

Staff Summary

PROPOSED TEXT AMENDMENTS TO JOSEPHINE COUNTY, OREGON, RURAL LAND DEVELOPMENT CODE (RLDC) TO ADDRESS GROWING OLCC REGULATED MARIJUANA ON RURAL RESIDENTIAL LANDS

Corrections in Red August 22, 2017

Public Hearing August 28, 2017

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The following are submitted to the Rural Area Planning Commission for consideration before the Commission on Monday, August 28, 2017

DEFINTIONS. Four necessary terms need defining (see below). In addition, currently the code reads that if you are growing a crop to be used for processing, it is not allowed in Rural Residential. However, 'commercial agricultural enterprises' currently include the term 'farm market'. It is recommend that, since many Rural Residential landowners do sell to farm markets, the words 'and established farm markets' be deleted thereby allowing a RR farmer to produce for a farm market. Also, by deleting this language, growing crops to sell to a farm market, regardless of zone, would be an allowed use. Lastly, under the term 'legal marijuana production site', by requiring the license holder to be the owner of the property, the county can attempt to address the concerns that 'out of towners', or those not vested in the community, are not growing on RR lands.

11.030 - TERMS DEFINED

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.

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 crop on site that meets the standards within this code. Said lot or parcel must be owned by the party holding the OLCC license.

OLCC. The Oregon Liquor Control Commission.

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

'GRANDFATHERING'. Grandfathering is really called a 'lawful nonconforming use', and is regulated under Article 13. Basically, the below would 'grandfather' a medical marijuana grow if the landowner was registered with OMMP after the date medical marijuana became legal in Oregon, but prior to the adoption of these amendments, and provided the property was in compliance with the codes administered by the Community Development Department.

In addition, an OLCC regulated grow would be 'grandfathered' if a landowner 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 processed by OLCC, and provided the property was in compliance with the codes administered by the Community Development Department.

To determine compliance with the codes, the applicant would have to apply for an annual compliance inspection certificate, and be in compliance prior to January 1, 2018, the date OLCC requires all licenses to be applied for. Such certificate must be renewed annually by July 1 of each year (the fee for the first year is reduced to 50% since an inspection and certificate were paid for in late 2017). If the property falls into non-compliance, the grow loses its 'grandfathered' status and is deemed 'unlawful'.

Compliance should be of minimal concern to the LUCS holder in that the back of his LUCS clearly informed him permits were required. And, for those that the county was aware of that failed to follow code, the Code Enforcement Administrator sent them a letter alerting them there were a violation(s) on their property.

Growers should be prepared for meeting grandfathering requirements in that the county was discussing grandfathering since October 2017, when the first proposal was publicly presented. In addition, OMMP also discussed grandfathering and encouraged growers to apply for a letter verifying grandfathered status—of which only 11 medical growers took advantage of.

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).

13.060 - DETERMINATION OF A NON-CONFORMING USE

D. Failure for a lawful nonconforming marijuana production site to obtain a Determination of Nonconforming Use within six months of the date this section of the code becomes effective, shall deem the nonconforming use unlawful.

AGRICULTURE. The intent of the Rural Residential district is 'residential'. Currently, the county does not regulate marijuana plants in RR. However, they do regulate accessory buildings. Simply, if no home on site, there should be no accessory buildings, regardless of what is inside of them. Per the July 19, 2017 Board Order, staff was directed to develop proposed rules that would address growing marijuana in the RR zones, whether inside a building or not.

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.

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 a Determination of Nonconforming Use within six months of the date this section of the code becomes effective, shall deem the nonconforming use unlawful.

LOT SIZE AND SETBACKS. *New marijuana grows (those not determined to be a lawful nonconforming use) are allowed in RR provided ~~the lot or parcel is at least 15 acres in size and~~ the canopy of the marijuana plant is setback at least 300 feet from all property lines. ~~The acreage was selected because if in the largest residential zone (RR5) the county required a one lot separation (so as to not bother adjacent neighbors), it would mean the middle lot or parcel would have to be 5 acres away from his neighbors, meaning 15 acres total devoted.~~ A 300' setback from all lot lines is required because 300' is the minimum lot size required in an RR5 zone, and by having a 300' setback the county is **again** requiring a hypothetical one lot separation between neighbors and grows. These proposals are for new OLCC regulated marijuana production sites.*

Lastly, assuming the new lighting standards are adopted, it should be clear that RR lands are also subject to the lighting standards.

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

FIRE SAFETY. *Often times grows are provided power by a generator. Or, power is provided by running multiple extension cords. Both scenarios provide for a fire safety concern, violate National and State codes, not to mention the possible back feed of electricity that can endanger the lives of crews working on power lines.*

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.

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.

WATER TRUCKS. Public roads are equipped for heavy water trucks, but private roads and easements are not. The trucks damage the roads and many times the residents are left paying to have the road repaired.

There is also a concern about the trucks delivering soil, and the damage they are causing to the roads. Since the soil deliveries are seasonal, and not on a daily basis, like the water trucks, there is no proposal to regulate the delivery of dirt (other than erosion standards in the RLDC).

Since the RR zone is intended for residential, it makes sense to limit the need for water trucks driving through residential areas on a reoccurring basis.

In addition, the county has received numerous complaints from vintners, environmentalists, and neighbors over the lack of water since the larger marijuana grow sites developed in the county. As such, it is prudent to make sure there is adequate water for all land uses. Since the intent of the RR zone is residential, smaller grows, requiring minimal water, are preferential over large grows that need an abundance of water hauled on site. Limiting water deliveries upholds the 'rural agriculture' intent of the zone, and helps avoid industrialization of the RR zone. In addition, allowing treated water to be applied to plants can possibly alter their quality.

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.

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.

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.