



Memorandum Date: October 27, 2015
Meeting Date: November 3, 2015

TO: Board of County Commissioners
DEPARTMENT: Public Works, Land Management Division
PRESENTED BY: Mark Rust, Associate Planner
AGENDA ITEM TITLE: WORK SESSION/DISCUSSION AND DIRECTION: New rules for implementing marijuana regulations

I. No motion is being requested.

II. AGENDA ITEM SUMMARY

The Land Management Division (LMD) is requesting that the Board review and provide direction on the draft regulatory concept that staff has developed to mitigate potential land use impacts that may result from implementation of new marijuana rules promulgated under HB 3400.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

In November of 2014, Oregon voters adopted Measure 91, legalizing the growing, distribution, possession and use of marijuana for non-medical use. In 2015, the state Legislature made comprehensive reforms to Measure 91 and addressed issues of local control. Specifically related to land use considerations, the Legislature adopted HB 3400 and SB 460. HB 3400 includes land use considerations for regulating recreational marijuana uses, and SB 460 authorizes early sales of recreational marijuana by medical marijuana dispensaries. The Board has not been presented with the land use implications from implementing the new marijuana laws.

On September 15, 2015 staff brought to the Board some issues to consider in regard to implementing the new State of Oregon marijuana regulations. At this meeting the Board directed staff to pursue a "light touch" of regulations to mitigate impacts from new marijuana uses. The Board also directed staff to look at other states, including Colorado and Washington, to see what regulations had been put in place.

B. Policy Issues

There are a number of potential land use related policy issues that could arise out of implementing the new recreational marijuana rules. See Attachment A for a matrix outlining some of these policy issues.

C. Board Goals

Priority 1 of the County's Strategic Plan is "Safe and Healthy County". This matter could be found to relate to objective 1.2 from the Strategic Plan, to "Improve the health of our communities". Additionally, one of the strategies under Objective 1.3 is to "Support existing partnerships and foster new partnerships and collaborations to improve health and safety in our communities". One of the tactics under this strategy is to "Support new opportunities to work collaboratively with our community partners on health and safety issues". Depending on the policy direction on this matter, there may be an opportunity to realize some of these objectives.

Another area of the Strategic Plan that could be found to relate to this matter is Priority 2, Vibrant Communities. Objective 2.1 is to Invest in a strong, diverse, and sustainable regional economy. One of the strategies under this goal is to "Promote ways to make it easier to do business in Lane County". Implementation of clear regulations around marijuana businesses could help make it easier to conduct business in Lane County.

D. Financial and/or Resource Considerations

Taking action on this item was contemplated as part of the Land Management Divisions 2015 Long Range Planning work program that was approved by the Board.

Specific taxation implications are addressed in Section V.

E. Health Implications

Any significant health implications related to the implementation of the new recreational marijuana rules are unknown to Land Management Division staff at this time. It is possible that there could be health implications to the public from implementing rules to allow marijuana uses. These implications would have to be assessed and/or evaluated at a later time by a person qualified to make such a health assessment.

F. Analysis

Staff analyzed rules from jurisdictions in other states as directed by the Board in September. Attachment B table is a table comparing four other jurisdictions from the states of Colorado and Washington. Within these different jurisdictions there is a wide variety of regulations, from a minimal regulatory approach to a highly restrictive approach.

This wide spectrum of identified rules, along with other possible regulatory strategies were then fit into a matrix that illustrates how they might be applied in Lane County. This matrix is included as Attachment A and compares three possible levels of regulation that could be applied to the existing State law framework. Level 1 represents a minimal regulatory approach (or light touch). Level 2 is a more moderately restrictive approach and Level 3 represents the most restrictive approach.

Lastly, a table of the new marijuana uses as they are contemplated to be either permitted or restricted in each zone is provided in Attachment C.

The State of Oregon Administrative Rules are still being written in draft form. These draft temporary rules should be complete by the end of 2015. Then in early 2016, The Oregon Liquor Control Commission (OLCC) will work to adopt permanent rules. Without knowing what the temporary or permanent rules will be (including the size provisions for the Tier 1 and 2 cultivation production limits) Lane County may need to revisit any code changes at a later date.

G. Alternatives/Options

The Board is being asked to direct the Land Management Division to proceed with the public process for the Board review and possibly adopt zoning rules to implement new marijuana regulations related to time place and manner.

IV. RECOMMENDATION

It is recommended that the Board direct the Land Management Division proceed with the public process considering the Level 1 approach to new rules for marijuana uses.

V. TIMING/IMPLEMENTATION/FOLLOW UP

Timing of creating new regulations to implement state law is critical. Having new regulations in place prior to the new state laws taking effect on January 4, 2016 is necessary to avoid creating impacts from potential new uses under our existing zoning regulations.

Staff is working diligently and expeditiously to move through the process to get new regulations in place prior to the end of the calendar year. However, given requirements for notice, public hearings, and ordinance adoption process, meeting the tight timeline will be difficult.

If the Board gives direction to Land Management to proceed with the public process of adopting new marijuana zoning regulations, staff's next step will be to conduct a work session and public hearing with the Lane County Planning Commission (LCPC) on November 17th. If the LCPC needs additional time to

make a recommendation beyond the November 17th date, staff anticipates continuing the LCPC public hearing to a joint BCC/LCPC public hearing to the evening of December 15th. This will require a first reading by the BCC on December 1st. Alternatively, if the LCPC completes the public hearing and makes a recommendation on Nov. 17th, Staff will return Dec. 1st to the BCC for a first reading, and then on Dec. 15th to just the BCC for a public hearing.

Another potential option for consideration is for the BCC to adopt an ordinance to refer the issue to the electors to prohibit marijuana uses. This ordinance would effectively act as a moratorium to allowing marijuana uses until the next election in November 2016, or until the ordinance was repealed. This would allow staff time to more thoroughly develop new code provisions to allow the uses. Once the new code provisions are in place, the ordinance to refer the issue to the electors could be repealed. Under this option staff anticipates that a new code could be in place within the first quarter of 2016.

Adoption of an ordinance prohibiting any legalized recreational marijuana activity will preclude the County from receiving the state tax allocation from retail sales. Adoption of an ordinance prohibiting any legalized recreational marijuana activity will preclude the County from imposing a local 3 percent tax on retail sales of recreational marijuana. It is unclear what the tax implication would be to the County if an ordinance prohibiting legalized recreational marijuana activity were to be adopted.

VI. ATTACHMENTS

Attachment A – Table showing concepts for regulating marijuana in Lane County

Attachment B – Table comparing rules from jurisdictions in other states

Attachment C – Table showing new marijuana uses allowed by zone

Marijuana uses – Concepts for regulating recreational marijuana in Lane County

Use Type	Oregon state Law	Level 1 (Minimal Oversight)	Level 2 (Moderate Oversight)	Level 3 (Maximum Oversight)
Producer	<ul style="list-style-type: none"> Developing rules (OAR's) on size limits for grow canopy size. Might be two tiered system. Tier 1, and tier 2. Different for indoor and outdoor grow operations Allows reasonable conditions on the manner of production Allows reasonable limitations on where a premises may be located Must be screened from public view by 10' tall solid fence or wall 	<ul style="list-style-type: none"> Tier 1 and 2 allowed in EFU (Exclusive Farm Use) zones, forest zones, and Industrial zones Tier 1 production allowed in commercial zones No production uses allowed in residential zones Require ventilation/odor control in zones other than EFU zones, and/or on smaller properties Require min. parcel size for outdoor grow Require min. setbacks 	<ul style="list-style-type: none"> All requirements under Level 1 provisions, plus: Require producer facility to be located at least 1000 feet from any other licensed producer facility Require ventilation/odor control in all zones Require security plan 	<ul style="list-style-type: none"> All requirements under Level 1 and 2 provisions, plus: No production allowed in Residential zones Size limitations Require producer facility to be located at least 1000 feet from any other licensed marijuana facility, unless co-located Limit number of locations Require renewable energy offset Expand setback requirements from all schools, day care, churches, parks, hospitals, etc.
Processor	<ul style="list-style-type: none"> May not be located in an area zoned exclusively for residential use Allows reasonable condition on the manner of processing Allows reasonable limitations on where a premises may be located 	<ul style="list-style-type: none"> Only allowed in Industrial zones Not allowed in residential zones Not allowed as home occupation Not allowed in a dwelling – if in another zone Require ventilation/odor control Require noxious gas/emissions control 	<ul style="list-style-type: none"> All requirements under Level 1 provisions, plus: Require processor facility to be at least 1000 feet from any other licensed processor facility Require security plan 	<ul style="list-style-type: none"> All requirements under Level 1 and 2 provisions, plus: Require producer facility to be located at least 1000 feet from any other licensed marijuana facility, unless co-located Size limitations Create two types of processor types, one with extraction and chemical processing, one without. Limit two uses by zone Expand setback requirements from all schools, day care, churches, parks, hospitals, etc.
Wholesaler	<ul style="list-style-type: none"> Not allowed in an area that is zoned exclusively for residential use Allows reasonable conditions on the manner of wholesale sales Allows reasonable limitations on where a premises may be located 	<ul style="list-style-type: none"> Allowed in Forest, Farm and Industrial zones Not allowed in residential zones Not allowed as home occupation Not allowed in dwelling Require ventilation/odor control 	<ul style="list-style-type: none"> All requirements under Level 1 provisions, plus: Require wholesale facility to be at least 1000 feet from any other licensed wholesale facility Require security plan 	<ul style="list-style-type: none"> All requirements under Level 1 and 2 provisions, plus: Require wholesale facility to be located at least 1000 feet from any other licensed marijuana facility, unless co-located Size limitations Expand setback requirements from all schools, day care, churches, parks, hospitals, etc.
Retail	<ul style="list-style-type: none"> Not allowed in an area that is zoned exclusively for residential use Hours of operation limited to 8 a.m. – 10 p.m. May not be located within 1000 feet of schools Must be in enclosed building No drive-up window sales allowed Allows reasonable conditions on the hours of operation Allows reasonable conditions on the manner of selling Allows reasonable conditions on the public's access to a premises for retail sales Allows reasonable limitations on where a premises may be located (may not require retail sales to be further than 1000 feet away from another retail sales outlet) 	<ul style="list-style-type: none"> Only allowed in commercial and industrial zones Not allowed in residential zones Not allowed as home occupation Not allowed in a dwelling Require ventilation/odor control 	<ul style="list-style-type: none"> All requirements under Level 1 provisions, plus: Require retail sales facility to be located at least 1000 feet from any other licensed retail sales facility Require security plan Limit hours of operation 	<ul style="list-style-type: none"> All requirements under Level 1 and 2 provisions, plus: Require retail sales facility to be at least 1000 feet from any other licensed marijuana facility unless co-located Size limitations Lighting requirements Expand setback requirements from all schools, day care, churches, parks, hospitals, etc.

Marijuana uses – Other jurisdictions comparison

	Pueblo County, CO	Aurora, CO	Boulder County, CO	King County, WA
Use Type				
Growing/cultivation/producer	<ul style="list-style-type: none"> • Not allowed as Home Occupation • Not allowed in a residence • Must be a fixed location • Stand-alone use only allowed in Ag. zones, and Ind. Zones • Allowed contiguous to retail outlet in commercial zones • Not w/in 250' of church, childcare, rehab. facility, etc. • Not w/in 1000' of schools 	<ul style="list-style-type: none"> • Not allowed in residential zones • No MJ use w/in 300 feet of res. use or res. zone • 1000 feet from schools • 500 feet from hospital and substance abuse center • Hours 8 a.m. – 10 p.m. • Building codes for ventilation and fire wall separation. • Best management practices • Air scrubbing and filtration systems • Outdoor cultivation not allowed 	<ul style="list-style-type: none"> • Only allowed in commercial and industrial zones • Not allowed in residential zones • No drive through service • Not allowed within 500 feet of another marijuana establishment in the commercial zones • Not allowed within 1000 feet of an alcohol or drug treatment facility, child care facility, school, or similar facility in adjacent municipality 	<ul style="list-style-type: none"> • Not allowed in residential zones • Limits outdoor, in greenhouses, and indoors by zone • Size limitations (ex. Ag. zone: 2,000 sq. ft. outright permitted; 10,000 sq. ft. with CUP.) • Min. parcel sizes for some zones • Fencing requirements • Setback requirements • Odor management plan • Not allowed in dwelling • Indoor restricted to pre-existing structures
Processing/product manufacturing	<ul style="list-style-type: none"> • Only allowed in commercial and industrial zones • No w/in 250' of residence in residential zone • Not w/in 1000' of schools • Not w/in 250' of church, childcare, rehab. facility, etc. 	<ul style="list-style-type: none"> • Not allowed in residential zones • Ventilation Plan • Mitigation of noxious gases 	<ul style="list-style-type: none"> • Only allowed in commercial and industrial zones • Not allowed in residential zones • No drive through service • Not allowed within 500 feet of another marijuana establishment in the commercial zones • Not allowed within 1000 feet of an alcohol or drug treatment facility, child care facility, school, or similar facility in adjacent municipality 	<ul style="list-style-type: none"> • Not allowed in residential zones • Type I, no extraction or chemical processing. Drying, curing, trimming and packaging only • Type II – includes extracting and chemical processing • Mim. parcel size in Agricultural zone of 4.5 acres • Size limitations in certain zones (inside UGB 2,000 sq. ft., outside UGB 30,000 sq. ft.) • Odor management plan
Retail store	<ul style="list-style-type: none"> • Only allowed in commercial zones • Not allowed w/in 250' of any residence • Not w/in 1000' of schools • Not w/in 250' of church, childcare, rehab. facility, etc. 	<ul style="list-style-type: none"> • Not allowed in residential zones • Limitation on number of retail outlets (max. 24) • Security Plan • Business Plan • Operating Plan • Ventilation Plan 	<ul style="list-style-type: none"> • Only allowed in commercial and industrial zones • Not allowed in residential zones • No drive through service • Not allowed within 500 feet of another marijuana establishment in the commercial zones • Not allowed within 1000 feet of an alcohol or drug treatment facility, child care facility, school, or similar facility in adjacent municipality 	<ul style="list-style-type: none"> • Only allowed in Commercial zones • Size limitations (up to 2,000 sq. ft. outright permitted; up to 5,000 sq. ft. with CUP)

Marijuana uses – New proposed land use framework

		Forest zones (F-1 & F-2)	Farm zones (EFU, A & AGT)	Residential zones	Commercial zones	Industrial zones
	License Type					
1.	Producer (grower) license (Farm use) LUCS required	Allowed outright as a farm use. Includes primary processing only, 10,000 sq. ft. and under.	Allowed outright as a farm use. Includes primary processing only, 10,000 sq. ft. and under.	Tier 1 allowed Tier 2 prohibited	Not allowed	Allowed with SUP**
2.	Processor license LUCS required	Not allowed	Not allowed	Not allowed	Not allowed	Allowed with SUP**
3.	Wholesaler license LUCS required	Allowed outright under the definition of farm use.	Allowed outright under the definition of farm use.	Not allowed	Not allowed	Allowed with SUP**
4.	Retail license LUCS required	Not allowed	Not allowed	Not allowed	Allowed with SUP*	Allowed with SUP*, **

* 1000 foot separation from schools.
 ** Size limitation of LC 16.292(3)(b) apply.

(SUP – Special Use Permit)