

MARIJUANA REGULATION ON RURAL RESIDENTIAL

Josephine County Board of Commissioners

First Reading

September 20, 2017



Why We're Here

- Approximately 1000 (1005) marijuana written, formal complaints filed in one year (approximately 300 just since the RPC hearing on August 28, 2017).
- 100's (1000's?) of e-mails, calls, and office visits to Commissioners and Staff regarding fears, vicious dogs, guns, thefts, concerns, illegal activity, property values, illegal deforestation, improper grading, runoff and flooding, etc.
- Ballot Measure 17-81 (May 2017): 64% of voters “opined Josephine County should prohibit the production of commercial, recreational marijuana in all Rural Residential zones”.
- More complaints and concerns re: black market sales, aka ‘commercial’, and other related complaints and non-residential activity in residential zones. (See next slide: Is OLCC recreational really the problem?)
- Board Order 2017-034 (July 2017).



Is OLCC the Problem?

Data as of Friday September 15, 2017

Zip Code	OLCC Licenses	Producer Licenses	Producer On RR	RR On-site	RR <u>JoCo</u>	RR Jackson	RR Other Oregon	RR Out of State
Cave Junction	23	23	10	4	2	1	3	0
Grants Pass	52	50	16	12	3	1	1	0
<u>Kerby</u>	3	2	1	0	0	0	0	1
Merlin	6	4	1	1	0	0	0	0
O'Brien	2	2	0	0	0	0	0	0
Selma	5	1	1	1	0	0	0	0
<u>Wilderville*</u>	5	5(2)=4	5(4)	3	2(1)	0	0	0
Williams*	15	14(2)=12	6(5)	4	0	2(1)	0	0
Wolf Creek	6	6	0	0	0	0	0	0
TOTAL	117	107(105)	40(38)	25	7(6)	4(3)	4	1

*In these two communities one property holds two licenses
Assumption is made P.O. Box in same zip is onsite operation



Board Order 2017-034

Adopted on July 19, 2017:

- Director (Schmelzer) is directed to initiate an application for review of proposed text amendments that provide for potential regulation of marijuana produced for commercial use in all Rural Residential zones. (Note: Exempts the personal 12 plants per property)
- Potential regulation **shall** include all **OLCC regulated** marijuana.
- Director is to schedule the matter before the Planning Commission.
- Director shall notify all LUCS applicants of this text amendment process and that it may result in the prohibition of the production of marijuana for non-personal, commercial use in the Rural Residential zones.



Board Order 2017-034

- Original version discussed a prohibition on approving LUCS, but that was not what was adopted.
- Since the Board Order, up until the RPC hearing (41 days), there had been 10 new LUCS for RR involving 8 properties.
- Since the hearing, there have been 12 more.
- Total since original Board Order (59 days): 20 RR properties applied for a LUCS.



Primarily Who Amendments Would Affect

- Anyone who is or will be regulated by OLCC in a Rural Residential zone.
- Rural Residential is 22% (63,468 acres) of our privately owned land (282,227 acres) in our unincorporated areas (1,028,564 acres), or, 6% of all unincorporated land.
- Rural Residential is basically around town centers. Historical rezones took land out of an agricultural class and added them to the Rural Residential inventory.



Purpose of Zoning In Josephine County

Adopted in 1973

2005 Rural Land Development Code (RLDC)

Sec. 10.020 Purpose

The purpose of the code is to coordinate Josephine County regulations governing the use and development of land, and more specifically:

- A. Implement the Comprehensive Plan and *guide and manage future growth in accordance with that plan*;
- B. To protect the *public health, safety and welfare*;
- C. Assist the public in *identifying and understanding regulations affecting the development and use of specific parcels of land* (in this case, Rural Residential land)



What the Comprehensive Plan Says about Ag/Rural Residential

Adopted in 2005, Ord. 81-11

Goal 1: Preserve and Maintain Agricultural Lands and the Rural Character of Josephine County

- Pol. 1: Preserve agricultural land for agriculture through agricultural zoning. Other lands can be considered for agricultural use taking into consideration...existing and future availability of water for farm irrigation purposes, existing land use patterns...
- Pol. 6: Agricultural plan designation shall be implemented through two agricultural zones: Exclusive Farm/Farm Resource. (Note: Rural Residential is not listed)



Comprehensive Plan...

Goal 3: Allocate Land to Encourage Affordable Housing

Overview: “Many residents choose to live in Josephine County because of the opportunity to live in a natural environment with privacy and open space.”

- Pol. 1: Lands that are shown to be non-resource in capability shall be placed in a Rural Residential class.
- Pol. 3: Land use allocations will accommodate identified need and public desire for rural home sites.
- Note: Census data shows that in the unincorporated areas we need 155 new homes/units *per year* to keep up with demand.



Comprehensive Plan...

Goal 10: Depict Land Use Patterns to Guide Future Uses to Implement the Desires of the County. (Note: See Ballot Measure 17-81)

- Pol. 1. F: Areas committed to residential use or are determined to be non-resource lands.

Goal 12: Procedures shall be established as needed and desired by the Rural Residents (See Ballot Measure 17-81).



Why Regulate Marijuana on Rural Residential

Rural Residential Zone

Sec. 61.010 Purpose

The purpose of the zone is to preserve the rural character while providing for rural residential living...



State Law

Counties Have to Allow Marijuana Production Where They Allow Agriculture

- The proposal is to allow personal farming (12 plants)
- The proposal is to allow legal marijuana production sites to flourish
- The proposal is to allow new production sites, if they can meet code

Counties Can Place Time, Place and Manner (TPM) Restrictions on the Production of Marijuana

- The following are the proposed TPM text amendments...



Text Amendment Process...

- August 28, 2017: Rural Planning Commission Public Hearing
- August 31, 2017: Rural Planning Commission Recommendation
- September 5, 2017: Board of Commissioners Meeting/Discussion
- September 7, 2017: Board of Commissioners Meeting/Discussion
- September 20, 2017: Board of Commissioners First Reading
- October 4, 2017: Board of Commissioners Second Reading(?)
- January 2, 2017: Effective Date



New RR Grow Sites

- New production sites allowed in RR provided they can be setback 300' from all property lines.
- 300' is the required lot width for a RR5 lot.
- The setback places a 'hypothetical' lot between grow and neighbor, thereby minimizing the potential for negative land use conflicts.
- No new minimum lot size (other than required for a standard RR lot).
- No new minimum lot width (other than required for a standard RR lot).
- RPC proposal was to also allow new Micro-Tier 1 >2.5 ac. With 150' setbacks. Board removed.



61.060 - PROPERTY DEVELOPMENT STANDARDS

B. Property Development Standards

1. Minimum lot size - RR-5: 5 Acres

RR-2.5: 2.5 Acres

RR-1: 1 Acre

2. Minimum lot width - RR-5: 300'

RR-2.5: 250'

RR-1: 150'

3. Minimum setbacks from property lines – Front (30') Side
(10') Rear (25')

OLCC regulated marijuana production site:
Front, Side, and Rear (300')

13. Lighting – See Article 77



‘Grandfathering’

- ‘Grandfathering’ really isn’t a term used in the code. The code, and state, use the term ‘lawful nonconforming use’.
- There are currently standards in the code for ‘grandfathering’ (Article 13).
- As such, to be ‘grandfathered’, you must have been legal prior to the code changing.
- If you are legal, you don’t have much to worry about...



Medical 'Grandfathered'...

- Legally established after Oregon Ballot Measure 67 in 1998.
- If operating before 1998, the site was illegal and can't become a 'lawful nonconforming use' unless enrolled in an OMMP or OLCC program.
- Must be in compliance with all codes administered by the Community Development Department.
- If you are legal, nothing to worry about...



Recreational 'Grandfathering'

- Must have secured a LUCS, or, have a LUCs application on file, that is *actively* being processed. In other words, if you never completed the LUCS process, or were turned down, not eligible.
- Must be in compliance with codes administered by the Community Development Department. (This shouldn't be too difficult since all LUCS state the need for permits.)
- OLCC licenses do not run with the land (they are applicant specific); therefore, the 'grandfathering' cannot be transferred either. The cannabis business is not alone...home occupations also cannot be transferred.
- What that looks like...



13.050 - ALTERATION OF A NON-CONFORMING USE OR STRUCTURE

D. For the purpose of verifying the nature and extent of a lawful nonconforming use, the applicant may not be required to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of the application. As for determining whether a medical marijuana production site is a lawful nonconforming use, the site would have had to been legally established after Oregon Ballot Measure 67 in 1998, and be in compliance with the codes administered by the Community Development Department at the time of adoption of this amendment, as verified by annual compliance inspection certificate. To determine if an OLCC regulated marijuana production site is a lawful nonconforming use a landowner must have secured a LUCS from OLCC prior to the adoption of these amendments, or applied for a LUCS prior to the adoption of these amendments and said LUCS is being actively processed by OLCC with the intent to issue a license, and provided the property was in compliance with the codes administered by the Community Development Department and the time of adoption of this amendment as verified by an annual compliance inspection certificate. Although permits run with the land, OLCC licenses do not; therefore, when the property is transferred to a different owner, the production site will lose its lawful nonconforming status.



E. For the purposes of verifying the nature and extent of a lawful nonconforming structure, the structure would have had to exist in its current state and use prior to Josephine County adopting zoning (1973) and prior to the adoption of a Building Safety program (1974).



Compliance With Codes Enforced By Comm. Develop.

Basically, permits from the Planning Division and the Building Safety Division. If doing everything 'right', then these should not be an issue for the grower.

Examples:

- Greenhouses
- Conex boxes
- Water tanks
- Houses, decks, garages, sheds, fences
- Campers
- Security systems, electrical, plumbing
- Land clearing, deforestation, grading, floodplains



How To Become 'Grandfathered'

- If in compliance with the above, apply for a 'Determination of Nonconforming Use'.
- This requirement is already in the code.
- However, the proposal is to set an established timeline to obtain such determination:

13.060 - DETERMINATION OF A NON-CONFORMING USE

D. Failure for a lawful nonconforming marijuana production site to obtain (submit an application for) a Determination of Nonconforming Use within ~~six~~ months [thirty days] of the date this section of the code becomes effective, shall deem the nonconforming use unlawful.

- Annually thereafter an Annual Compliance Inspection Certificate is required to ensure ongoing compliance.



Rural Residential Zone Standards

- *Currently* the code allows accessory structures if a principal use is established (that being residential).
- So, if you want a greenhouse or other structure you need an established dwelling on the lot.
- It is proposed to reiterate this in the code by making this requirement very clear/remove ambiguity.
- It is proposed....



61.020 - PERMITTED USES

A. Accessory buildings, including private garage or carport, ~~guest house~~, greenhouse, stable, barn, pen, coop, or other similar buildings normally required in connection with a use specified in Section 61.020 and subject to the provisions of Sections 61.050, 61.060 and 72.060, provided a single family dwelling is on the lot or parcel.



Commercial Agricultural Enterprises

The code *already* prohibits Commercial Agricultural Enterprises in the RR zone. The proposed makes it very clear/removes ambiguity...

61.020 - PERMITTED USES

B. Agriculture, farming and farm use as defined in Section 11.030, subject to the standards provided in Sections 61.050, 61.060, and also subject to the further limitations that all products must be produced on the property and commercial feed lots are prohibited. Commercial Agricultural Enterprises are not allowed.



What is a Commercial Agricultural Activity?

Article 11: “A farm operation that contributes in a substantial way to the area’s existing agricultural *economy*, and which helps maintain agricultural *processors* and established farm markets.

- “...a substantial way to the area’s existing agricultural *economy*” means ‘commercial’.
- The voters have made it very clear they do not want ‘commercial agriculture’ in the RR zones.
- In addition, currently, if growing to be sold for *processing*, you are a Commercial Agricultural Activity (and need to be in a resource zone).



Farm Use in RR

Sec. 61.050 currently has standards to be followed if farming in a RR zone:

- Farm uses shall not interfere with the use of adjoining residential properties.
- Farm uses shall not constitute a sanitation or health hazard.
- (Other standards apply to animals.)

- The proposal is to add another standard that reiterates the 'grandfathering' provision mentioned earlier. This helps reduce ambiguity in the code. It reads as follows...



61.050 - CRITERIA FOR FARM USE

Farm uses in the Rural Residential Zone shall meet the following provisions:

E. OLCC regulated marijuana production is only allowed if the land owner has secured a license from OLCC and an Annual Compliance Inspection Certificate from the Community Development Department verifying the property is in compliance with the Rural Land Development Code and the codes administered by the Building Safety Division. Failure to secure an Annual Compliance Inspection Certificate by July 1 of the production year shall deem the property to be in non-compliance. If the production site does not meet the requirements of this code, but was a legal production site prior to the adoption of this section of the code, it shall be treated as a lawful nonconforming use subject to Sections 13.020, 13.040, 13.050 and 13.060. Failure for a lawful nonconforming marijuana production site to ~~obtain~~ (submit a completed application for) a Determination of Nonconforming Use within ~~six months~~ [thirty days] of the date this section of the code becomes effective, shall deem the nonconforming use unlawful.



Definitions

Clarify growers who produce for farm markets are still able to grow on their land:

- **AGRICULTURAL ENTERPRISE, COMMERCIAL.** A farm operation that contributes in a substantial way to the area's existing agricultural economy, and which helps maintain agricultural processors ~~and established farm markets.~~

Define the program approved last November:

- **ANNUAL COMPLIANCE INSPECTION CERTIFICATE.** A certificate issued annually by the Community Development Department verifying a marijuana production site is in compliance with all codes administered by the department. The certificate can only be issued upon application and finding the property to be in compliance.



Definitions

LEGAL MARIJUANA PRODUCTION SITE. A lot or parcel with an OLCC regulated marijuana crop on site that meets the standards within this code. (Said lot or parcel must be owned by the party holding the OLCC license.) (Moved to Farm Use section—61.050.F.)

(Note: this is intended to reduce the problems of ‘strangers’ not vested in the community coming in and destroying the area and not being neighborly/part of the community.)

OLCC. The Oregon Liquor Control Commission.

PRODUCTION YEAR. The year a marijuana crop is grown on a lot or parcel.



Other...Rural Residential Roads and Water Trucks

- Complaints/Issues: People can no longer walk safely on roads in their neighborhood, children are not safe outside, wear and tear on roads and taxpayers/abutting landowners having to pay for repairs.
- ~~➤ Argument: If a crop needs to have water delivered, it has crossed from a rural residential farming operation into a commercial endeavor. Use the water allotted with the water right.~~
- ~~➤ Comprehensive Plan: Maintain a Rural Residential character.~~
- ~~➤ Purpose of the RR zone... "ensure that development does not exceed the carrying capacity of the land to support... consumptive groundwater withdrawal..."~~
- Propose the following....



ARTICLE 81 - ACCESS STANDARDS

81.010 – PURPOSE

The purpose of these standards is to ensure safe ingress and egress to and from properties; to minimize street congestion and traffic hazards, to protect the future operation of transportation facilities, to provide safe and convenient access to businesses, public services, and places of public assembly; and to make vehicular circulation more compatible with surrounding land uses.

81.020 - ACCESS STANDARDS

C. No OLCC regulated marijuana production site (located in a Rural Residential zone) shall be accessed off of a private road or easement unless the producer owns all the land abutting said private road or easement, [nor off any owner maintained road].

~~**ARTICLE 84 - WATER STANDARDS**~~

~~**84.010 – PURPOSE**~~

~~The purpose of this Article is to require prior testing and approval of development in order to reasonably assure an adequate and safe water supply for all citizens of Josephine County. A related purpose is to determine the availability, impact, and water quality for the users of ground water in Josephine County.~~

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~~**84.020 – APPLICATION**~~

~~K. No OLCC regulated marijuana production site on Rural Residential zoned land shall use water trucked onto the site. A water right must exist prior to marijuana being grown on the lot or parcel.~~



Other...Fire Safety (All Zones)

Currently Oregon Codes do not allow the 'stringing' of extension cords, cables, etc. The following reiterates state code:

ARTICLE 76 - WILDFIRE AND EMERGENCY SAFETY STANDARDS

76.010 – PURPOSE

The purpose of this Article is to establish minimum wildfire and safety mitigation standards for ~~some~~ development, ~~and the~~ replacement, substantial improvement or relocation of structures. This Article is intended to reduce threats to human life and safety, to structures and to wild lands, and to improve access in emergencies.

It is also the intent of this Article to achieve the greatest possible application of wildfire and emergency safety standards by covering new dwellings where authorized as permitted uses. In order to achieve this objective, this Article shall provide for reduced review and approval procedures for new, replacement of, substantially improved and relocated dwellings in Other Zones, as specified in Sections 76.020.D and 76.100.A of this Article.



Fire Safety...

76.020.E. -- OTHER REQUIREMENTS

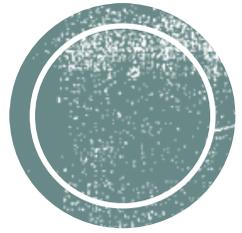
E. Other Requirements. The proposed utility serving a lot or parcel, including but not limited to, generators, solar, wind and hydroelectric, shall comply with the National Electrical Code and Oregon State Law. Permits and inspections are required for all systems. Any and all installations contrary to the Code such as, exposed NM cable, extension cords, splices and improper grounding and bonding, are direct violations of the Oregon Safety Law, ORS 479.520, and the National Electrical Code. All systems are required to be approved by the Building Safety Division prior to use. Nothing in this Article is intended to waive or diminish any other development standard, regulation or other provision required in this code or elsewhere.



Next Steps...

- Board holds public hearing today and decides if they want to make any changes.
- Board holds second hearing ('reading') in two weeks. Makes a decision.
- Final rules become effective 90 days after Board approval.
- All LUCS applicants on Rural Residential land sent a letter alerting them of changes.
- ~~➤ Known properties with violations sent a letter of alerting them of changes.~~
- No way to notify OMMP (privacy laws), so using newspaper, television and radio.
- It is up to the landowner to decide if they want to be grandfathered, or illegal.





Questions?

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