



TO: Columbia River Gorge Commission

FROM: Jeff Litwak, Counsel

DATE: May 2, 2016 for the May 10, 2016 Commission Meeting

SUBJECT: Consistency Review of Multnomah County Ordinance No. 1232 Relating to Marijuana Business Review Criteria

Action Requested

Staff recommends that at the May 10, 2016 hearing, the Gorge Commission:

1. Find the portions of Multnomah County Ordinance No. 1232 affecting lands in the General Management Area (GMA) consistent with the Management Plan; and
2. Tentatively find the provisions of Multnomah County Ordinance No. 1232 affecting lands in the Special Management Area (SMA) consistent with the Management Plan and direct staff to forward them to the Secretary of Agriculture for concurrence.

Introduction

In 1998, Oregon voters approved Ballot Measure 67 providing state authorization for the personal growing and use of medical marijuana. In 2014, Oregon voters approved Ballot Measure 91 providing state authorization for the personal use and commercial production, processing and sale of recreational marijuana. In 2015, the Oregon Legislature amended existing laws regulating medical and recreational marijuana when it adopted HB 3400.

In December 2015, the Commission accepted a memorandum from the Commission's Counsel concerning the application of these laws (and similar Washington laws) in the National Scenic Area. The memorandum concluded "the Gorge Commission cannot expressly allow marijuana land uses in the Management Plan for the National Scenic Area and cannot approve county land use ordinances or other legislative or permitting actions that expressly allow marijuana land uses in the National Scenic Area, or that interpret or apply existing provisions of a land use ordinance to allow marijuana land uses in the National Scenic Area."

Commission staff provided copies of the memorandum to each of the Gorge counties. On March 31, 2016, Multnomah County adopted Ordinance No. 1232, which allows marijuana businesses under certain conditions in Multnomah County, but expressly prohibits marijuana businesses in the GMA and SMA portions of the National Scenic Area.

On April 1, 2016, Multnomah County transmitted a copy of Ordinance No. 1232 to review for consistency with the Management Plan. Most of the ordinance relates to areas of Multnomah County outside the National Scenic Area. Attached to this staff report are the portions of the ordinance relating to the National Scenic Area: the title page and findings, section 5, and the adoption and signature page. The full ordinance, including the Commission's memorandum and testimony before the county is submitted as a separate document.

Statutory Requirements for Commission Consistency Review

Pursuant to Section 7(b)(3) of the Scenic Area Act, the Commission must review a county ordinance (and any amendments) for consistency with the Management Plan within 90 days of receipt of the ordinance. The 90-day deadline for review of Ordinance No. 1232 is June 30, 2016. If the Commission fails to act within 90 days, the ordinance is deemed approved. Approval of the ordinance shall be by majority vote, including at least three members from each state. Once deemed consistent by the Commission, the provisions that apply to the GMA may go into effect either immediately or on a date specified by a county. Multnomah County enacted the ordinance with an emergency clause, so the GMA provisions will be effective immediately. If the Commission finds the ordinance inconsistent, the Commission must state the reasons for finding the ordinance inconsistent with the Management Plan and submit suggested modifications to the County to make it consistent.

Section 8(i) of the Scenic Area Act specifies that the Commission shall review the SMA ordinance provisions within 90 days of receipt of the ordinance and make a tentative determination as to whether it is consistent with the Management Plan. If the Commission tentatively determines that the ordinance is consistent with Management Plan, the Commission then forwards the SMA ordinance provisions to the Secretary of Agriculture for concurrence. Multnomah County enacted the ordinance with an emergency clause, so the SMA provisions of the ordinance will be effective on the date of the Secretary's concurrence with the SMA portion. If the Commission determines that the ordinance is inconsistent with the Management Plan, it must return the ordinance to the county and state the reasons why it is inconsistent and suggest modifications to make the ordinance consistent.

Amendment Summary and Recommendation

Multnomah County Ordinance No. 1232 amends the Multnomah County Code section 38.0025, to expressly prohibit marijuana businesses. This prohibition is consistent with the Commission's memorandum that staff provided to the counties. Staff therefore recommends Multnomah County Ordinance No. 1232 is consistent with the Management Plan.

Conclusion

Staff recommends the Commission approve Multnomah County Ordinance No. 1232 as consistent with the Management Plan and direct staff to forward those provisions of the ordinance that apply to Special Management Area lands to the Secretary of Agriculture for concurrence.

Attachments: Multnomah County Ordinance No. 1232 (relevant pages only)

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

ORDINANCE NO. 1232

Amending MCC Chapters 11.15, 33, 34, 35, 36, and 38 Relating to Marijuana Business Review Criteria and Declaring an Emergency.

(Language ~~striken~~ is deleted; underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. Periodically, there is a need to amend County land use policies or regulations to address a change in law or circumstance; to implement elements of the Multnomah County Comprehensive Plan; or to make technical corrections for, among other things, clarification and consistency (commonly referred to as “housekeeping amendments”). Having identified such need, the Multnomah County Planning Commission recommended the adoption of this ordinance to the Board of County Commissioners. The Planning Commission made such recommendation through adoption of the resolution described below and pursuant to its authority in MCC 11.15.8405 through 11.15.8415, 33.0140, 34.0140, 35.0140, 36.0140, 37.0710, and 38.0710 and in ORS 215.110.
- b. Planning Commission Resolution No. PC 2015-4551 relates to Marijuana Businesses. This ordinance does not regulate the personal possession or use of marijuana.
- c. State law authorizes the production, processing, sale, and use of marijuana for medical and recreational purposes. In 1998, Oregon voters approved Ballot Measure 67 providing state authorization for the personal growing and use of medical marijuana. In 2014, Oregon voters approved Ballot Measure 91 providing state authorization for the personal use and commercial production, processing and sale of recreational marijuana. In 2015, the state legislature amended existing laws regulating medical and recreational marijuana when it adopted Oregon Laws 2015, chapter 614 (hereinafter “HB 3400”).
- d. Marijuana remains a schedule I controlled substance under the federal Controlled Substances Act, and nothing in state law immunizes a person from federal prosecution for the production, processing, sale, or use of marijuana.
- e. In recognition of the foregoing dichotomy in federal and state law, this ordinance is limited to the imposition of *restrictions* on the siting and operation of marijuana businesses for purposes of protecting and preserving the public health, safety and general welfare of the community. In other words, nothing in this ordinance operates as *authorization* of any marijuana use or activity. Instead, the nature, extent, scope, and operation of what is referred to herein as “Marijuana Businesses” is authorized and prescribed *solely* by state law and administrative rule; neither this ordinance nor any other County act shall be interpreted as authorizing any person to engage in any activity prohibited by law nor shall this ordinance or any other County act be applied in any manner that would authorize any person to engage in any activity prohibited by law.
- f. The authority to impose land use regulations derives from the County’s home rule authority and

charter. Although the County has its own inherent power to “protect the health, safety and welfare of the citizens of this state” (*see e.g.*, ORS 215.253(2)), the proposed ordinance is designed to fall within the category of those “reasonable regulations” (i.e., time, place, and manner) provided for in HB 3400. This ordinance capitalizes on the efficiency, including clarity to the public, gained by aligning the regulations herein with the framework set forth in state law and administrative rule with respect to the regulation of marijuana-related activities.

- g. The County’s authority to impose land use regulations in the Columbia River Gorge National Scenic Area (“Scenic Area”) is limited by the Columbia River Gorge National Scenic Area Act, which requires the County to submit land use ordinances for that area to the Columbia River Gorge Commission (“Commission”) for approval. The Commission’s legal counsel has advised that marijuana’s status as a schedule I controlled substance under federal law prevents the Commission (and in turn the County) from approving an ordinance applying current County zoning to marijuana businesses in the Scenic Area.
- h. Prior to the first Planning Commission hearing on this ordinance, the County mailed notices to individual property owners as required by ORS 215.503 (“Ballot Measure 56 notice”). Notice of the Planning Commission’s hearing also was published in the Oregonian newspaper and on the website of the Multnomah County Land Use Planning Program. The Planning Commission held a public hearing on February 1, 2016, during which all interested persons were given the opportunity to appear and be heard. The Planning Commission continued that hearing until February 8, 2016 to allow the Commission to deliberate, and at that hearing, the Planning Commission recommended adoption of the Marijuana Business ordinance.
- i. The Planning Commission’s recommendation is sound and derives from the proper execution of its duties and authority.

Multnomah County Ordains as Follows:

Section 1. MCC 33.0560, 34.0560, 35.0560 and 36.0560 is added as follows:

33.0560 **Marijuana Business**

(A) The purpose of this section is to protect and preserve the public health, safety and general welfare of the community by establishing restrictions on the siting and operation of Marijuana Businesses. The nature, extent, scope, and operation of Marijuana Businesses is authorized and prescribed by state law and administrative rule, not by this or any other County ordinance or act. No County ordinance or other act shall be interpreted as authorizing any person to engage in any activity prohibited by law nor shall any County ordinance or other act be applied in any manner that would authorize any person to engage in any activity prohibited by law. Accordingly, this section, through Table A and the other provisions of this section, imposes restrictions on the establishment and operation of Marijuana Businesses and does not constitute a separate source of authority for the establishment and operation of Marijuana Businesses. Nothing in this section regulates the personal use of marijuana.

(B) In construing this section, including the definitions of the terms given in paragraph (C), related provisions of state law and administrative rule provide relevant context.

(C) The following definitions apply to this section and to the implementation of this section

Section 5. MCC 38.0025 is amended as follows:

38.0025 Prohibited Land Uses and Activities

The following land uses and activities shall not be allowed within the Columbia River Gorge National Scenic Area:

(A) Solid waste disposal sites or sanitary landfills within the Special Management Area.

(B) New industrial development outside of the Urban Areas as designated by the Columbia River Gorge National Scenic Area Act.

(C) Marijuana Business, private or public research of cannabis, or laboratory for the testing of marijuana items.

(1) The term “Marijuana Business” and its derivations means an enterprise authorized by state law involving medical or recreational marijuana production, medical or recreational marijuana processing, recreational marijuana wholesaling, medical marijuana dispensing, or retailing of recreational marijuana.

Section 6. MCC 11.15.9105 is added as follows:

11.15.9105 Marijuana Business

(A) The purpose of this section is to protect and preserve the public health, safety and general welfare of the community by establishing restrictions on the siting and operation of Marijuana Businesses. The nature, extent, scope, and operation of Marijuana Businesses is authorized and prescribed by state law and administrative rule, not by this or any other County ordinance or act. No County ordinance or other act shall be interpreted as authorizing any person to engage in any activity prohibited by law nor shall any County ordinance or other act be applied in any manner that would authorize any person to engage in any activity prohibited by law. Accordingly, this section, through Table A and the other provisions of this section, imposes restrictions on the establishment and operation of Marijuana Businesses and does not constitute a separate source of authority for the establishment and operation of Marijuana Businesses. Nothing in this section regulates the personal use of marijuana.

(B) In construing this section, including the definitions of the terms given in paragraph (C), related provisions of state law and administrative rule provide relevant context.

(C) The following definitions apply to this section and to the implementation of this section through other provisions of the Multnomah County Code.

(1) The term “Marijuana Business” and its derivations means an enterprise authorized by state law involving medical or recreational marijuana production, medical or recreational marijuana processing, recreational marijuana wholesaling, medical marijuana dispensing, or retailing of recreational marijuana. Nothing in this section authorizes collocation of medical and recreational enterprises beyond that allowed under state law.

(2) The term “Outdoor Production” means producing marijuana:

(c) A commercial activity, as described in ORS 215.213(2)(c) or ORS 215.283(2)(a), carried on in conjunction with a marijuana crop.

Section 7. This ordinance being necessary for the health, safety, and general welfare of the people of Multnomah County, an emergency is declared and the ordinance takes effect upon its signature by the County Chair.

FIRST READING AND ADOPTION: March 31, 2016



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury

Deborah Kafoury, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By *Jed Tomkins*
Jed Tomkins, Assistant County Attorney

SUBMITTED BY: Kim Peoples, Director, Department of Community Services