

**BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY  
STATE OF OREGON**

**ORDINANCE No. 2017-002**

**AN ORDINANCE AMENDING THE JOSEPHINE COUNTY RURAL LAND DEVELOPMENT CODE (ORDINANCE 94-4, AS ORIGINALLY ADOPTED AND SUBSEQUENTLY AMENDED) TO IMPLEMENT CERTAIN CHANGES TO SECTIONS 11.030 RELATING TO DEFINITIONS; AMENDING, CREATING AND ADDING NEW SECTIONS 13.050.D. AND 13.050.E. REGARDING LAWFUL NONCONFORMING MARIJUANA USES AND STRUCTURES; 13.060.D. CONCERNING LAWFUL NONCONFORMING USE DETERMINATIONS; 61.020.A. ELIMINATING GUESTHOUSES, CORRECTING A SCRIVENER'S ERROR, AND CLARIFYING A DWELLING MUST BE ONSITE IN A RURAL RESIDENTIAL ZONE PRIOR TO AN ACCESSORY BUILDING; 61.020.B. CORRECTING A SCRIVENER'S ERROR AND CLARIFYING COMMERCIAL AGRICULTURAL ENTERPRISES ARE NOT ALLOWED IN A RURAL RESIDENTIAL ZONE; 61.050.E. REGARDING LAWFUL NONCONFORMING MARIJUANA USES; 61.050.F. REGARDING OLCC REGULATED PRODUCERS BE THE OWNER OF THE PROPERTY BEING REGULATED BY OLCC; 61.060.B.3. CREATING SETBACKS FOR MARIJUANA PRODUCTION SITES; 61.060.B.13. CORRECTING A SCRIVENER'S ERROR; 76.020.E. CLARIFYING STATE AND NATIONAL CODES; AND 81.020.C. LIMITING ACCESS ON CERTAIN ROADS.**

WHEREAS, on July 19, 2017, the Josephine County Board of Commissioners, by Order No. 2017-034, authorized the Community Development Director (Planning Director) 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 in Josephine County; and

WHEREAS, the Josephine County Rural Planning Commission held a public hearing on August 28, 2017, to consider the proposed text amendments and deliberated the proposal on August 31, 2017, at which time recommendations were forwarded to the Board of Commissioners; and

WHEREAS, the Josephine County Board of Commissioners discussed the recommendations at meetings on September 5, 2017 and September 7, 2017; and

WHEREAS, the Josephine County Board of Commissioners, having reviewed the record and listened to testimony regarding the foregoing amendments find the text amendments advance the policies and purposes of the Josephine County Comprehensive Plan.

NOW, THEREFORE, based on the foregoing, the Board of County Commissioners of Josephine County ordains the following as amendments to the text of the Rural Land Development Code.

**SECTION 1: TEXT AMENDMENTS**

1. Amend the following definition in Article 11.030 of the Rural Land Development Code

as follows:

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~~.

2. Add the following definitions to Article 11.030 of the Rural Land Development Code:

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.

LEGAL MARIJUANA PRODUCTION SITE. A lot or parcel with an OLCC regulated marijuana grow onsite that meets the standards within this code.

OLCC. The Oregon Liquor Control Commission.

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

3. Amend Section 13.050 (ALTERATION OF NON-CONFORMING USE OR STRUCTURE) of the Josephine County Rural Land Development Code, by amending 13.050.D as follows, and by adding the following new Section 13.050.E to the text of the Josephine County Rural Land Development Code:

## **ARTICLE 13 - NON-CONFORMING LOTS, USES & STRUCTURES**

### **13.050 - NON-CONFORMING STRUCTURES**

- 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 be 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 a Determination of Non-conforming Use. 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 at the time of adoption of this amendment as verified by a Determination of Non-conforming Use. 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).
4. Amend Section 13.060 (DETERMINATION OF A NONCONFORMING USE) of the Rural Land Development Code, by adding the following new Section 13.060.D to the text of the Josephine County Rural Land Development Code:

### **ARTICLE 13 - NON-CONFORMING LOTS, USES & STRUCTURES**

#### **13.060 - DETERMINATION OF A NON-CONFORMING USE**

- D. Failure for a lawful nonconforming marijuana production site to submit a completed application for a Determination of Nonconforming Use, within thirty days of the date this section of the code becomes effective, shall deem the nonconforming use unlawful.
5. Amend Section 61.020 (PERMITTED USES) of the Rural Land Development Code, by amending 61.020.A AND 61.020.B as follows:

### **ARTICLE 61 - RURAL RESIDENTIAL ZONES**

#### **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.
- 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.
6. Add the following new sections 61.050.E and 61.050.F to the text of the Josephine County Rural Land Development Code:

### **ARTICLE 61 - RURAL RESIDENTIAL ZONES**

#### **61.050 - CRITERIA FOR FARM USE**

- E. OLCC regulated marijuana production is only allowed if the land owner has secured the required approvals 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 submit a completed application for a Determination of Nonconforming Use within thirty days of the date this section of the code becomes effective, shall deem the nonconforming use unlawful.

- F. The lot or parcel with a marijuana production site shall be owned by the party being regulated by the OLCC.
7. Amend Section 61.060 (PROPERTY DEVELOPMENT STANDARDS) of the Josephine County Rural Land Development Code, by amending 61.060.B.3, as follows, and by adding the following new Section 61.060.B.22 to the text of the Josephine County Rural Land Development Code:

## **ARTICLE 61 - RURAL RESIDENTIAL ZONES**

### **61.060 - PROPERTY DEVELOPMENT STANDARDS**

#### **B. Property Development Standards**

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

OLCC regulated marijuana production sites: All structures, and the marijuana grow space, as measured from the canopy of the plants in accordance with OAR 845-025-2040(1)(d): Front, Side, and Rear (300')

22. Lighting – See Article 77

8. Amend Section 76.020 (STRUCTURE HEIGHT & SETBACK REQUIREMENTS) of the Rural Land Development Code, by amending 76.020.E, as follows:

## **ARTICLE 76 - WILDFIRE AND EMERGENCY SAFETY STANDARDS**

### **76.020 - APPLICATION OF WILDFIRE AND EMERGENCY SAFETY STANDARDS**

- 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.

- 9. Add the following new sections 81.020.C to the text of the Josephine County Rural Land Development Code:

**ARTICLE 81 - ACCESS STANDARDS**

**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, or off any owner maintained public right-of-way, unless the producer owns all of the land abutting said private road, easement, or right-of-way.

**SECTION 2: AFFIRMATION**

Except as specifically amended by the provisions of this ordinance, the Josephine County Rural Land Development Code (Ordinance 94-4), as previously adopted or amended, is hereby affirmed.

**SECTION 3: EFFECTIVE DATE**

First reading by the Board of County Commissioners this 20th day of September, 2017.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading, this \_\_\_\_\_ day of October, 2017. This Ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

**JOSEPHINE COUNTY  
BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Simon G. Hare, Chair

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Lily N. Morgan, Vice-Chair

\_\_\_\_\_  
Daniel E. DeYoung, Commissioner

**ATTEST:**

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Recording Secretary

**APPROVED AS TO FORM:**

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M. Wally Hicks, Legal Counsel