. Proposed Findings

Chapter 18.116. SUPPLEMENTARY PROVISIONS

18.116.330 Marijuana Production, Processing, Retailing, and Wholesaling

* * *

- C. Marijuana Retailing. Marijuana retailing, including recreational and medical marijuana sales, shall be subject to the following standards and criteria:
1. Hours. Hours of operation shall be no earlier than 9:00 a.m. and no later than 7:00 p.m. on the same day.
 2. Odor. The building, or portion thereof, used for marijuana retailing shall be designed or equipped to prevent detection of marijuana plant odor off premise by a person of normal sensitivity.
 3. Window Service. The use shall not have a walk-up or drive-thru window service.
 4. Secure Waste Disposal. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.
 5. Minors. No person under the age of 21 shall be permitted to be present in the building, or portion thereof, occupied by the marijuana retailer, except as allowed by state law.
 6. Co-Location of Related Activities and Uses. Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by the marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot or parcel or within the same building with any marijuana social club or marijuana smoking club.
 7. Separation Distances. Minimum separation distances shall apply as follows:
 - a. The use shall be located a minimum of 1,000 feet from:
 - i. A public elementary or secondary school for which attendance is compulsory under Oregon Revised Statutes 339.010, et seq., including any parking lot appurtenant thereto and any property used by the school;
 - ii. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot appurtenant thereto and any property used by the school;
 - iii. A licensed child care center or licensed preschool, including any parking lot appurtenant thereto and any property used by the child care center or preschool. This does not include licensed or unlicensed family child care which occurs at or in residential structures;
 - iv. National monuments and state parks; and
 - v. Any other marijuana retail facility licensed by the OLCC or marijuana dispensary registered with the OHA.
 - b. For purposes of DCC 18.116.330(B)(7), distance shall be measured from the lot line of the affected property to the closest point of the building space occupied by the marijuana retailer. For purposes of DCC 18.116.330(B)(7)(a)(vi), distance shall be measured from the closest point of the building space occupied by one marijuana retailer to the closest point of the building space occupied by the other marijuana retailer.
 - c. A change in use to another property to a use identified in DCC 18.116.330(B)(7), after a marijuana retailer has been licensed by or registered with the State of Oregon shall not result in the marijuana retailer being in violation of DCC 18.116.330(B)(7).
- D. Annual Reporting
1. An annual report shall be submitted, if requested, to the Community Development Department by the real property owner or licensee, if different, each February 1, documenting all of the following as of December 31 of the previous year, including the applicable fee as adopted in the current County Fee Schedule and a fully executed Consent to Inspect Premises form:
 - a. Documentation demonstrating compliance with the:
 - i. Land use decision and permits.

- ii. Fire, health, safety, waste water, and building codes and laws.
 - iii. State of Oregon licensing requirements.
 - b. Failure to timely submit the annual report, fee, and Consent to Inspect Premises form or to demonstrate compliance with DCC 18.116. 330(C)(1)(a) shall serve as acknowledgement by the real property owner and licensee that the otherwise allowed use is not in compliance with Deschutes County Code; authorizes permit revocation under DCC Title 22, and may be relied upon by the State of Oregon to deny new or license renewal(s) for the subject use.
 - c. Other information as may be reasonably required by the Planning Director to ensure compliance with Deschutes County Code, applicable State regulations, and to protect the public health, safety, and welfare.
 - d. Marijuana Control Plan to be established and maintained by the Community Development Department.
 - e. Conditions of Approval Agreement to be established and maintained by the Community Development Department.
 - f. This information shall be public record subject to ORS 192.502(17).
- ([Ord. 2021-00x §x, 2021](#); Ord. 2021-007 §x, 2021; Ord. 2020-007 §16, 2020; Ord. 2019-012, 2019; Ord. 2018-012 §3, 2018; Ord. 2016-015 §10, 2016)

FINDINGS

I. BACKGROUND

A. Deschutes County Marijuana Regulation History

Following the passage of Ballot Measure 91 (2014), legalizing the sale and recreational use of marijuana, and HB 3400 (2015), refining the implementation of marijuana legalization, the Deschutes County Board of Commissioners (Board) adopted marijuana regulations in June 2016 (Ordinance Nos. 2016-013, 2016-014, 2016-015, 2016-017, 2016-018, and 2016-019). Following their initial adoption, the Board committed to reexamine Deschutes County's marijuana land use regulations post-implementation after gaining additional experience regulating the evolving marijuana industry. Deschutes County utilized extensive resources from 2017 to 2019 to attempt to develop reasonable time, place, and manner marijuana regulations. During this time, citizens on all sides of the issue vocally expressed their dissatisfaction, consistently expressing doubt that Deschutes County's regulations have the ability to successfully harmonize ostensibly incompatible land uses in the rural County due to marijuana's classification as a farm crop.

On August 19, 2019, the Board adopted by emergency Ordinance No. 2019-014, which prohibited the establishment of future (new) marijuana production and processing businesses in unincorporated Deschutes County (commonly referred to as an Opt Out). Ordinance No. 2019-015, adopted on October 16, 2019, further clarified that Ordinance No. 2019-014 has no impact on the County's past marijuana production land use decisions and does not preclude those applicants from moving forward in the licensure process with the Oregon Liquor Control Commission (OLCC).

Oregon law (ORS 475B.968) provides that Deschutes County may adopt ordinances prohibiting marijuana businesses, but must then refer the matter to County electors at the next statewide general election. On November 3, 2020, Ballot Measure 9-134 asked voters if they wanted to repeal the opt-out ordinances. As the ballot measure was phrased, a "yes" vote would once again allow new marijuana production and processing businesses in Deschutes County, and a "no" vote would continue to prohibit new marijuana production and processing businesses in Deschutes County. Ultimately, 57% of Deschutes County's electorate voted "no" to [Measure 9-134](#), thereby upholding the opt-out and prohibiting future/new commercial marijuana production and processing businesses from being established in the unincorporated County. Existing marijuana production and processing businesses may continue to operate per their conditions of approval. Retail marijuana businesses are unaffected by the opt-out.

II. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning. The amendments modify marijuana retail hours consistent with the Oregon Liquor and Control Commission (OLCC) requirements and provide the Board of County Commissioners the discretion to modify annual marijuana reporting requirements.

III. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing a legislative plan amendment. Nonetheless, since Deschutes County is initiating one, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan.

A. Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments were provided to the *Bulletin* for the Board public hearing.

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on June 9, 2021. The Planning Commission will hold a public hearing on July 22, 2021. The Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands: The proposed amendments do not make changes regarding marijuana's status as a farm crop, or the appropriate location of commercial grow sites and processing operations, and therefore continue to support Statewide Goal 3, to preserve and maintain agricultural lands. The proposed amendments to the County Code are consistent with these provisions of state law and are therefore consistent with Goal 3.

Goal 4: Forest Lands: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 4, and therefore are in compliance.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: Complies because the text amendment does not propose to change the County's Plan policies or implementing regulations for Goal 5 open spaces, scenic and historic areas, and natural resources.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6, and therefore are in compliance.

Goal 7: Areas Subject to Natural Disasters and Hazards: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding natural disasters and hazards; therefore, they are in compliance.

Goal 8: Recreational Needs: Complies because the text amendment does not propose to change the County's Plan or implementing regulations regarding recreational needs.

Goal 9: Economy of the State: Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans. The proposed amendments apply to rural lands but do not propose to amend the Comprehensive Plan. Nevertheless, there are currently two retail marijuana businesses in unincorporated Deschutes County. DCC 18.116.330(C)(1) permits hours of operation from 9am to 7pm for marijuana retail; however, the OLCC permits hours of operation from 7am to 10pm. Increasing the allowable hours has the potential to increase those retail businesses' economic opportunities with respect to sales as well as employment. Changing the reporting requirements will not have a direct effect on the economy of the state.

Goal 10: Housing: This goal is not applicable because, unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

Goal 11: Public Facilities and Services: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding public facilities and services.

Goal 12: Transportation: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding the Transportation System Plan; therefore, they are in compliance.

Goal 13: Energy Conservation: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding energy conservation.

Goal 14: Urbanization: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding urbanization.

Goals 15 through 19 are not applicable to the proposed text amendments because the County does not contain these types of lands.

D. Deschutes County Comprehensive Plan

Chapter 1, Comprehensive Planning: This chapter sets the Goals and Policies of how the County will involve the community and conduct land use planning. As described above, the proposed regulations will be discussed at work sessions with the Board of County Commissioners, as well as to the Planning Commission, which is the County's official committee for public involvement. Both will conduct separate public hearings.

These actions also satisfy the Goals and relevant Policies of Section 1.3, Land Use Planning Policies. Goal 1 of this section is to "maintain an open and public land use process in which decisions are based on the objective evaluation of facts." Staff, the Planning Commission, and the Board reviewed the text amendments.

Chapter 2, Resource Management: This chapter sets the Goals and Policies of how the County will protect resource lands, including but not limited to, Agriculture and Forest as well as Water Resources and Environmental Quality.

Section 2.2, Agricultural Lands Policies, states that Goal 1 is to "preserve and maintain agricultural lands and the agricultural industry." Changing annual reporting requirements for existing marijuana production and processing businesses will not have a direct effect on the agricultural lands they may operate on. Retail businesses are not permitted on agricultural lands.

Goal 2 promotes a diversified, sustainable, revenue-generating agricultural sector. Policy 2.2.10 calls for the promotion of economically viable opportunities and practices while Policy 2.2.11 encourages small farming enterprises including but not limited to, niche markets and organic farming and valued-added projects. The proposed text amendments do not change existing marijuana businesses' ability to operate as a revenue generating agricultural businesses.

Goal 3 specifies the Exclusive Farm Use (EFU) policies, classifications, and codes are consistent with local and emerging agricultural conditions and markets. As noted above, the proposed amendments only impact reporting aspects of marijuana recreational production and processing businesses.