

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note that the public testimony may be limited by the Chair and normally is not allowed after the Public Hearing is closed.

**ASHLAND PLANNING COMMISSION
SPECIAL MEETING
OCTOBER 27, 2015
AGENDA**

- I. **CALL TO ORDER:** 7:00 PM, Civic Center Council Chambers, 1175 E. Main Street

- II. **ANNOUNCEMENTS**

- III. **AD-HOC COMMITTEE UPDATES**

- IV. **PUBLIC FORUM**

- V. **LEGISLATIVE PUBLIC HEARING**
 - A. **PLANNING ACTION: PL-2015-01677**
DESCRIPTION: An ordinance amending chapters 18.2.2, 18.2.3, 18.2.5, 18.3.3, 18.3.5 and 18.6.1 of the Ashland Land Use Ordinance relating to homegrown marijuana cultivation and marijuana-related businesses including production, processing, retail sales, testing, and wholesale.

- VI. **ADJOURNMENT**

**CITY OF
ASHLAND**



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development office at 541-488-5305 (TTY phone is 1-800-735-2900). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title 1).

ASHLAND PLANNING DIVISION STAFF REPORT

October 27, 2015

PLANNING ACTION: #2015-01677

APPLICANT: City of Ashland

ORDINANCE REFERENCES:

AMC 18.2.2	Base Zones and Allowed Uses
AMC 18.2.3	Special Use Standards
AMC 18.2.5	Standards for Residential Zones
AMC 18.3.3	Health Care Services District
AMC 18.3.5	North Mountain Neighborhood District
AMC 18.6.1	Definitions

REQUEST: Amendments to the Ashland Municipal Code creating standards for cultivation of homegrown marijuana and permitting marijuana-related businesses as allowed by state law in the Commercial (C-1), Employment (E-1), and Industrial (M-1) zones.

I. Relevant Facts

A. Background

In 1998, Oregon voters approved Ballot Measure 67, the Oregon Medical Marijuana ACT (OMMA) (ORS 475.300-475.346). Since that time, the Legislature amended OMMA on a number of occasions. In 2013, the Oregon Legislature passed House Bill 3460 that provided a system for registration and regulation of medical marijuana dispensaries (“dispensaries”). The law went into effect on March 1, 2014. The Oregon Health Authority (OHA) administers the state medical marijuana program including registration of medical marijuana grow sites and dispensaries.

In 2014, the Oregon Legislature approved Senate Bill 1531 granting local jurisdictions the authority to establish local restrictions for dispensaries and the ability to put into effect a temporary dispensary moratorium to allow cities and counties additional time to enact restrictions. The additional regulations went into effect March 19, 2014.

In July 2014, the City Council passed an ordinance amending the Ashland land use ordinance to allow medical marijuana dispensaries in the C-1, E-1, and M-1 zones. The attached dispensary map shows the locations of the approved medical marijuana dispensaries in Ashland.

In November 2014, Oregon voters approved Ballot Measure 91, legalizing the growing, distribution, possession, and use of marijuana in certain amounts for non-medical personal use by persons 21 years of age or older. Measure 91 also designated the Oregon Liquor Control Commission (OLCC) as the agency charged with licensing and regulating the growing, processing, and sale of recreational marijuana.

In 2015, the Oregon Legislature passed a series of bills, including House Bill 3400, that made reforms to OMMA and Measure 91. OMMA was amended in a number of ways including limiting the number of plants allowed at a medical marijuana grow site and allowing medical marijuana growers to apply for a recreational grow license. Measure 91 was also amended in a number of ways including allowing for personal making, processing or storing homemade marijuana concentrates and directing OLCC to adopt restriction on the size of recreational marijuana grows.

SB 460 allowed the sales of recreational marijuana by medical marijuana dispensaries on October 1, 2015. The bill also allowed a city or county to prohibit the sale of recreational marijuana at medical marijuana dispensaries by adopting an ordinance to that effect. The City Council discussed the option of preparing an ordinance to prohibit the early sale of recreational marijuana at the July 21, 2015 meeting and decided not to move forward with a prohibition.

The homegrown personal possession provisions of Measure 91 began on July 1, 2015, and persons 21 years of age or older may grow up to four marijuana plants per household. In addition, the households may process, keep, and store limited amounts of homegrown marijuana and homemade marijuana products.

OLCC begins accepting license applications for processing, production, testing, retail and wholesale operations on January 4, 2016. There are three medical marijuana dispensaries in Ashland that are approved by the City and registered with OHA and one dispensary approved by the City and pending approval by OHA.

The Planning Commission held study session discussions on draft standards for personal or “homegrown” marijuana grow sites and for marijuana-related businesses on June 23, 2015 http://www.ashland.or.us/SIB/files/2015-06-23_PC_Packet_Web.pdf and August 25, 2015 http://www.ashland.or.us/Files/2015-08-25_PC_Packet_Web2.pdf .

B. Ordinance Amendments

The proposed amendments to the land use ordinance are attached. The amendments are intended to balance the allowances for recreational and medical marijuana in state law with the mitigation of potential nuisance and safety impacts to residential neighborhoods from growing marijuana on residential properties and from marijuana-related businesses.

Changes or additions to the draft made since the August 25, 2015 Planning Commission study session are **highlighted**.

The proposed amendments address two areas – personal or homegrown marijuana and marijuana-related businesses. The existing special use standards for medical marijuana dispensaries in 18.2.3.190 have been revised to incorporate the proposed amendments to address the two areas.

Homegrown Marijuana

Homegrown marijuana is defined in the proposed amendments as growing and harvesting marijuana for personal consumption by a person 21 years or older, whether for medical or non-medical purposes, or for another medical marijuana card holder. Medical marijuana grow sites located in residential zones are considered homegrown marijuana for the purpose of the City's ordinance. The resident grower is defined as the person cultivating the homegrown marijuana.

The draft ordinance amendments allow homegrown marijuana cultivation as a special use in the residential zones including the North Mountain Neighborhood, the Health Care Services District, and the C-1, E-1, and M-1 zones. Homegrown marijuana is allowed in the non-residential zones because dwelling units are permitted in some of these areas as part of a mixed-use development. In addition, there are examples of pre-existing nonconforming single-family residences in the C-1, E-1, and M-1 zones (e.g., the homes on the south side of A St.).

As a special use, homegrown marijuana cultivation is subject to the special use standards in 18.23.190.A (see page 14-16 of attached draft). The proposed amendments address outdoor and indoor homegrown marijuana cultivation and are summarized below.

- The resident grower must live on the property and the property must be the primary residence of the resident grower.
- Drying, storage, or processing of homegrown marijuana has to be located in the dwelling unit or an accessory structure and cannot be located outdoors.
- Up to four homegrown marijuana plants are allowed to be grown outdoors meeting the following requirements.
 - Plants cannot be located in the front yard and cannot be visible from a public place, public street, or any area that the general

- public has access such as schools, playgrounds, parks, open space, paths, and trails.
- Plants must be screened to limit view and access from adjacent residential properties with a wood fence or masonry wall. Access points have to be secured at all times to prevent unauthorized access.
 - An area up to 50 square feet in size is allowed for outdoor cultivation.
 - The cultivation are must be located closer to the resident grower's primary residence than to dwellings on adjoining properties and a minimum of 20 feet from dwellings on adjoining properties and 10 feet from any property line.
 - The maximum plant height is 10 feet.
- Indoor homegrown marijuana cultivation must meet the following requirements.
 - Lighting systems associated with indoor cultivation must be shielded and windows covered to confine light and glare to the interior of the structure.
 - Any structure, electric service, plumbing, or mechanical equipment must satisfy Building Code requirements and obtain require building permits prior to installation.
 - Vacant or uninhabited dwelling units cannot be used for marijuana cultivation. No dwelling unit can primarily be used as a place to cultivate marijuana.

Discussion of Homegrown Marijuana Proposed Amendments

State law for recreational marijuana allows up to four marijuana plants per household and for medical marijuana allows up to 12 mature plants per address in residential zones and up to 48 plants per address in all other zones. State law does not distinguish between outdoor and indoor cultivation.

Household is defined in Measure 91 as “a housing unit, and includes 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.” Housing unit is defined in Measure 91 as “a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as a separate living quarters, in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.”

The cultivation of marijuana in the city limits appears to have increased over the past few years because of an increase in medical marijuana grows allowed under state law. As a result, the City began receiving nuisance-type complaints related to the odor produced by marijuana plants grown outdoors. Neighbor complaints

include not being able to enjoy their backyard and not being able to open their windows because of the strong odor produced by the marijuana grown on adjacent property.

In addition, complaints have involved impacts from light, glare, and noise from mechanical equipment (e.g., lights systems, fans) related to indoor cultivation and odor from processing (e.g., drying) plants in garages and accessory structures. Though not numerous, the more extreme cases have involved using garages and/or portions of the home for indoor cultivation. Larger scale indoor cultivation in residential situations can consume electricity nearing commercial levels and potentially can be a safety issue.

The purpose of setbacks, a height limit, and a maximum cultivation area for outdoor marijuana cultivation is to limit the location, size, and scale of the grow area. The intent of limiting the location, size, and scale of the grow area is to reduce adverse impacts to neighboring properties and maintain the dwelling unit and the associated yard area as the primary use of residential properties. Based on staff's experience with past code compliance cases the suggested setback may mitigate but will not prevent odor from reaching neighboring properties.

One thing to note is that any setback or area requirements will be more difficult to meet on smaller properties and/or properties with multiple dwellings on the same lot. The code compliance complaints received by the City thus far have been single-family dwelling situations with one dwelling unit on one lot.

Marijuana-Related Businesses

Marijuana-related businesses are those enterprises allowed by state law and licensed by the State including processing, production (growing), retail sales (medical and recreational), testing (laboratories), and wholesale storage and distribution.

The draft ordinance amendments allow marijuana retail sales as a special and conditional use in the C-1 and E-1 zones and allow processing, production, testing, and wholesale as special permitted uses in the E-1 and M-1 zones.

The previous standards for medical marijuana dispensaries are carried forward and some of those previous requirements are applied to all of the marijuana-related businesses. **Marijuana-related businesses** must meet the following requirements.

- The business must be located in a permanent building. Outdoor storage and cultivation is prohibited.
- Any modifications of the site or building must obtain Site Design Review if required. Security bars and grates on windows and doors are prohibited.
- Marijuana remnant or byproducts shall have secure disposal.

- The business must obtain an approved license or registration from the State of Oregon and meet all applicable state laws and administrative rules.
- Lighting systems associated with indoor cultivation must be shielded and windows covered to confine light and glare to the interior of the structure. Grow light systems within a greenhouse are prohibited.
- Any structure, electric service, plumbing, or mechanical equipments must satisfy Building Code requirements and obtain require building permits prior to installation.
- The property owner must record a declaration which waives the right to hold the City liable for damages from state or federal enforcement actions for activities the City permits under the new code.

Marijuana retail sales continue to be prohibited in the Downtown Design Standards Overlay. There are two approval routes for retail sales depending on the proposed location. If the establishment will be located on a boulevard, marijuana retail sales continue to be a special use that must meet the special use standards in 18.2.190.B. If the establishment will not be located on a boulevard but is 200 feet or more from a residential zone, marijuana retail sales continue to require a conditional use permit. The attached dispensary map shows the locations of the approved medical marijuana dispensaries in Ashland.

Marijuana retail sales must meet the standards required for marijuana-related businesses (described above on page 4) and the following standards.

- Retail sales must be not be located within 1,000 feet of another marijuana retail sales outlet.
- The retail sales outlet may not include a drive-up use.

Marijuana laboratories, processing, and production must meet the standards require for marijuana-related business and the following standards.

- Production facilities are limited to 10,000 square feet of gross leasable floor area per lot.
- Laboratories, processing, and production facilities must be located 200 feet or more from residential zones.

Discussion of Marijuana-Related Businesses

The proposed amendments limit **marijuana production** facilities to 10,000 square feet of gross leasable floor area per lot. Outdoor cultivation associated with marijuana production is prohibited. OLCC recently released draft rules covering general requirements applicable to all marijuana licenses for the marijuana-related businesses. The draft rules limit canopy sizes to 5,000 to 10,000 feet for indoor production.

States such as Colorado have allowed commercial grow operations in warehouse structures. Reported problems include high square footage needs with relatively few employees, continuous lighting, and inflated light industrial or warehouse rents. While none of the information is definitive, it may be prudent to initially limit the indoor grow operations so that employment lands are preserved for a variety of uses and employment intensities.

According to the City's 2007 Economic Opportunity Analysis (EOA), approximately 15% of Ashland's employment is in the industrial or manufacturing sector. The average employment density for the City's commercial, health care, employment, industrial zones is 17.2 employees per acre with more specifically an average of 9.2 employees per acre in the E-1 zone and 12.1 in the M-1 zone. Based on the average of 17.2 employees per acre, the employment land supply is projected to be sufficient through 2027, but begin to experience some deficits in the 2028-2057 time period.

The existing code limits retail establishments in the E-1 zone to 20,000 square feet in size. The intent of this code provision is to retain a sufficient amount of E-1 land for light industrial uses. The limitation on the size of production operations would be similar. The square footage limitation would allow indoor marijuana production of a reasonable size while preserving employment lands for different uses and potentially uses with higher employee per acre ratios.

Currently, medical marijuana dispensaries must be located at least 200 feet from residential zones. The draft is written so that the processing, production, retail, and testing operations would also have to meet this requirement.

Because the legal marijuana industry is new, there is limited information available about the impacts from marijuana laboratories, processing, and production and whether the uses create different or additional impacts (e.g., noise, odor, energy use, water use) compared to other general manufacturing uses. Typically, uses are required to be setback from residential zones if there are impacts such as odor from auto body painting or noise such as heavy machinery operation.

The existing code requires automobile and truck repair, auto body repair or painting, and kennels with animals housed outside to be at least 200 feet from residential zones. Cabinet, carpentry and machines shops can be located within 200 feet of a residential zone but are a conditional use. Wholesale distribution is allowed as a special permitted use within 200 feet of residential as long as the hours of deliveries and shipments occur between 9:00 a.m. and 7:00 p.m.

Changes to Draft

Changes or additions to the draft made since the August 25, 2015 Planning Commission study session are **highlighted**. Several changes are not highlighted

because previous wording was removed from the proposed amendments. A summary of the changes with references to the page numbers in the ordinance is below.

- **Laboratory** (page 10) – Laboratory was added as an eligible use in the E-1 and M-1 zones. The State recently added laboratories to the type of eligible licenses for marijuana-related businesses. Laboratories are for testing marijuana and marijuana-related products.
- **Home Occupation** (page 13) – Marijuana-related business was added to the list of prohibited uses for a home occupation. Previously, medical marijuana dispensary was a prohibited home occupation.
- **Total Number of Plants** – The limitation of the total number of plants on a property including both indoor and outdoor locations was deleted. In discussions with other departments, it appears that this provision would be difficult to enforce. Instead, emphasis is placed on the correct installation of electric, plumbing, and other mechanical equipment and maintaining the residential use of the property.
- **Sliding Scale** – The allowance to increase the number of plants on residential properties for every 2,500 square feet of additional lot area was deleted based on the Planning Commission discussion.
- **Primary Residence** (page 14) – For homegrown marijuana in section 18.2.3.190.A, the wording regarding primary residence was edited to make it clear that the resident grower must live on the property and the property must be the resident grower's primary residence.
- **Homemade Marijuana Extracts** – The prohibition of homemade marijuana extracts was deleted. The recent legislation allows personal making, processing, or storing of up to 16 ounces of homemade marijuana concentrates.
- **Access** (page 14) – Language was added requiring outdoor cultivation areas to be secured at all times to prevent unauthorized access. Also, previous language regarding greenhouses was deleted.
- **Cultivation Area Location** (page 14) – Language added requiring an outdoor cultivation area to be located closer to the resident grower's residence than to a neighboring dwelling. Also, language added allowing outdoor cultivation area to be in separate cultivation areas.
- **Plant Height** (page 15) – Language added requiring plants to not exceed ten feet in height.
- **Plumbing** (page 15 and 16) – Plumbing added to the list of items for indoor grows that must meet Building Code and obtain any necessary building permits.
- **Vacant Dwellings** (page 16) – Language added prohibiting vacant or uninhabited dwelling units from being used for marijuana cultivation.
- **Federal Law** (page 16) – 18.2.3.190.B.f reworded for clarity.
- **State Law and Rule References** – Specific ORS and OAR citations were removed. The state laws and rules are rapidly evolving and it is difficult to

continually update the references in the local code. Staff consulted with the Legal Department on this issue.

- **Retail Sales Separation** (page 18) – Language was added requiring 1,000 feet between retail sales outlets.
- **Health Care Services District** (page 20) – Language added allowing residences in the Health Care Services District to have homegrown marijuana. For example, much of the area round the hospital is residential and has the right to residential uses subject to the requirement of the R-2 zone.
- **North Mountain Neighborhood Zone** (page 22) – Language added allowing residences in the North Mountain Neighborhood zone to have homegrown marijuana as well as other agricultural uses allowed in the residential zones.
- **Definitions** (page 23) – A variety of definitions were edited for clarity and several definitions were added. For example, the licensed marijuana-related businesses were edited and consolidated in one grouping.

II. Procedural

18.5.9.020 Applicability and Review Procedure

Applications for Plan Amendments and Zone Changes are as follows:

B. Type III. It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.

1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
3. Land Use Ordinance amendments.
4. Urban Growth Boundary amendments.

III. Conclusions and Recommendations

If the Commission recommends approval of the attached ordinance, staff will prepare a formal recommendation to the Council for the Commission's review. The public hearing is scheduled at the Council on November 17, 2015.

Attachments:

- Draft Ordinance
- Dispensary Map
- Written Public Comments Received to Date