



Memorandum Date: September 1, 2015  
Meeting Date: September 15, 2015

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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: Land use implications of implementing marijuana regulations

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I. No motion is being requested.

II. AGENDA ITEM SUMMARY

This is a discussion item on the potential land use issues and/or impacts from implementing the new marijuana rules under HB 3400.

The Board is being asked to provide direction to the Land Management Division (LMD) in regard to if we should further explore addressing potential land use issues and/or impacts from implementing new marijuana regulations.

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.

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 detailed discussion of 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 goals.

Another area of the Strategic Plan to 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 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 recently approved by the Board.

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 depending on the policy direction given. These implications would have to be further assessed and/or evaluated at a later time by a person qualified to make such a health assessment.

F. Analysis

The analysis of the land use issues are discussed in the attached memo, see Attachment A.

G. Alternatives/Options

The Board is being asked to direct the Land Management Division to explore options for addressing potential impacts to implementing the new marijuana laws under HB 3400. Three primary issues to address are:

- 1) Should LMD explore reasonable time, place, and manner regulations

- on the operation of licensed marijuana businesses;
- 2) Should there be separation requirements between licensed marijuana businesses; and
  - 3) Should LMD consider limiting potential conflicts for marijuana businesses inside the urban growth boundaries (UGB's) of cities that have referred a prohibition to the electors?

(See Attachments A and B for a more detailed discussion and background on these issues)

Alternatively, the Board could direct the Land Management Division to do nothing and allow the implementation of the new marijuana laws under HB 3400 to take place under the current land use/zoning framework (see Attachment B).

#### IV. RECOMMENDATION

It is recommended that the Board direct the Land Management Division to further explore options for addressing potential impacts from implementation of the new marijuana laws under HB 3400.

#### V. TIMING/IMPLEMENTATION/FOLLOW UP

If the Board gives direction to Land Management to pursue recommended changes to the Lane Code for implementing the new marijuana rules LMD will start work immediately on formulating a plan to identify potential changes and move through the public process. LMD could report back to the Board within 1-2 months to provide more details of issues to address moving forward. Any changes would ultimately come back before the Board for a public hearing and final adoption.

#### VI. ATTACHMENTS

Attachment A – Land Use Policy Issues (one pager)

Attachment B – Background information memo to Board

Attachment C – Existing land use framework matrix

## **LAND USE POLICY ISSUES: MARIJUANA RULE IMPLEMENTATION**

- A) HB 3400, Section 33(2) says that a governing body of a county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a producer (grower), processor, wholesale, or retail license has been issued.

### **QUESTION FOR THE BOARD**

- 1) Should LMD explore reasonable regulations on the operation of the business located at premises for which a producer (grower), processor, wholesale, or retail license has been issued?
- B) Under HB 3400 there is a 1000 foot separation for medical dispensaries from other medical dispensaries, as well as from schools. There is not a separation requirement for retail sale locations from either existing medical dispensaries or other retail sales sites.

State law allows a local jurisdiction to require separation up to a maximum of 1000 feet between new licensed retail facilities.

### **QUESTION(S) FOR THE BOARD**

- 2) Should LMD explore reasonable regulations that could locally limit new licensed facilities to be at least 1000 feet from other marijuana uses?
- C) HB 3400, Section 134 allows a city or county to adopt ordinances to be referred to the electors of the city or county that prohibits the establishment of any one or more of the four recreational marijuana licensed facility types (producer, processor, wholesale, or retail), or medical marijuana facilities (processing sites or retail dispensary). A prohibition under this section would only apply to the jurisdiction of the city or the unincorporated area subject to the jurisdiction of the county.

As an example, the City of Junction City as adopted an ordinance to prohibit all four types of recreational marijuana license facility types. Since Lane County has land use jurisdiction over the lands that are within the City of Junction City's Urban Growth Boundary (UGB), but that are not annexed into the city limits of Junction City, it is feasible that Lane County could approve a licensed facility on a commercially zoned property under the County's jurisdiction right next to a similarly zoned property (commercially zoned) that is annexed to the city limits.

### **QUESTION(S) FOR THE BOARD**

- 3) Should LMD explore reasonable regulations around limiting these potential conflicting situations inside UGB's of cities that have referred a prohibition to the electors?



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The land use issues associated with medical and recreational marijuana in Oregon are very dynamic. Marijuana is illegal under the federal Controlled Substances Act (CSA) of 1970. In Oregon, there are court opinions, pending litigation, various interpretations of the law, new legislation, existing laws regulating medical marijuana, and new administrative rules forthcoming regulating recreational marijuana – all of which may influence the regulation and implementation of medical and recreational marijuana land uses.

Oregon House Bill 3400, adopted earlier this year, amended both the *Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act* (Ballot Measure 91, adopted by the voters in 2014) and the *Oregon Medical Marijuana Act* (codified as Oregon Revised Statutes 475.300 - 475.346). The legislative mark-up version of HB 3400 is 111 pages long. Many provisions are unrelated to land use regulation and therefore unrelated to the county's implementation of marijuana related uses under the zoning ordinance.

The purpose of this summary document is to consolidate HB 3400 land use provisions to be used as a reference during the consideration of drafting zoning ordinance amendments. This information is based on Land Management Division staff review of HB 3400 and related materials, and is *not intended* as legal guidance. It may be updated in the future as marijuana land use issues continue to evolve.

#### A. MARIJUANA LAND USE IN LANE COUNTY: CURRENT STATUS

1. The County Land Management Division, Building Division and other departments routinely receive inquiries regarding marijuana regulations and associated land use regulations and permitting requirements.

2. The County is responsible for regulating land uses, including those related to recreational and medical marijuana, pursuant to the Lane County Zoning Ordinance. Marijuana production, processing and sale are no different than any other land use when it comes to administering the zoning ordinance. As with other land uses, the appropriate zoning district(s) to locate these businesses will be based on characteristics of the business (growing, processing, wholesaling, retailing or a combination thereof). See Attachment B for a DRAFT matrix of how we believe new recreational marijuana uses would be regulated under our current zoning code language.
3. Medical marijuana-related uses have been regulated in the same manner as other similar uses under the zoning ordinance. The Oregon Medical Marijuana Act was adopted in 1998, although retail dispensaries were not legalized until 2014. For recreational marijuana, the inherent conflict is that related uses may be legally permissible under the construct of the County zoning ordinance and yet cannot legally operate until such time as the OLCC issues a license for each facility.

## B. NEW STATE LEGISLATION

The 2015 legislature adopted five bills related to marijuana. In addition to HB 3400, discussed at length below, only one bill is related to marijuana land use regulations.

**Senate Bill 460A (Early Start)** allows *medical* marijuana dispensaries to sell limited recreational marijuana products (i.e. recreational marijuana seeds, leaves, flowers and non-flowering plants) beginning October 1, 2015. The effect of this bill brings the legal sale of recreational marijuana to the market prior to the OLCC accepting and approving licenses for recreational marijuana dispensaries in 2016. The sale of limited recreational marijuana products can only occur in licensed medical marijuana dispensaries that are already authorized under the County's time, place and manner regulations. Therefore, no additional land use regulations are necessary before October 1, 2015 to allow the sale of limited recreational marijuana products.

**House Bill 3400 amended** Ballot Measure 91 and certain provisions of the Oregon Medical Marijuana Act. Details are below in sections C and D.

## C. RECREATIONAL MARIJUANA (Ballot Measure 91/House Bill 3400)

### Overview:

Measure 91, approved by Oregon voters in November 2014 -- the *Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act* -- was approved in Lane County. HB 3400, which amends Measure 91, was adopted by the 2015 state legislature. The following information summarizes the original act as amended by HB 3400.

- a. The purpose of the law is to permit persons licensed, controlled, regulated and taxed by this state to legally manufacture and sell marijuana to persons 21 year of age and older.
- b. Though the original Act does not include any specific land use regulations, HB 3400 does.
- c. Though the original Act does not amend the Oregon Medical Marijuana Act, HB 3400 does.
- d. The Act clarifies that *marijuana* does not include industrial hemp, as defined in ORS 571.300, or industrial hemp commodities or products. (Growing industrial hemp is considered to be an agricultural product / farm use (OAR 571.305(1)). Industrial hemp facilities must be licensed by the Oregon Department of Agriculture (ODA).)

Under the language of the House Bill:

- Marijuana is a crop for the purposes of “farm use”.
- A new dwelling is not permitted in conjunction with a marijuana crop on land designated for exclusive farm use (EFU).
- A farm stand is not permitted in conjunction with marijuana production on land designated EFU.
- Processor, wholesale, and retail licensed premises may not be located in an area that is zoned exclusively for residential use.

**Definitions:**

- a. Household: *a housing unit, including any place in or around the housing unit at which the occupants of the housing unit are producing, processing, keeping or storing homegrown marijuana or homemade marijuana products*
- b. Marijuana: *the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae*
- c. Immature Marijuana Plant: *a marijuana plant that is not flowering*
- d. Mature marijuana plant: *a marijuana plant that is not an immature marijuana plant*
- e. Marijuana items: *marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts*
- f. Marijuana processor: *a person who processes marijuana items in this state*
- g. Marijuana producer: *a person who produces marijuana in this state*
- h. Marijuana retailer: *a person who sells marijuana items to a consumer in this state*
- i. Marijuana wholesaler: *a person who purchases marijuana items in this state for resale to a person other than a consumer*

- j. (1) "Premises" or "licensed premises" *includes the following areas of a location licensed under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015:*
- (A) *All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;*
  - (B) *All areas outside a building that the commission has specifically licensed for the production, processing, wholesale sale or retail sale of marijuana items; and*
  - (C) *For a location that the commission has specifically licensed for the production of marijuana outside a building, the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, leases or has a right to occupy.*
- (2) "Premises" or "licensed premises" does not include a primary residence.  
(Emphasis added)
- k. *Processes: the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts. Processes does not include packaging and labeling.*
- l. *Produces: the manufacture, planting, cultivation, growing or harvesting of marijuana*
- m. *Public place: a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartment designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and areas used in conjunctions with public passenger transportation.*

### Recreational Marijuana for Personal Use:

The production, processing and storage of homegrown marijuana and marijuana products is often referred to as the *Personal Use Allowance*. The personal allowance authorized for recreational marijuana per household is a right to possess marijuana; it is not a land use issue and will not be regulated by the zoning ordinance.

- a. Effective July 1, 2015, the making, processing and storage of homegrown marijuana and marijuana products is not to exceed four plants, eight ounces of useable marijuana, 16 ounces in solid form, 72 ounces in liquid form and 16 ounces of concentrates *per* household at any time
- b. The delivery of marijuana is not to exceed more than one ounce of homegrown marijuana, 16 ounces of solids, 72 ounces of liquids and 16 ounces of concentrates at a time by a person 21 years of age or older to another person 21 years of age or older for non-commercial purposes.
- c. No consumption is allowed in public.

- d. No person may produce, process, keep or store homegrown marijuana or homemade marijuana products if the products can be readily seen by normal unaided vision from a public place.

#### **Oregon Liquor Control Commission (OLCC):**

The Oregon Liquor Control Commission (OLCC) is responsible to adopt laws (Oregon Administrative Rules) to implement and administer Measure 91 and HB 3400. The duties of the OLCC include:

- a. To regulate the purchase, sale, production, processing, transportation and delivery of marijuana items.
- b. On or before *January 1, 2016*, to adopt rules and regulations as deemed necessary for the implementation and administration of the Act.
- c. On or before *January 4, 2016*, to begin *receiving* applications for the licensing of persons to produce, process, wholesale and retail marijuana. (The Act states that OLCC may not unreasonably delay decisions on a license, but does not specify a time limit.)

#### **Recreational marijuana license types:**

There are four new OLCC license types for recreational marijuana.

1. Producer (grower) license
2. Processor license
3. Wholesale license
4. Retail license

The same person may hold one or more production licenses, one or more processor licenses, one or more wholesale licenses, and one or more retail licenses.

#### **Reasonable regulations:**

Section 33 of HB 3400 authorizes the County to impose reasonable regulations on the operation of licensed recreational marijuana businesses.

The word "reasonable" is not defined by HB 3400. Depending on the statutory construction, a dictionary definition of "reasonable" may be relevant.

Reasonable (time, place, and manner) regulations under HB 3400 are defined to include:

- a) Conditions on the manner in which a producer, processor, wholesaler, or retailer operate.
- b) Conditions on the hours (time) during which a retailer may operate.

- c) Requirements related to the public's access to a premises for which a license has been issued.
- d) Limitations on where (place) a premises for which a license may be issued may be located.
- e) The governing body may not adopt an ordinance that prohibits a premises for which a retail license has been issued from being located within a distance that is greater than 1,000 feet of another premises for which a retail license has been issued.

#### **Land Use Compatibility Statement (LUCS):**

Section 34 of HB 3400 requires a land use compatibility statement (LUCS) from the County as part of the Oregon Liquor Control Commission's marijuana business licensing process.

A LUCS must demonstrate that the requested license is for a land use this is allowable as a permitted or conditional use within the given zoning designation where the land is located. OLCC may not issue a license if the LUCS shows that the land use is prohibited in the applicable zone.

A county that received a request for a LUCS must act on the request within 21 days.

### **D. MEDICAL MARIJUANA**

The Oregon Medical Marijuana Act (OMMA) is codified in ORS 475.300-475.346. The Oregon Health Authority (OHA) adopted Oregon Administrative Rules (OAR 333, Division 8) necessary for the implementation and administration of the Oregon Medical Marijuana Act. The County is not responsible for administering the OAR's relative to medical marijuana. Registration is required through the Oregon Health Authority for production and processing of medical marijuana and for medical marijuana dispensaries.

#### **Definitions (HB 3400)**

- a. Registry identification cardholder: *a person to whom a registry identification card has been issued under ORS 475.309*
- b. Marijuana grow site: *a location registered under ORS 475.304 where marijuana is produced for use by a registry identification holder.*
- c. Person designated to produce marijuana by a registry identification card holder: *a person designated to produce marijuana by a registry identification cardholder under ORS 475.304 who produces marijuana for a registry identification cardholder at an address other than the address where the registry identification cardholder resides or at an address where more than 12 mature plants are produced.*

**Medical marijuana registration types (not licenses):**

There are three different types of medical marijuana registrations:

1. Medical marijuana grow site (producer).
2. Medical marijuana processing site (processing).
3. Medical marijuana dispensary (retail sales).

Under the medical marijuana regulations, the processor sites and dispensary sites may not be located in an area that is zoned for residential use. This is different than the regulations for recreational MJ that limits processor, wholesale, and retail licensed premises from being located in an area that is zoned exclusively for residential use.

**Land Use Compatibility Statement (LUCS):**

For medical MJ, there is not a LUCS sign off requirement.

**Reasonable regulations:**

Section 89 of HB 3400 authorizes the County to impose reasonable regulations on the operation of medical marijuana uses.

Reasonable (time, place, and manner) regulations include:

- Limitations on the hours (time) during which the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary may operate;
- Conditions on the manner in which a marijuana processing site or medical marijuana dispensary may transfer usable marijuana, medical cannabinoid products, cannabinoid concentrates, cannabinoid extracts, immature marijuana plants and seeds;
- Requirements related to the public's access to the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary; and
- Limitations on where (place) the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary may be located.
- Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of marijuana grow sites of persons designated to produce marijuana by registry identification cardholders, marijuana processing sites and medical marijuana dispensaries that are located in the area subject to the jurisdiction of the city or county.

Marijuana uses – Existing land use framework by zone

	F-2 Zone	EFU Zone	RR Zone	RC Zone	RI Zone
<b>License Type</b>	LC 16.211	LC 16.212	LC 16.290	LC 16.291	LC 16.292
<b>1. Producer (grower) license (Farm use) LUCS required</b>	Allowed outright as a farm use. Includes primary processing only (harvesting, preparation, storage, and disposal of product)	Allowed outright as a farm use. Includes primary processing only (harvesting, preparation, storage, and disposal of product)	Allowed outright as "Raising and harvesting crops"	Not allowed	Allowed with SUP as "small scale, low impact manufacturing"***
<b>2. Processor license LUCS required</b>	Allowed with SUP as Home Occupation	Allowed with SUP 16.212(4)(a), (c), or (h)	Allowed with or w/o SUP as Home Occupation	Not allowed	Allowed with SUP as primary processing of farm product.** OR Allowed with SUP as "small scale processing", subject to size limitations***
<b>3. Wholesaler license LUCS required</b>	Allowed with SUP as Home Occupation	Allowed with SUP 16.212(4)(c)	Allowed with or w/o SUP as Home Occupation	Not allowed	Allowed with SUP as "small scale storage and wholesale distribution, testing...", subject to size limitations***
<b>4. Retail license LUCS required</b>	Allowed with SUP as Home Occupation*	Allowed with SUP as Home Occupation*	Allowed with or w/o SUP as Home Occupation*	Allowed with SUP as Retail trade of products.*	Allowed with SUP as "associated sales for uses permitted..."*
<b>5. Medical Producer (grower) registration (not a license) No LUCS</b>	Allowed	Allowed	Allowed	Not allowed	Allowed with SUP as "small scale, low impact manufacturing"***
<b>6. Medical Processor registration (not a license) No LUCS</b>	Allowed	Allowed	Allowed <sup>1</sup>	Not allowed	Allowed with SUP as "small scale processing", subject to size limitations***
<b>7. Medical Dispensary registration (not a license) No LUCS</b>	Allowed with SUP as Home Occupation *	Allowed with SUP as Home Occupation*	Not allowed <sup>2</sup>	Allowed with SUP as Retail trade of products*	Not allowed*

\* 1000 foot separation from schools. For medical MJ dispensaries, may not be located within 1000' of another medical MJ dispensary.

\*\* Criteria requires demonstration of "significantly dependent on proximity to rural resource". See LC 16.292(3)(a).

\*\*\* Size limitation of LC 16.292(3)(b) apply.

(SUP – Special Use Permit)

<sup>1</sup> Not allowed in an area that is zoned for residential use if the marijuana processing site processes cannabinoid extracts. HB 3400, Section 85(3)(a).

<sup>2</sup> Not allowed in an area that is zoned for residential use. HB 3400, Section 86(3)(a).