



REVIEWED  
*nc m*  
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending DCC Title 18 to  
Regulate Existing and New Marijuana Production  
Registered by the Oregon Health Authority (OHA)  
and Declaring an Emergency. \*  
\*  
\*  
\*  
ORDINANCE NO. 2016-019

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-15-000253-TA) to the Deschutes County Code (DCC) Title 18, Chapter 18.116, Supplementary Provisions to regulate existing and new marijuana production registered by the Oregon Health Authority (OHA); and

WHEREAS, the Deschutes County Planning Commission held public hearings on November 5 and 12 2015, to review the amendments and recommended adoption; and

WHEREAS, the Board of County Commissioners considered this matter after a duly noticed public hearings on December 2, 2015, and May 2, 2016, and concluded that the public will benefit from the changes to Title 18; and

WHEREAS, the Board finds it in the public interest to adopt amendments to the DCC to regulate existing and new marijuana production registered by the Oregon Health Authority (OHA) in conjunction with Deschutes County Code (Title 18) and state law (including HB 3400, SB 1598, and ORS 30.395); now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC 18.116.340, Marijuana Production Registered by the Oregon Health Authority (OHA), is amended to read as described in Exhibit "A," attached and incorporated by reference herein, with new language underlined and deleted language set forth in strikethrough.

Section 2. FINDINGS. The Board adopts as its findings Exhibit "K," attached and incorporated by reference herein.

Section 3. EMERGENCY. This Ordinance being necessary for the public peace, health and safety, an emergency is declared to exist and this Ordinance takes effect on its passage.

///

Dated this 1 of June, 2016

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

Alan Unger  
ALAN UNGER, Chair

Tammy Baney  
TAMMY BANEY Vice Chair

ATTEST:  
[Signature]  
Recording Secretary

Anthony DeBone  
ANTHONY DEBONE, Commissioner

Date of 1<sup>st</sup> Reading: 1 day of June, 2016.

Date of 2<sup>nd</sup> Reading: 1 day of June, 2016.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Alan Unger	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tammy Baney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony DeBone	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Effective date: 1 day of June, 2016.

## Chapter 18.116. SUPPLEMENTARY PROVISIONS

### 18.116.340. Marijuana Production Registered by the Oregon Health Authority (OHA)

#### A. Applicability. Section 18.116.340 applies to:

1. All marijuana production registered by OHA prior to June 1, 2016; and
2. All marijuana production registered by OHA on or after June 1 2016 until the effective date of Ordinances 2016-015, 2016-16, 2016-17, and 2016-18, at which time Ordinances 2016-015 through Ordinance 2016-018 shall apply.

#### B. All marijuana production registered by OHA prior to June 1, 2016 shall comply with the following standards by September 15, 2016:

##### 1. Lighting. Lighting shall be regulated as follows:

- a. Inside building lighting, including greenhouses, hoop houses, and similar structures, used for marijuana production shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. on the following day.
- b. Lighting fixtures shall be fully shielded in such a manner that all light emitted directly by the lamp or a diffusing element, or indirectly by reflection or refraction, is projected below the horizontal plane through the lowest light-emitting part.
- c. Light cast by exterior light fixtures other than marijuana grow lights shall comply with DCC 15.10, Outdoor Lighting Control.

#### C. All marijuana production registered by OHA prior to June 1, 2016 shall comply with the following standards by December 15, 2016:

1. Odor. As used in DCC 18.116.330(B)(10), building means the building, including greenhouses, hoop houses, and other similar structures, used for marijuana production or marijuana processing.
  - a. The building shall be equipped with an effective odor control system which must at all times prevent unreasonable interference of neighbors' use and enjoyment of their property.
  - b. An odor control system is deemed permitted only after the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the system will control odor so as not to unreasonably interfere with neighbors' use and enjoyment of their property.
  - c. Private actions alleging nuisance or trespass associated with odor impacts are authorized, if at all, as provided in applicable state statute.
  - d. The odor control system shall:
    - i. Consist of one or more fans. The fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the required CFM; or
    - ii. Utilize an alternative method or technology to achieve equal to or greater odor mitigation than provided by i. above.
  - e. The system shall be maintained in working order and shall be in use.
2. Noise. Noise produced by marijuana production and marijuana processing shall comply with the following:
  - a. Sustained noise from mechanical equipment used for heating, ventilation, air condition, odor control, fans and similar functions shall not exceed 30 dB(A) measured at any property line between 10:00 p.m. and 7:00 a.m. the following day.
  - b. Sustained noise from marijuana production is not subject to the Right to Farm protections in DCC 9.12 and ORS 30.395. Intermittent noise for accepted farming practices is however permitted.

3. Screening and Fencing. The following screening standards shall apply to greenhouses, hoop houses, and similar non-rigid structures and land areas used for marijuana production and processing:
    - a. Subject to DCC 18.84, Landscape Management Combining Zone approval, if applicable.
    - b. Fencing shall be finished in a muted earth tone that blends with the surrounding natural landscape and shall not be constructed of temporary materials such as plastic sheeting, hay bales, tarps, etc., and shall be subject to DCC 18.88, Wildlife Area Combining Zone, if applicable.
    - c. Razor wire, or similar, shall be obscured from view or colored a muted earth tone that blends with the surrounding natural landscape.
    - d. The existing tree and shrub cover screening the development from the public right-of-way or adjacent properties shall be retained to the maximum extent possible. This provision does not prohibit maintenance of existing lawns, removal of dead, diseased or hazardous vegetation; the commercial harvest of forest products in accordance with the Oregon Forest Practices Act; or agricultural use of the land.
  4. Water. The applicant shall provide:
    - a. A copy of a water right permit, certificate, or other water use authorization from the Oregon Water Resource Department; or
    - b. A statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or
    - c. Proof from the Oregon Water Resources Department that the water to be used is from a source that does not require a water right.
  5. Security Cameras. If security cameras are used, they shall be directed to record only the subject property and public rights-of-way, except as required to comply with requirements of the OLCC or the OHA.
  6. Secure Waste Disposal. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA Person Responsible for the Grow Site (PRMG).
- D. All new marijuana production registered by OHA on or after June 1, 2016 shall comply DCC 18.116.340(A-C) and the following standards:
1. Shall only be located in the following zones
    - a. EFU;
    - b. MUA-10; or
    - c. Rural Industrial in the vicinity of Deschutes Junction.
  2. Minimum Lot Area.
    - a. In the EFU and MUA-10 zones, the subject property shall have a minimum lot area of five (5) acres.
  3. Maximum Building Floor Area. In the MUA-10 zone, the maximum building floor area used for all activities associated with medical marijuana production on the subject property shall be:
    - a. Parcels from 5 acres to less than 10 acres in area: 2,500 square feet.
    - b. Parcels equal to or greater than 10 acres: 5,000 square feet.
  4. Setbacks. The following setbacks shall apply to all marijuana production areas and buildings:

- a. Minimum Yard Setback/Distance from Lot Lines: 100 feet.
  - b. Setback from an off-site dwelling: 300 feet.  
For the purposes of this criterion, an off-site dwelling includes those proposed off-site dwellings with a building permit application submitted to Deschutes County prior to submission of the marijuana production or processing application to Deschutes County.
  - c. Exception: Reductions to these setback requirements may be granted at the discretion of the Planning Director or Hearings Body provided the applicant demonstrates that the reduced setbacks afford equal or greater mitigation of visual, odor, noise, lighting, privacy, and access impacts.
5. Indoor Production and Processing.
- a. In the MUA-10 zone, marijuana production shall be located entirely within one or more fully enclosed buildings with conventional or post framed opaque, rigid walls and roof covering. Use of greenhouses, hoop houses, and similar non-rigid structures is prohibited.
  - b. In the EFU zone, marijuana production shall only be located in buildings, including greenhouses, hoop houses, and similar structures.
  - c. In all zones, marijuana production is prohibited in any outdoor area.
6. Maximum Mature Plant Canopy Size. In the EFU zone, the maximum canopy area for mature marijuana plants shall apply as follows:
- a. Parcels from 5 acres to less than 10 acres in lot area: 2,500 square feet.
  - b. Parcels equal to or greater than 10 acres to less than 20 acres in lot area: 5,000 square feet. The maximum canopy area for mature marijuana plants may be increased to 10,000 square feet upon demonstration by the applicant to the County that:
    - i. The marijuana production operation was lawfully established prior to January 1, 2015; and
    - ii. The increased mature marijuana plant canopy area will not generate adverse impact of visual, odor, noise, lighting, privacy or access greater than the impacts associated with a 5,000 square foot canopy area operation.
  - c. Parcels equal to or greater than 20 acres to less than 40 acres in lot area: 10,000 square feet.
  - d. Parcels equal to or greater than 40 acres to less than 60 acres in lot area: 20,000 square feet.
  - e. Parcels equal to or greater than 60 acres in lot area: 40,000 square feet.
7. Separation Distances. Minimum separation distances shall apply as follows:
- a. The use shall be located a minimum of 1000 feet from:
    - i. A public elementary or secondary school for which attendance is compulsory under Oregon Revised Statutes 339.010, et seq., including any parking lot appurtenant thereto and any property used by the school;
    - ii. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot appurtenant thereto and any property used by the school;
    - iii. A licensed child care center or licensed preschool, including any parking lot appurtenant thereto and any property used by the child care center or preschool. This does not include licensed or unlicensed child care which occurs at or in residential structures;
    - iv. A youth activity center; and
    - v. National monuments and state parks.
  - b. For purposes of DCC 18.116.330(B)(7), all distances shall be measured from the lot line of the affected properties listed in DCC 18.116.330(B)(7)(a) to the closest point of the buildings and land area occupied by the marijuana producer or marijuana processor.

- c. A change in use of another property to those identified in DCC 18.116.330(B)(7) shall not result in the marijuana producer or marijuana processor being in violation of DCC 18.116.330(B)(7) if the use is:
  - i. Pending a local land use decision;
  - ii. Registered by the State of Oregon; or
  - iii. Lawfully established.
  
- 8. Access. Marijuana production over 5,000 square feet of canopy area for mature marijuana plants shall comply with the following standards.
  - a. Have frontage on and legal direct access from a constructed public, county, or state road; or
  - b. Have access from a private road or easement serving only the subject property.
  - c. If the property takes access via a private road or easement which also serves other properties, the applicant shall obtain written consent to utilize the easement or private road for marijuana production access from all owners who have access rights to the private road or easement. The written consent shall:
    - i. Be on a form provided by the County and shall contain the following information:
    - ii. Include notarized signatures of all owners, persons and properties holding a recorded interest in the private road or easement;
    - iii. Include a description of the proposed marijuana production or marijuana processing operation; and
    - iv. Include a legal description of the private road or easement.
  
- 9. Residency. In the MUA-10 zone, a minimum of one of the following shall reside in a dwelling unit on the subject property:
  - a. An owner of the subject property; or
  - b. A person registered with the OHA as a person designated to produce marijuana by a registry identification cardholder, provided that the registration applies to the subject property.
  
- 10. Annual Reporting. An annual report shall be submitted to the Community Development Department by the real property owner or licensee, if different, each February 1, documenting all of the following as of December 31 of the previous year, including the applicable fee as adopted in the current County Fee Schedule and a fully executed Consent to Inspect Premises form:
  - a. Documentation demonstrating compliance with the:
    - i. Land use decision and permits.
    - ii. Fire, health, safety, waste water, and building codes and laws.
    - iii. State of Oregon licensing requirements.
  - b. Failure to timely submit the annual report, fee, and Consent to Inspect Premises form or to demonstrate compliance with DCC 18.116.330(C)(1)(a) shall serve as acknowledgement by the real property owner and licensee that the otherwise allowed use is not in compliance with Deschutes County Code; authorizes permit revocation under DCC Title 22, and may be relied upon by the State of Oregon to deny new or license renewal(s) for the subject use.
  - c. Other information as may be reasonably required by the Planning Director to ensure compliance with Deschutes County Code, applicable State regulations, and to protect the public health, safety, and welfare.
  - d. Marijuana Control Plan to be established and maintained by the Community Development Department.
  - e. Conditions of Approval Agreement to be established and maintained by the Community Development Department.
  - f. This information shall be public record subject to ORS 192.502(17).

#### 11. Prohibited Uses.

- a. In the EFU zone, the following uses are prohibited:
  - i. A new dwelling used in conjunction with a marijuana crop;
  - ii. A farm stand, as described in ORS 215.213(1)(r) or 215.283(1)(o), used in conjunction with a marijuana crop;
  - iii. A commercial activity, as described in ORS 215.213(2)(c) or 215.283(2)(a), carried on in conjunction a marijuana crop; and
  - iv. Agri-tourism and other commercial events and activities in conjunction with a marijuana crop.
- b. In the MUA-10 Zone, the following uses are prohibited:
  - i. Commercial activities in conjunction with farm use when carried on in conjunction with a marijuana crop.
- c. In the EFU, MUA-10, and Rural Industrial zones, the following uses are prohibited on the same property as marijuana production:
  - i. Guest Lodge.
  - ii. Guest Ranch.
  - iii. Dude Ranch.
  - iv. Destination Resort.
  - v. Public Parks.
  - vi. Private Parks.
  - vii. Events, Mass Gatherings and Outdoor Mass Gatherings.
  - viii. Bed and Breakfast.
  - ix. Room and Board Arrangements.

(Ord. 2016-019 §1, 2016)