MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date:	November 30, 2016
Department:	Public Works
Agenda Planning Date:	Nov. 23, 2016
Time required:	20 Min
☐ Audio/Visual aids	
Contact:	Joe Fennimore
Phone:	503-566-4177
Department Head Signature:	Alan M Haley

TITLE	Public Hearing for Legislative Amendment (LA) 16-002/Zone Code Amendments Regarding Marijuana Businesses.
Issue, Description & Background	On September 23, 2015, the Marion County Board of Commissioners adopted Ordinance No.1358, which prohibited the establishment of marijuana business in the unincorporated areas of Marion County and referred the matter to the citizens of Marion County for the election held on November 8, 2016. On March 2, 2016, the board adopted Resolution #16R-4 initiating revisions to the Marion County Code (MCC) Title 16 (Urban Zoned Code) and Title 17 (Rural Zone Code) if the citizens of Marion County elected not to continue the prohibition on marijuana businesses and scheduled a public hearing for November 30, 2016. In the election held on November 8, 2016, Marion County citizens passed Measure 24-404 to allow medical marijuana businesses in unincorporated Marion County and did not pass Measure 24-405 to allow recreational marijuana businesses in unincorporated Marion County. The zone codes must now be amended to regulate medical marijuana businesses. The attached memorandum summarizes the proposed amendments for consideration.
Financial Impacts:	None.
Impacts to Department & External Agencies	There is a possibility that the workload of the Sheriff's Office code enforcement staff may increase.
Options for Consideration:	1. Close the public hearing and approve, deny, or modify the proposed amendments. 2. Close the public hearing and leave the record open. 3. Continue the public hearing.
Recommendation:	Staff recommends the board close the public hearing and approve the proposed amendments.
List of attachments:	Memorandum with proposed amendments. Marion County Code Chapter 5.25 Medical Marijuana Dispensary Facilities.
Presenter:	Joe Fennimore

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

Joe Fennimore gfennimore@co.marion.or.us

Marion County
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SURVEY

MEMORANDUM

To: Marion County Board of Commissioners

From: Public Works/Fennimore

Subject: Legislative Amendment (LA) 16-002/Marijuana Businesses

Date: November 23, 2016

ISSUE:
In the November 8, 2016, election, the citizens of Marion County passed Measure 24-404 to allow medical marijuana businesses in unincorporated Marion County and did not pass Measure 24-405 to allow recreational marijuana businesses in unincorporated Marion County. The zone codes now need to be amended to regulate medical marijuana businesses.

BACKGROUND:
On September 23, 2015, the Marion County Board of Commissioners adopted Ordinance No. 1358, which prohibited the establishment of marijuana business in the unincorporated areas of Marion County and referred the matter to the citizens of Marion County for the election held on November 8, 2016.

On March 2, 2016, the board adopted Resolution #16R-4 initiating revisions to the Marion County Code (MCC) Title 16 (Urban Zoned Code) and Title 17 (Rural Zone Code) if the citizens of Marion County elected not to continue the prohibition on marijuana businesses. The matter was referred to the Marion County Planning Commission for a recommendation. The commission held a public hearing on August 16, 2016, and at a subsequent work session on August 23, 2016, issued a recommendation on the type of regulations that should be applied to marijuana businesses. The recommendation was presented to the board at a work session on September 13, 2016. At that work session and a subsequent meeting on September 27, 2016, the board directed staff to prepare code amendments and schedule a public hearing for November 30, 2016.

ANALYSIS:
The proposed amendments are attached with ~~DELETIONS IN STRIKETRHOUGH~~, **ADDITIONS IN BOLD UNDERLINE** and *STAFF COMMENTS IN GRAY AND ITALICS*.

Medical Marijuana Production:
The proposed amendments would allow the production of medical marijuana as farm use in the EFU (Exclusive Farm Use) and SA (Special Agriculture) zones, however, they must be conducted indoors and have visible grow lights turned off between the hours of 7:00 pm to 7:00 am. Producing would also be allowed in all industrial zones upon obtaining a conditional

use permit. The specific conditional use standards in the Urban Code are added to MCC 16.32.500(A) and to the Rural Code in MCC 17.120.120(A) and include requirements that:

- The activity be conducted indoors.
- Emit no light or odors detectable on neighboring properties.
- Shall comply with the alarm system control ordinance.
- The person or entity shall keep all real and personal property tax accounts current for the business for which it is the taxpayer.
- No minors allowed on the business premises.
- Owners and employees must pass a background check.
- No consumption allowed on the business premises unless otherwise allowed for employees in OAR 333-008-1200.
- The business must comply with the Oregon Indoor Clean Air Act that prohibits indoor tobacco smoking. The business may not be co-located with a tobacco smoking lounge, or any kind of marijuana social club where marijuana is consumed.

Medical Marijuana Processors:
Small scale medical marijuana processors would be allowed in the EFU and SA zones upon obtaining an administrative review approval. The activity would have to be conducted indoors with no lights visible or odors detectable on adjacent neighboring properties.

Medical marijuana processors would be allowed in all industrial zones upon obtaining a conditional use permit and are also subject to the standards in MCC 16.32.500(A) and MCC 17.120.120(A) outlined above.

Medical Marijuana Dispensaries:
Medical marijuana dispensary would be allowed in all of the commercial zones except the Commercial Office (CO) zone, upon obtaining a conditional use permit. The specific conditional use standards in the Urban Code are added to MCC 16.32.500(B) and in the Rural Code to MCC 17.120.120(B) and include requirements that:

- The facility may not be located within 1,000 feet of a property containing a pre-kindergarten, Head Start program, community learning center, certified child care facility, relief nursery, public park, public or private elementary, secondary, or career school primarily attended by minors.
- May not be open any day before 7:00 a.m. or after 10:00 p.m.
- Shall comply with the alarm system control ordinance.
- The person or entity shall keep all real and personal property tax accounts current for the business for which it is the taxpayer.
- No minors are allowed on the business premises unless the minor is an Oregon Medical Marijuana Program (OMMP) cardholder and is accompanied by a parent or guardian and not in areas prohibited by OAR 333-008-1200.
- No consumption of medical marijuana is allowed on the business premises unless otherwise as allowed for employees in OAR 333-008-1200. The business must comply with the Oregon Indoor Clean Air Act that prohibits indoor tobacco smoking. The business may not be co-located with a tobacco smoking lounge, or any kind of marijuana social club where marijuana is consumed.

Other:
Other amendments proposed include:
- Clarify that medical marijuana businesses cannot be home occupations.
- Income from marijuana cannot be used to justify a farm dwelling.
- Farm stands and agri-tourism events may not be used for the sale of or to promote the sale of marijuana products or extracts.

~~DELETIONS IN STRIKETRHOUGH~~
ADDITIONS IN BOLD UNDERLINE
STAFF COMMENTS IN GRAY AND ITALICS

CHAPTER 16.06
COMMERCIAL RETAIL – CR ZONE

16.06.020 Conditional uses.
A. The following uses may be permitted subject to obtaining a conditional use permit:
1. Manufacture of jewelry, silverware and plated ware, SIC 391.
2. Manufacture of costume jewelry, novelties, buttons, etc., SIC 396.
3. Local and suburban passenger transportation, SIC 411.
4. Intercity and rural highway passenger transportation within 2,000 feet from the center point of an I-5 interchange and having direct access onto a major arterial, SIC 413.
5. Transmission towers*.
6. Carpet and upholstery cleaning, SIC 7217.
7. Automotive rental and leasing, without drivers, SIC 751 (see MCC 16.26.580).
8. Automotive repair shops, SIC 753 (see MCC 16.26.580).
9. Automotive services, except repair, SIC 754 (see MCC 16.26.580).
10. Electrical repair shops, SIC 762.
11. Reupholstery and furniture repair, SIC 764.
12. Professional sports clubs and promoters, SIC 7941.
13. Utilities* – secondary truck parking and material storage yard.
14. Medical Marijuana Dispensary* subject to Chapter 16.32.

Medical marijuana dispensaries permitted as a conditional use in the CR zone.

CHAPTER 16.07
COMMERCIAL GENERAL – CG ZONE

Sections:
16.07.000 Purpose.
16.07.010 Uses
16.07.020 Conditional uses.
16.07.030 Prohibited uses.
16.07.100 Development standards.
16.07.110 Height.
16.07.120 Lot area and dimensions.
16.07.130 Front yards and yards abutting streets.
16.07.140 Interior side and rear yards.
16.07.200 Landscaping.
16.07.250 Special requirements within 100 feet of residentially designated zones.
16.07.300 Informational reference to additional standards.

* Terms defined in Chapter 16.49 MCC.

16.07.020 Conditional uses.
A. The following use may be permitted subject to obtaining a conditional use permit:
1. Medical Marijuana Dispensary* subject to Chapter 16.32.

Medical marijuana dispensaries permitted as a conditional use in the CG zone.

CHAPTER 16.09
INDUSTRIAL COMMERCIAL – IC ZONE

16.09.020 Conditional uses.

A. The following uses may be permitted subject to obtaining a conditional use permit:

1. Animal specialty services, SIC 0752.
2. Crude petroleum and gas extraction, SIC 131.
3. Millwork, SIC 2431.
4. Structural wood members, not elsewhere classified, SIC 2439.
5. Wooden containers, SIC 244.
6. Miscellaneous wood products, SIC 249.
7. Furniture and fixtures, SIC 25.
8. Chemicals and allied products, SIC 28, except miscellaneous chemical products (SIC 289).
9. Rubber and plastics footwear, SIC 302.
10. Fabricated rubber products, not elsewhere classified, SIC 306.
11. Miscellaneous plastics products, SIC 308.
12. Leather tanning and finishing, SIC 311.
13. Enameled iron and metal sanitary ware, SIC 3431.
14. Plumbing fixture fittings and trim (brass goods), SIC 3432.
15. Screw machine products and bolts, nuts, screws, rivets, and washers, SIC 345.
16. Metal forgings and stampings, SIC 346.
17. Electroplating, plating, anodizing, and coloring, SIC 3471.
18. Miscellaneous fabricated metal products, SIC 349.
19. Metalworking machinery and equipment, SIC 354.
20. Woodworking machinery, SIC 3553.
21. Refrigeration and service industry machinery, SIC 358.
22. Ship and boat building and repairing, SIC 373.
23. Jewelry, silverware and plated ware, SIC 391.
24. Costume jewelry, costume novelties, buttons, and miscellaneous notions, except precious metals, SIC 396.
25. Solid waste transfer stations*.
26. Recreational vehicle park*.
27. **Medical Marijuana Processor* subject to Chapter 16.32.**
28. **Medical Marijuana Producer* subject to Chapter 16.32.**

Allows medical marijuana production and processing as a conditional use.

CHAPTER 16.10
INDUSTRIAL PARK – IP ZONE

16.10.020 Conditional uses.

A. The following uses may be permitted subject to obtaining a conditional use permit:

1. Crude petroleum and natural gas extraction, SIC 131.
2. Carpeting and flooring, SIC 175.
3. Food and kindred products, SIC 20.
4. Miscellaneous textile goods, SIC 229.
5. Lumber and wood products, except furniture, SIC 24.
6. Furniture and fixtures, SIC 25.
7. Paper and allied products, SIC 26.
8. Chemicals and allied products, SIC 28.
9. Rubber and miscellaneous plastics products, SIC 30, except tires and inner tubes (SIC 301) and reclaimed rubber (SIC 303).
10. Leather tanning and finishing, SIC 311.
11. Flat glass, SIC 321.
12. Glass and glassware, pressed or blown, SIC 322.

13. Pottery and related products, SIC 326.
14. Cut stone and stone products, SIC 328.
15. Miscellaneous nonmetallic mineral products, SIC 329.
16. Fabricated metal products, except machinery and transportation equipment, SIC 34.
17. Machinery, except electrical, SIC 35.
18. Storage batteries, SIC 3691.
19. Primary batteries, dry and wet, SIC 3692.
20. Transportation equipment, SIC 37.
21. Miscellaneous manufacturing industries, SIC 39, except signs and advertising displays (SIC 3993).
22. Electric services, SIC 491.
23. Gas production and distribution, SIC 492.
24. Wholesale durable goods, not elsewhere classified, SIC 5099.
25. Chemicals and allied products, SIC 516.
26. Petroleum and petroleum products, SIC 517.
27. Solid waste transfer station*.
28. Finance, insurance and real estate, SIC 60, 61, 62, 63, 64, 65, 66, 67.
29. Medical Marijuana Processor* subject to Chapter 16.32.
30. Medical Marijuana Producer* subject to Chapter 16.32.

Allows medical marijuana production and processing as a conditional use.

CHAPTER 16.11
GENERAL INDUSTRIAL – IG ZONE

16.11.020 Conditional uses.

The following uses may be permitted subject to obtaining a conditional use permit:
A. Scrap and waste materials* (see MCC 16.26.540).
B. Wrecking yards*.
C. Solid waste disposal site subject to Chapter 16.32 MCC.
D. Surface mining subject to Chapter 16.32 MCC.
E. Solid waste transfer station*.
F. Lumber and wood products, SIC 24.
G. Medical Marijuana Processor* subject to Chapter 16.32.
H. Medical Marijuana Producer* subject to Chapter 16.32.

Allows medical marijuana production and processing as a conditional use.

CHAPTER 16.12
HEAVY INDUSTRIAL – IH ZONE

16.12.020 Conditional uses.

The following uses may be permitted subject to obtaining a conditional use permit:
A. Solid waste disposal site subject to Chapter 16.32 MCC.
B. Surface mining subject to Chapter 16.32 MCC.
C. Medical Marijuana Processor* subject to Chapter 16.32.
D. Medical Marijuana Producer* subject to Chapter 16.32.

Allows medical marijuana production and processing as a conditional use.

CHAPTER 16.13
URBAN TRANSISTION - UT ZONE

16.13.020 Conditional uses.

The following uses may be permitted subject to obtaining a conditional use permit and compliance with MCC 16.13.300:

A. Expansion or replacement of a use permitted under MCC 16.13.010(A).
B. Commercial activities in conjunction with farm **use*** or forest use subject to MCC 16.13.030(E).

Reference to farm use definition that does not include marijuana production.
C. Exploration, mining, and processing of geothermal, or other subsurface resources not used exclusively in conjunction with farm or forest management (see MCC 16.26.750 and 16.26.760). Surface mining is included subject to Chapter 16.32 MCC. Includes processing of aggregate into asphalt or portland cement provided the facility is located more than two miles from a planted vineyard.
D. Public or private power generation facilities (see MCC 16.26.730, 16.26.740, 16.26.750, and 16.26.760).
E. Kennels*.
F. Temporary homes for the infirm subject to Chapter 16.32 MCC.
G. Solid waste disposal sites subject to Chapter 16.32 MCC.
H. Transmission towers* and transmission facilities*.
I. Private or public parks and playgrounds serving the general public.
J. Religious organizations* (see MCC 16.26.600).
K. Public golf courses (SIC 7992) and golf-related recreation identified in SIC 7997 and 7999 (see MCC 16.26.320).
L. Elementary and secondary schools, SIC 8211 (see MCC 16.26.620).
M. Public buildings and structures such as libraries, fire stations and public utilities*.
N. Civic, social and fraternal organizations, SIC 864.
O. Child care facilities* (see MCC 16.26.220).
P. Farm stand subject to the standards in MCC 16.13.030(F).
Q. Uses allowed outright or conditionally in the most restrictive zone**, other than a medical marijuana processor* or medical marijuana producer*,** consistent with the land use designation.

Prohibits marijuana businesses in the UT zone.

Chapter 16.25
PERMITTED USES GENERALLY

16.25.200 Permitted secondary and accessory structures and uses.
The following secondary and accessory uses and structures shall be permitted on a lot with a primary use and are subject to the limitations and requirements in Chapters 16.24, 16.25, 16.26, 16.27, and 16.28 MCC, and the requirements in any applicable overlay zone:

H. Subject to the requirements in subsection (H)(2) of this section, uses permitted outright in certain zones are permitted as an accessory use in a more restrictive zone as follows:

1. Uses permitted in MCC 16.05.010 of the CO zone are allowed as an accessory use in the RM zone when the lot is contiguous to a commercial zone. Uses permitted in MCC 16.06.010 of the CR zone**, other than a medical marijuana dispensary*,** are an accessory use in the CO zone. Uses permitted in MCC 16.07.010 of the CG zone are allowed as an accessory use in the CR zone. Uses permitted in MCC 16.11.010 of the IG zone are permitted as accessory uses in the IP zone.
2. Requirements.
   a. The area occupied by accessory uses permitted in subsection (H)(1) of this section shall not exceed 40 percent of the area occupied by uses permitted outright or conditionally in the primary or overlay zones.
   b. Any development requirements in Chapter 16.24 MCC and Chapters 16.26 through 16.34 MCC shall be met for the accessory use as if it was a primary use.
   c. The accessory use shall be located on the same lot as the primary use and any structures associated with the accessory use shall be owned or leased by the owner of the primary business.
   d. The allowance of accessory uses in a more restrictive zone shall not be considered a basis for a zone change to a less restrictive zone.

Prohibits medical marijuana dispensaries in the CO zone as an accessory use.

Chapter 16.30
OFF-STREET PARKING AND LOADING

16.30.170 Minimum parking space requirements.

Use (Standard Industrial Classification)		Minimum No. of Automobile Spaces	Minimum No. of Bicycle Parking Spaces
1.	Buildings containing no more than three dwelling units	Two spaces per dwelling or mobile home unit	N/A
2.	Two-family shared housing	Three parking spaces per dwelling	N/A
3.	Multifamily dwellings containing four or more dwelling units	Two spaces per dwelling unit	The greater of four spaces or 0.1 space per dwelling unit
4.	Low-income housing for those 62 or more years of age	One space per four dwelling units	The greater of four spaces or 0.1 space per dwelling unit
5.	Retirement centers	One space per two dwelling units	The greater of four spaces or 0.1 space per dwelling unit
6.	Agriculture, forestry and fishing (SIC 01, 02, 07, 08, 09) except SIC 074 and 075	Five spaces when retail sales are involved	Two spaces when retail sales are involved
7.	Veterinary services (SIC 074) Animal services, except veterinary (SIC 075)	One space per 400 square feet of gross floor area	Two spaces when retail sales are involved
8.	A. Mining (SIC 10, 11, 12, 13 and 14) B. Construction (SIC 15, 16 and 17) C. Manufacturing (SIC 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39) D. Transportation, communications, electric, gas and sanitary services (SIC 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49) **E. Medical Marijuana Producer*, Medical Marijuana processor***	The greater of the following: (1) 0.75 spaces per employee, (2-a) 0 – 49,999 square feet of gross floor area – one space per 5,000 square feet (2-b) 50,000 – 99,999 square feet of gross floor area – one space per 10,000 square feet (2-c) 100,000 or greater square feet of gross floor area – one space per 15,000 square feet	For each use in Division A and B: four spaces For each use in Division C, **D** and ~~D~~**E**: The greater of four spaces or one space for every four required automobile spaces

9.	Water transportation services, not elsewhere classified – Marinas only (SIC 4469)	One space per boat berth or docking space	Two spaces
10.	Wholesale trade (SIC 50 and 51)	One space per 1,500 square feet gross floor area	One space for every 10 required automobile spaces
11.	A. Building materials, hardware, garden supply and mobile home dealers (SIC 52) B. Automobile dealers and gasoline service stations (SIC 55) C. Home furniture, home furnishings and equipment stores (SIC 57)	One space per 900 square feet of gross floor area	The greater of four spaces or one space per 20,000 square feet of gross floor area
12.	A. General merchandise stores (SIC 53) B. Food stores (SIC 54) C. Apparel and accessory stores (SIC 56) D. Miscellaneous retail (SIC 59) **E. Medical marijuana dispensary*.**	One space per 225 square feet of gross floor area except 250 square feet for buildings of more than 10,000 square feet of gross floor area	The greater of four spaces or one space per 20,000 square feet of gross floor area

Added marijuana businesses to the table in the required parking section.

CHAPTER 16.32
SPECIFIC CONDITIONAL USE

Sections:
16.32.010 Specific conditional use requirements.
16.32.100 Solid waste disposal sites.
16.32.200 Surface mining.
16.32.300 Temporary home for care of the infirm.
16.32.400 Home occupations, conditional, with employees.
16.32.500 Medical Marijuana Businesses

16.32.500 Medical Marijuana Businesses
Medical marijuana businesses shall be operated in compliance with this section.

A. Medical Marijuana Producer *and/or Medical Marijuana Processor*.
1. **Shall be conducted entirely indoors.**
2. **Emit no light visible to adjacent neighboring property owners or the public.**
3. **Ensure odors are not detectable on adjacent neighboring properties.**
4. **Comply with the alarm system control ordinance, MCC Chapter 8.25.**
5. **Owners, employees and volunteers shall submit to a criminal background check by the sheriff pursuant to ORS 181.533 and OAR 257-010-0025(1)(a). It shall be a violation of this section if an owner, employee or**

volunteer has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years of the date of the criminal background check; has been convicted more than once of the manufacture or delivery of a controlled substance in Schedule I or Schedule II at any time; or has been convicted of any of the following crimes at any time: criminal mistreatment based upon the unlawful manufacture of a controlled substance, child neglect I, racketeering, use of minor in controlled substance offense, manufacture or delivery of hydrocodone within 1,000 feet of a school, manufacture or delivery of a controlled substance within 1,000 feet of a school, causing another to ingest a controlled substance, application of a controlled substance to the body of another person, or felony driving under the influence of intoxicants.

6. **The person or entity shall keep all real and personal property tax accounts current for the business for which it is the taxpayer.**
7. **No minors are allowed on the business premises.**
8. **No consumption of medical marijuana is allowed on the business premises unless otherwise as allowed for employees in OAR 333-008-1200. The business must comply with the Oregon Indoor Clean Air Act that prohibits indoor tobacco smoking. The business may not be co-located with a tobacco smoking lounge, or any kind of marijuana social club where marijuana is consumed.**

B. Medical Marijuana Dispensary*.

1. **The property on which the facility is located may not be located within 1,000 feet of a property containing a pre-kindergarten, Head Start program, community learning center, certified child care facility regulated pursuant to ORS Chapters 329, 329A, and 657 A, a relief nursery regulated pursuant to ORS Chapter 417, a public park, public or private elementary, secondary, or career school primarily attended by minors.**
2. **Comply with the alarm system control ordinance, MCC Chapter 8.25.**
3. **May not be open any day before 7:00 a.m. or after 10:00 p.m.**
4. **Owners, employees and volunteers shall submit to a criminal background check by the sheriff pursuant to ORS 181.533 and OAR 257-010-0025(1)(a). It shall be a violation of this section if an owner, employee or volunteer has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years of the date of the criminal background check; has been convicted more than once of the manufacture or delivery of a controlled substance in Schedule I or Schedule II at any time; or has been convicted of any of the following crimes at any time: criminal mistreatment based upon the unlawful manufacture of a controlled substance, child neglect I, racketeering, use of minor in controlled substance offense, manufacture or delivery of hydrocodone within 1,000 feet of a school, manufacture or delivery of a controlled substance within 1,000 feet of a school, causing another to ingest a controlled substance, application of a controlled substance to the body of another person, or felony driving under the influence of intoxicants.**
5. **The person or entity shall keep all real and personal property tax accounts current for the business for which it is the taxpayer.**
6. **No minors are allowed on the business premises unless the minor is an Oregon Medical Marijuana Program (OMMP) cardholder and is accompanied by a parent or guardian and not in areas prohibited by OAR 333-008-1200.**
7. **No consumption of medical marijuana is allowed on the business premises unless otherwise as allowed for employees in OAR 333-008-1200. The business must comply with the Oregon Indoor Clean Air Act that prohibits indoor tobacco smoking. The business may not be co-located with a tobacco smoking lounge, or any kind of marijuana social club where marijuana is consumed.**

Specific criteria for marijuana businesses.

CHAPTER 16.35
GENERAL ADMINISTRATIVE PROVISIONS

16.35.060 Conformance requirement.
The zoning administrator or designee shall, prior to issuing any permit pertaining to the use of land or structures, or the erection or alteration of any structure, ascertain that the proposed use or construction shall in all ways conform to the requirements set forth in this title.

No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law**, except federal laws related to marijuana**, or is being used or has been divided in violation of the provisions of this title unless issuance of the permit or land use approval would correct the violation.

All land uses shall be conducted in full compliance with any other county ordinance, code and requirement of state and federal laws. Failure to conform to other applicable laws may be grounds for revocation of any permits and enforcement action including, but not limited to, a citation in accordance with Chapter 1.25 MCC.

Marijuana is a controlled substance and not allowed under federal law.

CHAPTER 16.49
DEFININTIONS

16.49.102 Farm use.
"Farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. Farm use includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. Farm use also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. Farm use also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission. Farm use includes the on-site construction and maintenance of equipment and facilities used for the activities described in this section. Farm use does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees as defined in ORS 215.203(3) or land described in ORS 321.267(1)(e) or 321.415(5). In the UT zone, "farm use" means current employment of land for the primary purpose of obtaining a profit in money from farm use as defined in ORS 215.203(2). Preparation of products or by-products includes but is not limited to the cleaning, treatment, sorting, or packaging of the products or by-products. "Products or by-products raised on such land" means that those products or by-products are raised on the farm operation where the preparation occurs or on other farm land provided the preparation is occurring only on land being used for the primary purpose of obtaining a profit in money from the farm use of the land.

Farm use does not include a medical marijuana processor * or medical marijuana producer*.

Producing marijuana and related businesses are not permitted as farm use in the urban zones.

16.49.138 Home occupation, limited.
"Home occupation, limited" means any business or professional activity engaged in the production of income by a resident of a dwelling or dwelling unit as a subordinate use of the building and its premises, and in conformance with the provisions of MCC 16.26.200. Such term does not include the lease or rental of a dwelling unit or the rooming or boarding of persons on the same premises, **or a marijuana business licensed pursuant to applicable law.**

16.49.139 Home occupation, conditional.
"Home occupation, conditional" means any business or professional activity engaged in the production of income by a resident of a dwelling or dwelling unit, that employs no more than one person ("person" includes volunteer, nonresident employee, partner or other person), as a subordinate use of the building and its premises in conformance with MCC 16.32.400. Such term does not include the lease or rental of a dwelling unit or the rooming or boarding of persons on the same premises **or a marijuana business licensed pursuant to applicable law.**

Prohibits marijuana businesses from being established as home occupations.

16.49.16~~2~~1 Lot line.
"Lot line" means one of the property lines forming the exterior boundaries of a lot, and includes a dwelling unit ownership line where the underlying real property is included in the unit.

16.49.164~~2~~ Lot line, front.
"Lot line, front" means:
A. In the case of an interior lot having only one street or roadway easement frontage, the lot line separating the lot from the street right-of-way or the nearest right-of-way line of a roadway easement.
B. In the case of any lot not covered by subsection (A) of this section, the lot line which the architecturally designed front of the building faces or the lot line designated by the zoning administrator on an approved site plan.

16.49.16~~6~~3 Lot line, rear.
"Lot line, rear" means:
A. In the case of any lot having a rear lot line designated on a subdivision plat, the lot line so designated.
B. In the case of any other lot, the lot line opposite and most distant from the front lot line. In the case of a triangular-shaped lot, the rear lot line for setback purposes shall be a line connecting points 20 feet from the intersecting side lot lines.

16.49.16~~8~~4 Lot line, side.
"Lot line, side" means any lot line which is not a front or rear lot line.

16.49.1~~70~~65 Lot width.
"Lot width" means the horizontal distance between the side lot lines measured in the buildable portion of the lot.

16.49.166 Medical Marijuana Dispensary.
"Medical Marijuana Dispensary" means a facility that dispenses medical marijuana to qualifying individuals and is licensed pursuant to applicable law.

16.49.167 Medical Marijuana Processor.
"Medical Marijuana Processor" means a person or facility that processes medical marijuana and is licensed pursuant to applicable law.

16.49.168 Medical Marijuana Producer.
"Medical Marijuana Producer" means a person or facility that produces medical marijuana and is licensed pursuant to applicable law.

Re-numbered and add definitions of marijuana businesses.

16.49.258 Temporary use.
"Temporary use" means a primary, secondary, or accessory use that occurs on a lot for less than six months in any calendar year, or a lesser period as prescribed in MCC 16.25.300 or elsewhere in this title**, but does not include a medical marijuana processor*, medical marijuana producer* or a medical marijuana dispensary**.

Prohibits marijuana businesses as a temporary use.

DELETIONS IN STRIKEOUT
ADDITIONS IN BOLD UNDERLINE
STAFF COMMENTS IN GRAY AND ITALICS

CHAPTER 17.110
GENERAL PROVISIONS

17.110.270 Home occupation.
"Home occupation" means any business or professional activity engaged in the production of income by a resident of a dwelling or dwelling unit as a subordinate use of the building and its premises, and in conformance with the provisions of this title. A home occupation may include a limited home occupation, conditional home occupation or a home occupation in a resource zone. Such term does not include the lease or rental of a dwelling unit or the rooming or boarding of persons on the same premises, nor does it include a use meeting the standards of a Home Office in Chapter 17.125 **or a marijuana business licensed pursuant to applicable law.**

Prohibits marijuana businesses from being established as home occupations.

17.110.374 Medical Marijuana Dispensary.
"Medical Marijuana Dispensary" means a facility that dispenses medical marijuana to qualifying individuals and is licensed pursuant to applicable law.

17.110.376 Medical Marijuana Processor.
"Medical Marijuana Processor" means a person or facility that processes medical marijuana and is licensed pursuant to applicable law.

17.110.378 Medical Marijuana Producer.
"Medical Marijuana Producer" means a person or facility that produces medical marijuana and is licensed pursuant to applicable law.

Adds definitions for marijuana businesses

17.110.680 Administration of the title.
This title shall be jointly administered by the county building official and by the director or designee. The building official and the director or other designated officer, prior to issuing any permit pertaining to the use of land or structures, or the erection or alteration of any structure, shall ascertain that the proposed use or construction shall in all ways conform to the requirements set forth in this title.

No permit for the use of land or structures or for the alteration or construction of any structure shall be issued and no land use approval shall be granted if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action, is in violation of local, state or federal law**, except federal laws related to marijuana**, or is being used or has been divided in violation of the provisions of this title, unless issuance of the permit or land use approval would correct the violation.
Marijuana is a controlled substance and not allowed under federal law.

(Section 17.110.680 continues past this paragraph, but the remainder of the section does not contain any proposed changes and has not been included for brevity purposes).

Chapter 17.120
SPECIFIC CONDITIONAL USES

Sections:

Article I. Specific Conditional Uses

17.120.010 Mobile home parks.
17.120.020 Duplex on a corner lot.

17.120.030 Boat, camper, and trailer storage area or lot.
17.120.040 Temporary use of mobile home or recreational vehicle during certain hardship conditions.
17.120.050 Custom cabinet shop and sales firm.
17.120.075 Conditional home occupations.
17.120.080 Wireless communications facilities.
17.120.090 Agri-tourism events and activities.
17.120.100 Wind power generation facilities.
17.120.110 Photovoltaic solar power generating facilities.
17.120.120 Medical marijuana businesses

17.120.120 Medical Marijuana Businesses
Medical marijuana businesses shall be operated in compliance with this section.

A. Medical marijuana processor (see MCC 17.110.376) and/or marijuana producer (see MCC 17.110.378).

1. **Shall be conducted entirely indoors.**
2. **Emit no light visible to adjacent neighboring property owners or the public.**
3. **Ensure odors are not detectable on adjacent neighboring properties.**
4. **Comply with the alarm system control ordinance, MCC Chapter 8.25.**
5. **Owners, employees and volunteers shall submit to a criminal background check by the sheriff pursuant to ORS 181.533 and OAR 257-010-0025(1)(a). It shall be a violation of this section if an owner, employee or volunteer has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years of the date of the criminal background check; has been convicted more than once of the manufacture or delivery of a controlled substance in Schedule I or Schedule II at any time; or has been convicted of any of the following crimes at any time: criminal mistreatment based upon the unlawful manufacture of a controlled substance, child neglect I, racketeering, use of minor in controlled substance offense, manufacture or delivery of hydrocodone within 1,000 feet of a school, manufacture or delivery of a controlled substance within 1,000 feet of a school, causing another to ingest a controlled substance, application of a controlled substance to the body of another person, or felony driving under the influence of intoxicants.**
6. **The person or entity shall keep all real and personal property tax accounts current for the business for which it is the taxpayer.**
7. **No minors are allowed on the business.**
8. **No consumption of medical marijuana is allowed on the business premises unless otherwise as allowed for employees in OAR 333-008-1200. The business must comply with the Oregon Indoor Clean Air Act that prohibits indoor tobacco smoking. The business may not be co-located with a tobacco smoking lounge, or any kind of marijuana social club where marijuana is consumed.**

B. Medical Marijuana Dispensary (see MCC 17.110.374).

1. **The property on which the facility is located may not be located within 1,000 feet of a property containing a pre-kindergarten, Head Start program, community learning center, certified child care facility regulated pursuant to ORS Chapters 329, 329A, and 657 A, a relief nursery regulated pursuant to ORS Chapter 417, a public park, public or private elementary, secondary, or career school primarily attended by minors.**
2. **Comply with the alarm system control ordinance, MCC Chapter 8.25.**
3. **May not be open any day before 7:00 a.m. or after 10:00 p.m.**
4. **Owners, employees and volunteers shall submit to a criminal background check by the sheriff pursuant to ORS 181.533 and OAR 257-010-0025(1)(a). It shall be a violation of this section if an owner, employee or volunteer has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years of the date of the criminal background check; has been convicted more than once of the manufacture or delivery of a controlled substance in Schedule I or Schedule II at any time; or has been convicted of any of the following crimes at any time: criminal mistreatment based upon the unlawful manufacture of a controlled substance, child neglect I, racketeering, use of minor in controlled substance offense, manufacture or delivery of hydrocodone within 1,000 feet of a school, manufacture or delivery of a controlled substance within 1,000 feet of a school, causing another to ingest a controlled substance, application of a controlled substance to the body of another person, or felony driving under the influence of intoxicants.**

5. **The person or entity shall keep all real and personal property tax accounts current for the business for which it is the taxpayer.**
6. **No minors are allowed on the business premises unless the minor is an Oregon Medical Marijuana Program (OMMP) cardholder and is accompanied by a parent or guardian and not in areas prohibited by OAR 333-008-1200.**
7. **No consumption of medical marijuana is allowed on the business premises unless otherwise as allowed for employees in OAR 333-008-1200. The business must comply with the Oregon Indoor Clean Air Act that prohibits indoor tobacco smoking. The business may not be co-located with a tobacco smoking lounge, or any kind of marijuana social club where marijuana is consumed.**

Specific criteria for marijuana businesses.

CHAPTER 17.128
AR (ACERAGE RESIDENTIAL) ZONE

17.128.020 Permitted uses.
Within an AR (acreage residential) zone no building, structure or premises shall be used or arranged except for the following purposes:

A. Single-family dwelling**.**

B. Farm use, including the sale of produce that is raised on the premises**, but not including a medical marijuana processor (see MCC 17.110.376), medical marijuana producer (see MCC 17.110.378), or a medical marijuana dispensary (see MCC 17.110.374)**.

Producing marijuana and related businesses are not permitted as farm use in the AR zone.

CHAPTER 17.136
EFU (EXCLUSIVE FARM USE) ZONE

17.136.020 Permitted uses.
Within an EFU zone no building, structure or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

A. Farm uses (see farm use definition, MCC 17.110.223)**, provided a medical marijuana producer as defined in MCC 17.110.378 shall have visible grow lights turned off between the hours 7:00 pm and 7:00 am and all activity shall take place indoors.**
Confines the grows to indoors only and prohibits lights from grow operations to be visible from 7:00 pm to 7:00 am.

K. Single agri-tourism or other commercial event, **excluding events that promote the sale of marijuana products or extracts,** subject to MCC 17.125.130.

HB 3400 (2015) Prohibits agri-tourism in conjunction with a marijuana business.

17.136.030 Dwellings permitted subject to standards.
The following dwellings may be established in the EFU zone with filing of the declaratory statement in MCC 17.136.100(C), subject to approval by the director, based on satisfaction of the standards and criteria listed for each type of dwelling pursuant to the procedures in Chapter 17.115 MCC.

A. Primary Farm Dwellings. A single-family dwelling customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

1. It is located on high-value farmland as defined in MCC 17.136.140(D) and satisfies following standards:

a. There is no dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;
b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $80,000 in gross annual income from the sale of farm products**, not including marijuana**. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;
c. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section;
d. The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (A)(1)(b) of this section; or

2. It is not located on high-value farmland as defined in MCC 17.136.140(D) and satisfies the following standards:
a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;
b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $40,000 in gross annual income from the sale of the farm products**, not including marijuana**. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;
c. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(2)(b) of this subsection;
d. The dwelling will be occupied by a person or persons who produced the commodities which generated the income required in subsection (A)(2)(b) of this subsection; or

3. It is not located on high-value farmland, as defined in MCC 17.136.140(D), and satisfies the following standards:
a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;
b. The parcel on which the dwelling will be located is at least 160 acres;
c. The subject tract is currently employed for farm use as defined in ORS 215.203**, other than marijuana production**;
d. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing, or caring for livestock, at a commercial scale;

4. It is in conjunction with a commercial dairy farm as defined in this chapter and if:
a. The subject tract will be employed as a commercial dairy as defined; and
b. The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy; and
c. Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and
d. The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm activities necessary to the operation of the commercial dairy farm; and
e. The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and
f. The Oregon Department of Agriculture has approved the following:
i. A permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and
ii. A producer license for the sale of dairy products under ORS 621.072;

5. The applicant had previously operated a commercial farm use and if:

a. Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by subsection (A)(1) or (2) of this section, whichever is applicable.

b. The subject lot or parcel on which the dwelling will be located is:

i. Currently employed for the farm use, as defined in this title, that produced in the last two years or three of the last five years, or the average of the best three of the last five years, the gross farm income required by subsection (A)(1) or (2) of this section, whichever is applicable; and

ii. At least the size of the applicable minimum lot size in this chapter; and:

(A) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and

(B) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (A)(2)(b) of this section;

(C) In determining the gross income required by subsections (A)(5)(a) and (b) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract, and only gross income from land owned, not leased or rented, shall be counted;

6. All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions:

- It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling.
- These covenants, conditions, and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions is located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.

B. Secondary Farm Dwellings. Secondary (accessory) dwellings customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

1. The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.

2. There is no other dwelling on lands in the EFU, SA or FT zone owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.

3. The proposed dwelling will be located:

a. On the same lot or parcel as the primary farm dwelling; or

b. On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or

c. On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (B)(1) of this section; or

d. On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable State Building Code or similar types of farm worker housing as that existing on farm operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

e. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (B)(4) of this section, whichever is applicable.

4. The primary dwelling to which the proposed dwelling would be accessory satisfies the following criteria:
a. On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $40,000 gross annual income from the sale of farm products**, not including marijuana,** in the last two years, three of the last five years, or the average of the best three of the last five years; or
b. On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $80,000 in gross annual income from the sale of farm products, **not including marijuana,** in the last two years, three of the last five years, or the average of the best three of the last five years;
c. The primary dwelling is located on a commercial dairy farm as defined in this chapter; and
i. The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and
ii. The Oregon Department of Agriculture has approved a permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and
iii. The Oregon Department of Agriculture has approved a producer license for the sale of dairy products under ORS 621.072;
d. In determining the gross income in subsections (B)(4)(a) and (b) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

5. The dwelling will be consistent with the fish and wildlife habitat policies of the Comprehensive Plan if located in a designated big game habitat area.

6. Secondary farm dwellings shall be a manufactured home, or other type of attached multi-unit residential structure allowed by the applicable State Building Code, and a deed restriction filed with the county clerk requiring removal of the manufactured home or removal, demolition or conversion to a nonresidential use if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.

HB 3400 (2015) Prohibits using income from marijuana to justify a dwelling.

17.136.040 Uses permitted subject to standards.
The following uses may be permitted in the EFU zone subject to approval of the request by the planning director, based on satisfaction of the standards and criteria specified for each use, pursuant to Chapter 17.115 MCC:

A. Farm Stand. Farm stand subject to the following standards:
1. The structures shall be designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the in State of Oregon, including processed food items, and the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand; and,
2. Annual sales of the incidental items and fees from promotional activity, sales of farm crops produced outside the State of Oregon, and sales of prepared food items together cannot make up more than 25 percent of the total annual sales of the farm stand; and
3. The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.
4. As used in this section, “processed food items” means farm crops and livestock that have been converted into other products through canning, drying, baking, freezing, pressing, butchering or other similar means of adding value to the farm product, such as such as jams, syrups, apple cider, and similar animal products, but not prepared food items.
5. As used in this section, “prepared food items” means that food products that are prepared for immediate consumption, such as pies, short cake, milk shakes, smoothies, and baked goods.

6. Adequate off-street parking shall be provided and all vehicle maneuvering will be conducted on site. No vehicle backing or maneuvering shall occur within adjacent roads, streets or highways.
7. No farm stand building or parking is permitted within the right-of-way.
8. Roadways, driveway aprons, driveways and parking surfaces shall be surfaces that prevent dust, and may include paving, gravel, cinders, or bark/wood chips.
9. Approval is required from the County Public Works Department regarding adequate egress and access including compliance with vision clearance standards. All egress and access points shall be clearly marked.
10. All outdoor light fixtures shall be directed downward, and have full cutoff and full shielding to preserve views of the night sky and to minimize excessive light spillover onto adjacent properties, roads and highways.
11. Signs are permitted consistent with Marion County Code Chapter 191.
12. All required permits shall be obtained from the Marion County Health Department or the Department of Agriculture, as required.
13. When requested by the Planning Director, the farm stand operator/land owner shall submit a statement demonstrating how the farm stand complies with this policy certified by the landowner's/operator's accountant or attorney as being accurate and complete.
14. A farm stand may not be used for the sale of marijuana products or to promote the sale of marijuana products or extracts.

HB 3400 (2015) Prohibits marijuana businesses from being operated in conjunction with a farm stand.

F. Facilities for Processing Farm Crops. A facility for processing of farm crops, an establishment for the slaughter, processing, or selling of poultry or poultry products pursuant to ORS 603.038, or the production of biofuel as defined in ORS 315.141, subject to the following:

1. Except for the establishment for the slaughter, processing, or selling of poultry or poultry products the farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. For an establishment for the slaughter, processing, or selling of poultry or poultry products, all of the poultry must have been raised on the farm operation consistent with ORS 603.038
2. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use.
3. The processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits siting of the processing facility.
4. Division of a lot or parcel that separates a processing facility from the farm operation on which it is located shall not be approved.
5. A medical marijuana processor as defined in MCC 17.110.376 shall:
a. Be conducted entirely indoors, and;
b. Emit no light visible to adjacent neighboring property owners or the public, and;
c. Ensure odors are not detectable on adjacent neighboring properties.

Prohibits lights and odor from processing operations to be detectable to neighbors or the public.

17.136.050 Conditional uses.
The following uses may be permitted in an EFU zone subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.136.060(A), and any additional criteria, requirements, and standards specified for the use:

D. The following commercial uses:
1. Home occupations, including bed and breakfast inns, subject to the criteria in MCC 17.136.060(C) with filing of the declaratory statement in MCC 17.136.100(C).
2. Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under MCC 17.136.040(F), and subject to MCC 17.136.060(D), but including a winery not permitted under MCC 17.136.040(B)**, but not including a medical marijuana processor as defined in MCC 17.110.376, subject to MCC 17.136.060(D).**
Prohibits large scale processing.
3. Expansion of a lawfully established dog kennel with filing of the declaratory statement in MCC 17.136.100(C).

4. Room and board arrangements for a maximum of five unrelated persons in existing dwellings with filing of the declaratory statement in MCC 17.136.100(C).
5. The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission.
6. A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
7. Composting Facilities.

a. Existing composting operations and facilities that do not meet MCC 17.136.020(J) may be maintained, enhanced, or expanded on the same tract subject to meeting the performance and permitting requirements of the Department of Environmental Quality (DEQ) under OAR 340-093-0050 and 340-096-006, subject to compost facility operators preparing, implementing and maintaining a site-specific Odor Minimization Plan that:
(a) Meets the requirements of OAR 340-096-0150;
(b) Identifies the distance of the proposed operation to the nearest residential zone;
(c) Includes a complaint response protocol;
(d) Is submitted to the DEQ with the required permit application; and
(e) May be subject to annual review by the county to determine if any revisions are necessary.

b. New composting operations and facilities that do not meet MCC 17.136.020(J) may be established on land not defined as high-value farmland subject to the following:

i. Meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-006; and
ii. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility; and
iii. On-site sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.
iv. Compost facility operators must prepare, implement and maintain a site-specific Odor Minimization Plan that:
(a) Meets the requirements of OAR 340-096-0150;
(b) Identifies the distance of the proposed operation to the nearest residential zone;
(c) Includes a complaint response protocol;
(d) Is submitted to the DEQ with the required permit application; and
(e) May be subject to annual review by the county to determine if any revisions are necessary.

8. Operations for the extraction and bottling of water, except in the sensitive groundwater overlay zone.
9. Agri-tourism events and activities **excluding events that promote the use or sale of marijuana products or extracts,** subject to the requirements in MCC 17.120.090.
10. Dog training classes or testing trials not permitted under MCC 17.136.040(O).

HB 3400 (2015) Prohibits agri-tourism in conjunction with a marijuana business.

CHAPTER 17.137
SA (SPECIAL AGRICULTURE) ZONE

17.137.020 Permitted uses.
Within an SA zone no building, structure or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

A. Farm uses (see farm use definition, MCC 17.110.223)**, provided a medical marijuana producer as defined in MCC 17.110.378 shall have visible grow lights turned off between the hours 7:00 pm and 7:00 am and all activity shall take place indoors.**
Confines grows to indoors only and prohibits lights from grow operations to be visible from 7:00 pm to 7:00 am.

K. Single agri-tourism or other commercial event, **excluding events that promote the sale of marijuana products or extracts,** subject to MCC 17.125.130.

HB 3400 (2015) Prohibits agri-tourism in conjunction with a marijuana business.

17.137.030 Dwellings permitted subject to standards.
The following dwellings may be established in the SA zone with filing of the declaratory statement in MCC 17.137.100(C), subject to approval by the director, based on satisfaction of the standards and criteria listed for each type of dwelling, pursuant to the procedures in Chapter 17.115 MCC.

A. Primary Farm Dwellings. A single-family dwelling customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

1. It is located on high-value farmland as defined in MCC 17.137.130(D) and satisfies following standards:
   a. There is no dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;
   b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $80,000 in gross annual income from the sale of farm products**, not including marijuana**. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;
   c. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(1)(b) of this section;
   d. The proposed dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (A)(1)(b) of this section; or
2. It is not located on high-value farmland as defined in MCC 17.137.130(D) and satisfies the following standards:
   a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;
   b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $40,000 in gross annual income from the sale of the farm products**, not including marijuana**. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted;
   c. The subject tract is currently employed for the farm use that produced the income required in subsection (A)(2)(b) of this subsection;
   d. The dwelling will be occupied by a person or persons who produced the commodities which generated the income required in subsection (A)(2)(b) of this subsection; or
3. It is not located on high-value farmland, as defined in MCC 17.137.130(D), and satisfies the following standards:
   a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use;
   b. The parcel on which the dwelling will be located is at least 160 acres;
   c. The subject tract is currently employed for farm use as defined in ORS 215.203**, other than marijuana production**;
   d. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing, or caring for livestock, at a commercial scale;
4. It is in conjunction with a commercial dairy farm as defined in MCC 17.137.130(B) and if:
   a. The subject tract will be employed as a commercial dairy as defined; and
   b. The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy; and
   c. Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and

d. The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm activities necessary to the operation of the commercial dairy farm; and

e. The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and

f. The Oregon Department of Agriculture has approved the following:

i. A permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and

ii. A producer license for the sale of dairy products under ORS 621.072;

5. The applicant had previously operated a commercial farm use and if:

a. Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by subsection (A)(1) or (2) of this section, whichever is applicable.

b. The subject lot or parcel on which the dwelling will be located is:

i. Currently employed for the farm use, as defined in this title, that produced in the last two years or three of the last five years, or the average of the best three of the last five years, the gross farm income required by subsection (A)(1) or (2) of this section, whichever is applicable; and

ii. At least the size of the applicable minimum lot size in this chapter; and:

(A) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and

(B) The dwelling will be occupied by a person or persons who produced the commodities that grossed the income in subsection (A)(2)(b) of this section;

(C) In determining the gross income required by subsections (A)(5)(a) and (A)(5)(b)(i) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract, and only gross income from land owned, not leased or rented, shall be counted;

6. All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions:

It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling.

These covenants, conditions, and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and restrictions is located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.

B. Secondary Farm Dwellings. Secondary (accessory) dwellings customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

1. The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm uses, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.

2. There is no other dwelling on lands in the EFU, SA or FT zone owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.

3. The proposed dwelling will be located:

a. On the same lot or parcel as the primary farm dwelling; or

b. On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or

c. On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (B)(1) of this section; or

d. On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable State Building Code or similar types of farm worker housing as that existing on farm operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

e. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (B)(4) of this section, whichever is applicable.

4. The primary dwelling to which the proposed dwelling would be accessory satisfies the following criteria:

a. On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $40,000 gross annual income from the sale of farm products**, not including marijuana,** in the last two years, three of the last five years, or the average of the best three of the last five years; or

b. On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $80,000 in gross annual income from the sale of farm products, **not including marijuana,** in the last two years, three of the last five years, or the average of the best three of the last five years;

c. The primary dwelling is located on a commercial dairy farm as defined in this chapter; and

i. The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

ii. The Oregon Department of Agriculture has approved a permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and

iii. The Oregon Department of Agriculture has approved a producer license for the sale of dairy products under ORS 621.072;

d. In determining the gross income in subsections (B)(4)(a) and (b) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

5. The dwelling will be consistent with the fish and wildlife habitat policies of the Comprehensive Plan if located in a designated big game habitat area.

6. Secondary farm dwellings shall be a manufactured home, or other type of attached multi-unit residential structure allowed by the applicable State Building Code, and a deed restriction filed with the county clerk requiring removal of the manufactured home or removal, demolition or conversion to a nonresidential use if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.

HB 3400 (2015) Prohibits using income from marijuana to justify a dwelling.

17.137.040 Uses permitted subject to standards.

The following uses may be permitted in the SA zone subject to approval of the request by the director, based on satisfaction of the standards and criteria specified for each use, pursuant to the procedures in Chapter 17.115 MCC:

A. Farm Stand. Farm stand subject to the following standards:

1. The structures shall be designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the in State of Oregon, including processed food items, and the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand; and,

2. Annual sales of the incidental items and fees from promotional activity, sales of farm crops produced outside the State of Oregon, and sales of prepared food items together cannot make up more than 25 percent of the total annual sales of the farm stand; and

3. The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

4. As used in this section, “processed food items” means farm crops and livestock that have been converted into other products through canning, drying, baking, freezing, pressing, butchering or other similar means of adding value

to the farm product, such as such as jams, syrups, apple cider, and similar animal products, but not prepared food items.
5. As used in this section, "prepared food items" means that food products that are prepared for immediate consumption, such as pies, short cake, milk shakes, smoothies, and baked goods.
6. Adequate off-street parking shall be provided and all vehicle maneuvering will be conducted on site. No vehicle backing or maneuvering shall occur within adjacent roads, streets or highways.
7. No farm stand building or parking is permitted within the right-of-way.
8. Roadways, driveway aprons, driveways and parking surfaces shall be surfaces that prevent dust, and may include paving, gravel, cinders, or bark/wood chips.
9. Approval is required from the County Public Works Department regarding adequate egress and access including compliance with vision clearance standards. All egress and access points shall be clearly marked.
10. All outdoor light fixtures shall be directed downward, and have full cutoff and full shielding to preserve views of the night sky and to minimize excessive light spillover onto adjacent properties, roads and highways.
11. Signs are permitted consistent with Marion County Code Chapter 191.
12. All required permits shall be obtained from the Marion County Health Department or the Department of Agriculture, as required.
13. When requested by the Planning Director, the farm stand operator/land owner shall submit a statement demonstrating how the farm stand complies with this policy certified by the landowner's/operator's accountant or attorney as being accurate and complete.
14. A farm stand may not be used for the sale of marijuana products or to promote the sale of marijuana products or extracts.

HB 3400 (2015) Prohibits a marijuana business from being operated in conjunction with a farm stand.

F. Facilities for Processing Farm Crops. A facility for processing of farm crops, an establishment for the slaughter, processing, or selling of poultry or poultry products pursuant to ORS 603.038, or the production of biofuel as defined in ORS 315.141, subject to the following:

1. Except for the establishment for the slaughter, processing, or selling of poultry or poultry products the farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. For an establishment for the slaughter, processing, or selling of poultry or poultry products , all of the poultry must have been raised on the farm operation consistent with ORS 603.038
2. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use.
3. The processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits siting of the processing facility.
4. Division of a lot or parcel that separates a processing facility from the farm operation on which it is located shall not be approved.
5. A medical marijuana processor as defined in MCC 17.110.376 shall:
a. Be conducted entirely indoors, and;
b. Emit no light visible to adjacent neighboring property owners or the public, and;
c. Ensure odors are not detectable on adjacent neighboring properties.

Prohibits lights and odor from processing operations to be detectable to neighbors or the public.

17.137.050 Conditional uses.
The following uses may be permitted in an SA zone subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.137.060(A) and any additional criteria, requirements, and standards specified in this section:

D. The following commercial uses:
1. Home occupations, including bed and breakfast inns, subject to the criteria in MCC 17.137.060(C) with filing of the declaratory statement in MCC 17.136.100(C).
2. Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under MCC 17.137.040(F), and subject to MCC 17.137.060(I), but including a winery not permitted under

MCC 17.137.040(B)**, but not including a medical marijuana processor as defined in MCC 17.110.376, subject to MCC 17.137.060(I).**
Prohibits large scale processing.
3. Dog kennels in conjunction with a dwelling occupied by the kennel operator with filing of the declaratory statement in MCC 17.137.100(C).
4. Room and board arrangements for a maximum of five unrelated persons in existing residences with filing of the declaratory statement in MCC 17.137.100(C).
5. The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission.
6. A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
7. Composting Facilities.
a. Existing composting operations and facilities that do not meet MCC 17.136.020(J) may be maintained, enhanced, or expanded on the same tract subject to meeting the performance and permitting requirements of the Department of Environmental Quality (DEQ) under OAR 340-093-0050 and 340-096-006, subject to compost facility operators preparing, implementing and maintaining a site-specific Odor Minimization Plan that:
(a) Meets the requirements of OAR 340-096-0150;
(b) Identifies the distance of the proposed operation to the nearest residential zone;
(c) Includes a complaint response protocol;
(d) Is submitted to the DEQ with the required permit application; and
(e) May be subject to annual review by the county to determine if any revisions are necessary.
b. New composting operations and facilities that do not meet MCC 17.136.020(J) may be established on land not defined as high-value farmland subject to the following:
i. Meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-006; and
ii. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility; and
iii. On-site sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.
iv. Compost facility operators must prepare, implement and maintain a site-specific Odor Minimization Plan that:
(a) Meets the requirements of OAR 340-096-0150;
(b) Identifies the distance of the proposed operation to the nearest residential zone;
(c) Includes a complaint response protocol;
(d) Is submitted to the DEQ with the required permit application; and
(e) May be subject to annual review by the county to determine if any revisions are necessary.
8. Operations for the extraction and bottling of water, except in the sensitive groundwater overlay zone.
9. Agri-tourism events and activities **excluding events that promote the use or sale of marijuana products or extracts,** subject to the requirements in MCC 17.120.090.
HB 3400 (2015) Prohibits agri-tourism in conjunction with a marijuana business.
10. Dog training classes or testing trials not permitted under MCC 17.137.040(O).

CHAPTER 17.138
TC (TIMBER CONSERVATION) ZONE

17.138.020 Permitted uses.
Within a TC zone no building, structure or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

A. Farm uses (see farm use definition, MCC 17.110.223)**, but not including a medical marijuana processor (see MCC 17.110.376), medical marijuana producer (see MCC 17.110.378), or a medical marijuana dispensary (see MCC 17.110.374)**.
B. Buildings, other than dwellings, customarily provided in conjunction with farm or forest use.

C. Forest operations or forest practices including, but not limited to, reforestation, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash pursuant to ORS 527 (Forest Practices Act).
D. Temporary forest labor camp.
E. Alteration, restoration, or replacement of a lawfully established dwelling with filing of the declaratory statement in MCC 17.138.060(B), when the dwelling:

1. Is assessed in the current County Assessor's records as a site-built dwelling or manufactured home.
2. The dwelling to be replaced must be removed, demolished or converted to an allowable nonresidential use:
   a. Within one year after the date the replacement dwelling is certified for occupancy pursuant to ORS 455.055; or
   b. If the dwelling to be replaced is in such a state of disrepair that the structure is unsafe for occupancy or constitutes an attractive nuisance, on or before a date set by the permitting authority that is not less than 90 days after the replacement permit is issued; and
   c. If a dwelling is removed by moving it off the subject parcel to another location, the applicant must obtain approval from the permitting authority for the new location.
3. The applicant must cause to be recorded in the deed records of the county a statement that the dwelling to be replaced has been removed, demolished or converted to a non-residential use.
4. In the case of replacement, the replacement dwelling shall be situated in the same location as the existing dwelling as possible.
5. Replacement under this section includes dwelling replaced pursuant to 17.138.070 (C) when a fire report is provided at the time building permits are applied for.

F. Temporary on-site structures which are auxiliary, as defined in MCC 17.138.120(A), to and used during the term of a particular forest operation pursuant to ORS 527.
G. Physical alterations to the land auxiliary, as defined in MCC 17.138.120(A), to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities pursuant to ORS 527.
H. Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.
I. Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups.
J. Temporary portable facility for the primary processing of forest products.
K. Exploration for mineral and aggregate resources as defined in ORS Chapter 517.
L. Private hunting and fishing operations without any lodging accommodations.
M. Towers and fire stations for forest fire protection.
N. Widening of roads, including public road and highway projects as follows:

1. Climbing and passing lanes within the street right-of-way existing as of July 1, 1987.
2. Reconstruction or modification of public streets, including the placement of utility facilities overhead and in the subsurface of public roads and highways along public right-of-way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new parcels result.
3. Temporary public street detours that will be abandoned and restored to original condition or use at such time as no longer needed.
4. Minor betterment of existing public street related facilities such as maintenance yards, weigh stations and rest areas, within rights-of-way existing as of July 1, 1987, and contiguous publicly owned property utilized to support the operation and maintenance of public streets.

O. Water intake facilities, canals and distribution lines for farm irrigation and ponds.
P. Caretaker dwelling for public park or public fish hatchery.
Q. Uninhabitable structures accessory to fish and wildlife enhancement.
R. Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead.
S. Destination resorts reviewed and approved pursuant to the destination resort siting requirements in ORS 197.435 through 197.465 and State Land Use Goal 8.
T. Disposal site for solid waste that has been ordered established by the Oregon Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation

Producing marijuana and related businesses are not permitted as farm use in the TC zone.

CHAPTER 17.139
FT (FARM/TIMBER) ZONE

17.139.020 Permitted uses.
Within an FT zone no building, structure or premises shall be used, arranged or designed to be used, erected, structurally altered or enlarged except for one or more of the following uses:

A. A. Farm uses (see farm use definition, MCC 17.110.223)**, but not including a medical marijuana processor (see MCC 17.110.376), medical marijuana producer (see MCC 17.110.378), or a medical marijuana dispensary (see MCC 17.110.374)**.

Producing marijuana and related businesses are not permitted as farm use in the FT zone.

T. Single agri-tourism or other commercial event, **excluding events that promote the sale of marijuana products or extracts,** subject to MCC 17.125.130.

HB 3400 (2015) Prohibits agri-tourism in conjunction with a marijuana business.

17.139.030 Dwellings permitted subject to standards.
The following dwellings may be established in the FT zone, with filing of the declaratory statement in MCC 17.139.070(B), subject to approval by the director, based on satisfaction of the standards and criteria listed for each type of dwelling, pursuant to the procedures in Chapter 17.115 MCC. Subsections (A) through (D) of this section provide criteria for siting a dwelling based on the predominant use of the tract on January 1, 1993, for forest land. Subsections (E) through (I) of this section list criteria for siting a dwelling based on the predominant use of the tract on January 1, 1993, for farm use.

E. Primary Farm Dwellings. A single-family dwelling, subject to the special use and siting requirements in MCC 17.139.070, customarily provided in conjunction with farm use. The dwelling will be considered customarily provided in conjunction with farm use when:

1. It is located on high-value farmland, as defined in MCC 17.139.130(E) on a lot or parcel predominantly devoted to farm use on January 1, 1993, and satisfies the following standards:
    a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term “farm operation” means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.
    b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $80,000 in gross annual income from the sale of farm products**, not including marijuana**. In determining gross annual income from the sale of farm products, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted.
    c. The subject tract is currently employed for the farm use that produced the income required in subsection (E)(1)(b) of this section.
    d. The dwelling will be occupied by a person or persons who produced the commodities which generated the income in subsection (E)(1)(b) of this section; or
2. It is not located on high-value farmland, as defined in MCC 17.139.130(E), on a lot or parcel predominantly devoted to farm use on January 1, 1993, and satisfies the following standards:
    a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term “farm operation” means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.
    b. The farm operator earned on the subject tract in the last two years, three of the last five years, or the average of the best three of the last five years at least $40,000 in gross annual income from the sale of farm products**, not including marijuana**. In determining gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract. Only gross income from land owned, not leased or rented, shall be counted.

c. The subject tract is currently employed for the farm use that produced the income required in subsection (E)(1)(b) of this section.

d. The dwelling will be occupied by a person or persons who produced the commodities which generated the income required in subsection (E)(1)(b) of this section; or

3. It is not located on high-value farmland, as defined in MCC 17.139.130(E), on a lot or parcel predominantly devoted to farm use on January 1, 1993, and satisfies the following standards:

a. There is no other dwelling on the subject farm operation on lands zoned EFU, SA or FT other than seasonal farm worker housing. The term "farm operation" means all lots or parcels of land in the same ownership that are used by the farm operator for farm use.

b. The parcel on which the dwelling will be located is at least 160 acres.

c. The subject tract is currently employed for farm use, as defined in ORS 215.203**, other than marijuana production**.

d. The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing, or caring for livestock, at a commercial scale;

4. It is in conjunction with a commercial dairy farm as defined in this chapter and if:

a. The subject tract will be employed as a commercial dairy as defined; and

b. The dwelling is sited on the same lot or parcel as the buildings required by the commercial dairy; and

c. Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and

d. The dwelling will be occupied by a person or persons who will be principally engaged in the operation of the commercial dairy farm, such as the feeding, milking or pasturing of the dairy animals or other farm activities necessary to the operation of the commercial dairy farm; and

e. The building permits, if required, have been issued for and construction has begun for the buildings and animal waste facilities required for a commercial dairy farm; and

f. The Oregon Department of Agriculture has approved the following:

i. A permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and

ii. A producer license for the sale of dairy products under ORS 621.072;

5. The applicant had previously operated a commercial farm use and if:

a. Within the previous two years, the applicant owned and operated a different farm or ranch operation that earned the gross farm income in each of the last five years or four of the last seven years as required by subsection (E)(1) or (2) of this section, whichever is applicable;

b. The subject lot or parcel on which the dwelling will be located is:

i. Currently employed for the farm use, as defined in this title, that produced in the last two years, three of the last five years, or the average of the best three of the last five years, the gross farm income required by subsection (E)(1) or (2) of this section, whichever is applicable; and

ii. At least the size of the applicable minimum lot size in this chapter; and

iii. Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract; and

iv. The dwelling will be occupied by a person or persons who produced the commodities which grossed the income in subsection (E)(5)(a) of this section;

v. In determining the gross income required by subsections (E)(5)(a) and (E)(5)(b)(i) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract, and only gross income from land owned, not leased or rented, shall be counted;

6. All of the property in a tract used for the purposes of establishing a farm dwelling shall be held, sold and conveyed subject to the following covenants, conditions and restrictions:

- It is not lawful to use the property described in this instrument for the construction or siting of a dwelling or to use the acreage of the tract to qualify another tract for the construction or siting of a dwelling.
- These covenants, conditions, and restrictions can be removed only and at such time as the property described herein is no longer protected under the statewide planning goals for agricultural and forest lands or the legislature otherwise provides by statute that these covenants, conditions and restrictions may be removed and the authorized representative of the county or counties in which the property subject to these covenants, conditions and

restrictions is located executes and records a release of the covenants, conditions and restrictions, consistent with OAR 660-006-0027.

F. Secondary Farm Dwellings. Secondary (accessory) dwellings, subject to the special use and siting requirements in MCC 17.139.070, customarily provided in conjunction with farm use, on a lot or parcel predominantly devoted to farm use on January 1, 1993, when:

1. The primary dwelling and the proposed dwelling will each be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator.

2. There is no other dwelling on lands in the FT, SA or EFU zones owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm and could reasonably be used as an additional farm dwelling.

3. The proposed dwelling will be located:

a. On the same lot or parcel as the primary farm dwelling; or

b. On the same contiguous ownership as the primary dwelling, and the lot or parcel on which the proposed dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the same ownership; or

c. On a lot or parcel on which the primary farm dwelling is not located, when the secondary farm dwelling is limited to only a manufactured dwelling with a deed restriction filed with the county clerk. The deed restriction shall require the additional dwelling to be removed when the lot or parcel is conveyed to another party. Occupancy of the additional farm dwelling shall continually comply with subsection (F)(1) of this section; or

d. On any lot or parcel, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm worker housing as that existing on farm operations registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. The county shall require all accessory farm dwellings approved under this subsection to be removed, demolished or converted to a nonresidential use when farm worker housing is no longer required; or

e. On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size and the lot or parcel complies with the gross farm income requirements in subsection (F)(4) of this section, whichever is applicable.

4. The primary dwelling to which the proposed dwelling would be accessory satisfies the following criteria:

a. On land not identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $40,000 in gross annual income from the sale of farm products**, not including marijuana,** in the last two years, three of the last five years, or the average of the best three of the last five years; or

b. On land identified as high-value farmland, the primary farm dwelling is located on land that is currently employed for farm use and the farm operator earned at least $80,000 in gross annual income from the sale of farm products**, not including marijuana,** in the last two years, three of the last five years, or the average of the best three of the last five years;

c. The primary dwelling is located on a commercial dairy farm as defined in MCC 17.139.130(C); and

i. The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

ii. The Oregon Department of Agriculture has approved a permit for a confined animal feeding operation under ORS 468B.050 and 468B.200 through 468B.230; and

iii. The Oregon Department of Agriculture has approved a producer license for the sale of dairy products under ORS 621.072;

d. In determining the gross income in subsections (F)(4)(a) and (b) of this section, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

5. The dwelling will be consistent with the fish and wildlife habitat policies of the Comprehensive Plan if located in a designated big game habitat area.

6. Secondary farm dwellings shall be a manufactured home, or other type of attached multi-unit residential structure allowed by the applicable State Building Code, and a deed restriction (removal agreement) is filed with the county clerk requiring the removal of the manufactured home, or removal, demolition or conversion to a nonresidential use, if other residential structures are used, when the occupancy or use no longer complies with the criteria or standards under which the manufactured home was originally approved.

HB 3400 (2015) Prohibits using income from marijuana to justify a dwelling.

17.139.040 Uses permitted subject to standards.
The following uses may be permitted in the FT zone subject to approval of the request by the director, based on satisfaction of the standards and criteria specified for each use, pursuant to the procedures in Chapter 17.115 MCC.

A. Farm Stand. Farm stand subject to the following standards:

1. The structures shall be designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the in State of Oregon, including processed food items, and the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand; and,
2. Annual sales of the incidental items and fees from promotional activity, sales of farm crops produced outside the State of Oregon, and sales of prepared food items together cannot make up more than 25 percent of the total annual sales of the farm stand; and
3. The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.
4. As used in this section, "processed food items" means farm crops and livestock that have been converted into other products through canning, drying, baking, freezing, pressing, butchering or other similar means of adding value to the farm product, such as such as jams, syrups, apple cider, and similar animal products, but not prepared food items.
5. As used in this section, "prepared food items" means that food products that are prepared for immediate consumption, such as pies, short cake, milk shakes, smoothies, and baked goods.
6. Adequate off-street parking shall be provided and all vehicle maneuvering will be conducted on site. No vehicle backing or maneuvering shall occur within adjacent roads, streets or highways.
7. No farm stand building or parking is permitted within the right-of-way.
8. Roadways, driveway aprons, driveways and parking surfaces shall be surfaces that prevent dust, and may include paving, gravel, cinders, or bark/wood chips.
9. Approval is required from the County Public Works Department regarding adequate egress and access including compliance with vision clearance standards. All egress and access points shall be clearly marked.
10. All outdoor light fixtures shall be directed downward, and have full cutoff and full shielding to preserve views of the night sky and to minimize excessive light spillover onto adjacent properties, roads and highways.
11. Signs are permitted consistent with Marion County Code Chapter 191.
12. All required permits shall be obtained from the Marion County Health Department or the Department of Agriculture, as required.
13. When requested by the Planning Director, the farm stand operator/land owner shall submit a statement demonstrating how the farm stand complies with this policy certified by the landowner's/operator's accountant or attorney as being accurate and complete.
14. **A farm stand may not be used for the sale of marijuana products or to promote the sale of marijuana products or extracts.**

HB 3400 (2015) Prohibits a marijuana business from being operated in conjunction with a farm stand.

F. Facilities for Processing Farm Crops. A facility for processing of farm crops, an establishment for the slaughter, processing, or selling of poultry or poultry products pursuant to ORS 603.038, or the production of biofuel as defined in ORS 315.141, subject to the following:

1. Except for the establishment for the slaughter, processing, or selling of poultry or poultry products the farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. For an establishment for the slaughter, processing, or selling of poultry or poultry products, all of the poultry must have been raised on the farm operation consistent with ORS 603.038
2. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use.

3. The processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits siting of the processing facility.
4. Division of a lot or parcel that separates a processing facility from the farm operation on which it is located shall not be approved.
5. A medical marijuana processor as defined in MCC 17.110.376 shall:
a. Be conducted entirely indoors, and;
b. Emit no light visible to adjacent neighboring property owners or the public, and;
c. Utilize an air filtration system to ensure odors are not detectable on adjacent neighboring properties.

Prohibits lights and odor from processing operations to be detectable to neighbors or the public.

17.139.050 Conditional uses.
The following uses may be permitted in an FT zone subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.139.060(A) and any additional criteria, requirements and standards specified for the use.

D. The following commercial uses:
1. Home occupations, including bed and breakfast inns, subject to MCC 17.139.060(C) and the requirements in MCC 17.139.070(B).
2. Commercial activities in conjunction with farm use, including the processing of farm crops into biofuel not permitted under MCC 17.139.040(F), and subject to MCC 17.139.060(L), but including a winery not permitted under MCC 17.139.040(B)**, but not including a medical marijuana processor as defined in MCC 17.110.376, subject to MCC 17.139.060(L).**
Prohibits large scale processing.
3. Dog kennels in conjunction with a dwelling occupied by the kennel operator, subject to the requirements in MCC 17.139.070(B).
4. Room and board arrangements for a maximum of five unrelated persons in an existing dwelling, subject to the requirements in MCC 17.139.070(B).
5. The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission.
6. A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.
7. Composting Facilities.
a. Existing composting operations and facilities that do not meet MCC 17.136.020(J) may be maintained, enhanced, or expanded on the same tract subject to meeting the performance and permitting requirements of the Department of Environmental Quality (DEQ) under OAR 340-093-0050 and 340-096-006, subject to compost facility operators preparing, implementing and maintaining a site-specific Odor Minimization Plan that:
(a) Meets the requirements of OAR 340-096-0150;
(b) Identifies the distance of the proposed operation to the nearest residential zone;
(c) Includes a complaint response protocol;
(d) Is submitted to the DEQ with the required permit application; and
(e) May be subject to annual review by the county to determine if any revisions are necessary.
b. New composting operations and facilities that do not meet MCC 17.136.020(J) may be established on land not defined as high-value farmland subject to the following:
i. Meet the performance and permitting requirements of the Department of Environmental Quality under OAR 340-093-0050 and 340-096-006; and
ii. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility; and
iii. On-site sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.
iv. Compost facility operators must prepare, implement and maintain a site-specific Odor Minimization Plan that:
(a) Meets the requirements of OAR 340-096-0150;
(b) Identifies the distance of the proposed operation to the nearest residential zone;
(c) Includes a complaint response protocol;

(d) Is submitted to the DEQ with the required permit application; and
(e) May be subject to annual review by the county to determine if any revisions are necessary.

8. Operations for the extraction and bottling of water, except in the sensitive groundwater overlay zone.
9. Agri-tourism events and activities **that do not promote the use or sale of marijuana products or extracts,** subject to the requirements in MCC 17.120.090.
10. Dog training classes or testing trials not permitted under MCC 17.139.040(M).
Prohibits agri-tourism in conjunction with a marijuana business.

CHAPTER 17.143
CC (COMMUNITY COMMERCIAL) ZONE

17.143.030 Conditional uses.
When authorized under the procedure provided for conditional uses in this title, the following uses will be permitted in a CC zone, subject to MCC 17.143.040:
A. Home occupations, subject to MCC 17.120.075;
B. Retail and service uses not listed in MCC 17.143.020 and not exceeding 4,000 square feet of floor space in a rural community or 8,000 square feet of floor space in an urban community (SIC 50 through 89 except 70 and 88);
C. Wireless communications facilities subject to MCC 17.120.080.
D. Medical marijuana dispensary (see MCC 17.110.374), subject to MCC 17.120.120 and not exceeding 4,000 square feet of floor space in a rural community or 8,000 square feet of floor space in an urban community.

Permits medical marijuana dispensary as a conditional use in the CC zone.

CHAPTER 17.145
C (COMMERCIAL) ZONE

17.145.030 Conditional uses.
When authorized under the procedure provided for conditional uses in this title, the following uses will be permitted in a C zone, subject to MCC 17.145.050:
A. Crematories;
B. Fee fishing pond or lake;
C. Kennels (boarding and raising of animals);
D. Mineral resource sites (see specific conditional uses, MCC 17.120.410 through 17.120.480);
E. Heliport;
F. Wireless communications facilities (see specific conditional uses, MCC 17.120.080);
G. U-haul concrete mix store;
H. Utilities – secondary truck parking and material storage yard;
I. Welding shop (SIC 7692);
J. Blacksmith (SIC 7699);
K. Colleges and universities (SIC 822);
L. Cabinet shop and sales firm (see specific conditional uses, MCC 17.120.050);
M. Boat, camper and trailer storage area or lot (see specific conditional uses, MCC 17.120.030);
N. Home occupations, subject to MCC 17.120.075;
O. Retail and service uses not listed in MCC 17.145.020 and not exceeding 3,500 square feet of floor area.
P. Medical marijuana dispensary (see MCC 17.110.374), subject to MCC 17.120.120 and not exceeding 3,500 square feet of floor area.

Permits medical marijuana dispensary as a conditional use in the CC zone.

CHAPTER 17.150
ID (INTERCHANGE DISTRICT) ZONE

17.150.040 Conditional uses.
When authorized under the procedure provided for conditional uses in this title, the following uses will be permitted in the interchange district:

A. Except in a designated unincorporated community:
1. All permitted and conditional uses set forth in the C zone**, other than a medical marijuana dispensary (see MCC 17.110.374)** not exceeding 3,500 square feet of floor space.

Prohibits marijuana sales in the ID zone.

17.150.090 Industrial uses.
The following uses may be permitted in an interchange district, except within an unincorporated community, after such uses have been approved under the procedures set forth in MCC 17.119.010 through 17.119.080 (conditional uses):
A. All industrial uses set forth in the I zone**, other than a medical marijuana processor (see MCC 17.110.376) or medical marijuana producer (see MCC17.110.378),** not exceeding 35,000 square feet of floor space.

Prohibits marijuana production, processing in the ID zone.

CHAPTER 17.164
IUC (UNINCORPORATED COMMUNITY INDUSTRIAL) ZONE

17.164.030 Conditional uses.
When authorized under the procedure provided for conditional uses in this title, the following uses will be permitted in an IUC zone, subject to MCC 17.164.040:
A. Manufacturing, processing, trucking, wholesale distribution, and storage uses not listed in MCC 17.164.020 and not exceeding 40,000 square feet of floor space in a rural community or 60,000 square feet of floor space in an urban community (SIC 20 through 39 and 42);
B. Wireless communications facilities subject to MCC 17.120.080;
C. Manufacturing, processing, trucking, wholesale distribution, and storage uses not listed in MCC 17.164.020 (SIC 20 through 39 and 42) subject to the standards in MCC 17.164.080, in an urban community where the property is located in a limited use overlay zone that implements either requirements of the community plan or an exception to statewide Goal 14.
D. Medical marijuana processor (see MCC 17.110.376) and/or medical marijuana producer (see MCC17.110.378), subject to MCC 17.120.120 , with a maximum of 40,000 square feet of floor space in a rural community and up to 60,000 square feet of floor space in an urban community.

Allows marijuana production and processing as a conditional use.

CHAPTER 17.165
I (INDUSTRIAL) ZONE

17.165.040 Conditional uses.
When authorized under the procedure provided for conditional uses in this title, the following uses will be permitted in an I zone, subject to MCC 17.165.060:
A. Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to MCC 17.120.410 through 17.120.480;
B. Petroleum, petroleum products, by-products manufacturing and storage facilities (SIC 29);
C. Metals, primary, manufacturing facilities (SIC 33);
D. Machinery manufacturing facilities (SIC 35);
E. Railroad equipment manufacturing (SIC 3743);

F. Automobile wreckers (SIC 5093);
G. Welding shop (SIC 7692);
H. Blacksmith (SIC 7699);
I. Public power generation;
J. Solid waste disposal sites (see specific conditional uses, MCC 17.120.310 through 17.120.380);
K. *Repealed by Ord. 1313;*
L. Heliport;
M. Wireless communication facilities (see specific conditional uses, MCC 17.120.080);
N. Recreational vehicle, mobile home and boat repair and manufacturing;
O. Kennels, boarding and raising of animals;
P. Public power generation facilities;
Within any I zone no building, structure, or premises shall be used, or arranged, except as permitted by this title. Only the following uses may be permitted at a scale appropriate to serve the rural area, subject to MCC 17.165.060:
Q. ~~*Repealed by Ord. 1313;*~~ **Medical marijuana processor (see MCC 17.110.376) and/or medical marijuana producer (see MCC17.110.378), subject to MCC 17.120.120.**

Allows medical marijuana production and processing as a conditional use.

CHAPTER 17.171
P (PUBLIC) ZONE

17.171.020 Uses.
Within any P (public) zone no building, structure or premises shall be used, arranged, or designed to be used, erected, structurally altered or enlarged except for the following purposes:

A. Farm use**, but not including a medical marijuana processor (see MCC 17.110.376), medical marijuana producer (see MCC 17.110.378), or a medical marijuana dispensary (see MCC 17.110.374)**.

Producing medical marijuana and related uses are not permitted in the P zone as farm use.

Chapter 5.25
MEDICAL MARIJUANA DISPENSARY FACILITIES

Sections:

5.25.010 Title.
5.25.020 Findings and purpose.
5.25.030 Prohibited activities.
5.25.040 Use not permitted in any farm or forest zone.
5.25.050 Ban exemption permit required.
5.25.060 Application for ban exemption permit.
5.25.070 Term and renewal of ban exemption permit.
5.25.080 Ban exemption permit regulations.
5.25.090 No vested or nonconforming rights.
5.25.100 Violations.
5.25.110 Denial or revocation of a permit.
5.25.120 Appeal procedure.
5.25.130 Fees.
5.25.140 Findings.
5.25.150 References.

5.25.010 Title.

The ordinance codified in this chapter adopts a new chapter to the county code and shall be known as the medical marijuana dispensary facilities ban and ban exemption permit ordinance of Marion County. [Ord. 1333 § 1, 2014.]

5.25.020 Findings and purpose.

A. The board adopts the findings in MCC 5.25.140 as findings to support this chapter.

B. The purpose of the ordinance codified in this chapter is to enact a new chapter of the Marion County Code on the subject of medical marijuana dispensary facilities, which explicitly prohibits medical marijuana dispensary facilities in the unincorporated area of Marion County, particularly in farm and forest zones, and provides for a ban exemption permit for medical marijuana dispensary facilities in commercial, industrial or mixed use zones. This prohibition will be enforced until such time as the manufacture, distribution, and possession of medical marijuana is not prohibited under federal law.

C. This chapter is not intended to regulate the possession, cultivation or use of medical marijuana at a registered marijuana grow site or by anyone who is a registry identification cardholder. [Ord. 1333 § 2, 2014.]

5.25.030 Prohibited activities.

A. It is unlawful to operate, use or allow the operation of a medical marijuana dispensary facility in the unincorporated area of Marion County without having a current ban exemption permit under this chapter.

B. It is unlawful to lease, rent or otherwise allow any medical marijuana dispensary facility in any building, structure, premises, location or land in the unincorporated area of Marion County unless the medical marijuana dispensary facility business has a current ban exemption permit. [Ord. 1333 § 3, 2014.]

5.25.040 Use not permitted in any farm or forest zone.

The use of any building, structure, location, premises or land for a medical marijuana dispensary facility is not allowed in any farm or forest zone. [Ord. 1333 § 4, 2014.]

5.25.050 Ban exemption permit required.

A. Commercial or Industrial Zoned Land. A medical marijuana dispensary facility may be located in commercial or industrial zones in the unincorporated area of Marion County only if the business has first obtained a ban exemption permit.

B. Mixed Use Zoned Land. A medical marijuana dispensary facility may be located in a mixed use zone in the unincorporated area of Marion County only if the nature of the mixed use zone is not primarily residential, farm or forest uses, and if the business has first obtained a ban exemption permit. [Ord. 1333 § 5, 2014.]

5.25.060 Application for ban exemption permit.

A. After March 1, 2014, a person or entity seeking a ban exemption permit shall submit an application to the county on forms provided by the county. At the time of application, applicant shall pay a nonrefundable application fee to cover the costs incurred by the county in processing the application.

B. The applicant shall be the individual to whom the Oregon Health Authority ("OHA") has granted a permit pursuant to Chapter 726, Oregon Laws 2013 and the corresponding administrative rules.

C. The applicant shall submit a separate application and pay a separate application fee for each physical location for which the applicant seeks a ban exemption permit.

D. The applicant shall provide the following information on the application form and other required information in support of the application:

1. Name of the business and business location;

2. Name of the business owner and manager (if different);

3. Copy of OHA permit for the business;

4. Confirmation of passing a criminal background check performed by the sheriff pursuant to ORS 181.533 and OAR 257-010-0025(1)(a) for all owners, employees, or volunteers that will work at the location identified in subsection (D)(1) of this section;

5. Written authorization for OHA to disclose information to Marion County about the business and the applicant in conjunction with the OHA permit;

6. The permit holder shall save harmless, indemnify, and defend Marion County and any of its elected officials, officers, employees or agents for any and all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from county liability to agencies of the federal government pursuant to contracts or grants from those federal agencies occurring due to the issuance of a ban exemption permit to the permit holder;

7. The permit holder shall waive liability against Marion County and any of its elected officials, officers, employees or agents for any claims arising out of the revocation of or refusal to grant a permit; for any claims alleging a taking or inverse condemnation due to revocation of or refusal to permit a particular location or relocation of a permitted facility for failing to satisfy all the requirements of a permit; or for any actions taken or not taken by Marion County pursuant to a permit;

8. The permit holder shall waive liability against Marion County and any of its elected officials, officers, employees or agents for any claims for any lawful arrest or prosecution of the applicant or any employees, clients or customers for a violation of federal or state criminal laws. [Ord. 1333 § 6, 2014.]

5.25.070 Term and renewal of ban exemption permit.

A. A ban exemption permit is effective upon the date of its issuance and expires at the end of the three hundred and sixty-fifth day (one year) following its issuance.

B. In order to renew a ban exemption permit, the applicant shall submit an application to the county on forms provided by the county no more than 90 and at least 60 days prior to the expiration of the existing ban exemption permit. A renewal application shall contain all of the information and documentation required of an original application pursuant to MCC 5.25.060(D).

C. At the time of filing a renewal application, applicant shall pay a nonrefundable application fee to cover the costs incurred by the county in processing the renewal application.

D. If a specific location that is the subject of a renewal application has a documented history of law enforcement contacts during the time that the specific location has been permitted under this chapter, the sheriff may recommend denial of a renewal application. In the event that the sheriff recommends denial of a renewal application, the sheriff shall forward the recommendation to the planning division. The planning division may issue a notice of denial based upon the sheriff's recommendation. Denial of a renewal application based upon the sheriff's recommendation may be reviewed by the hearings officer pursuant to MCC 5.25.120. [Ord. 1333 § 7, 2014.]

5.25.080 Ban exemption permit regulations.

A person or entity having or required to obtain a ban exemption permit for a medical marijuana dispensary business shall comply with the following regulations:

A. The person or entity shall comply with all building code and zoning requirements applicable to the property on which the business is located.

B. The person or entity shall comply with all federal, state, and local laws applicable to the business.

C. The medical marijuana dispensary facility cannot be located within 1,000 feet of any boundary of a property containing a pre-kindergarten, Head Start program, community learning center, or certified child care facility regulated pursuant to ORS Chapters 329, 329A, and 657A, a relief nursery regulated pursuant to ORS Chapter 417, a public park, or a location prohibited by OHA regulations, which currently include being located within 1,000 feet of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors, or within 1,000 feet of another medical marijuana dispensary facility.

D. The business shall comply with Chapter 8.25 MCC, the alarm system control ordinance.

E. All employees and volunteers of the business must submit to a criminal background check by the sheriff pursuant to ORS 181.533 and OAR 257-010-0025(1)(a). It shall be a violation of this chapter if an employee or volunteer has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years of the date of the criminal background check; has been convicted more than once of the manufacture or delivery of a controlled substance in Schedule I or Schedule II at any time; or has been convicted of any of the following crimes at any time: criminal mistreatment based upon the unlawful manufacture of a controlled substance, child neglect I, racketeering, use of minor in controlled substance offense, manufacture or delivery of hydrocodone within 1,000 feet of a school, manufacture or delivery of a controlled substance within 1,000 feet of a school, causing another to ingest a controlled substance, application of a controlled substance to the body of another person, or felony driving under the influence of intoxicants.

F. The person or entity shall keep all real and personal property tax accounts current for the business for which it is the taxpayer.

G. The business may not be operated as a home occupation in any zone.

H. No minors are allowed on the business premises unless the minor is an Oregon Medical Marijuana Program (OMMP) cardholder and is accompanied by a parent or guardian and not in areas prohibited by OAR 333-008-1200.

I. No consumption of medical marijuana is allowed on the business premises unless otherwise as allowed for employees in OAR 333-008-1200. The business must comply with the Oregon Indoor Clean Air Act that prohibits indoor tobacco smoking. The business may not be co-located with a tobacco smoking lounge, or any kind of medical marijuana social club where medical marijuana is consumed.

J. The business may not be open any day before 7:00 a.m. or after 10:00 p.m. [Ord. 1335 § 3, 2014; Ord. 1333 § 8, 2014.]

5.25.090 No vested or nonconforming rights.

This chapter prohibits medical marijuana dispensary facilities and other facilities for the storing or dispensing of marijuana in the unincorporated area of Marion County. Neither this chapter nor any other provision of the Marion County Code, or any action, failure to act, statement, representation, certificate, approval, or permit issued shall create, confer or convey any vested or nonconforming right or benefit regarding any medical marijuana business, medical marijuana dispensary facility or other facility that is prohibited by this chapter. [Ord. 1333 § 9, 2014.]

5.25.100 Violations.

Any violations of this chapter may be enforced including but not limited to as set forth in Chapter 1.25 MCC, Enforcement, and by seeking administrative, injunctive, or other judicial relief. In addition, violations of this chapter may be deemed a public nuisance and may be abated by the county as a public nuisance. [Ord. 1333 § 10, 2014.]

5.25.110 Denial or revocation of a permit.

A. An application may be denied unless the applicant satisfies all the application requirements and regulations set forth in this chapter.

B. A permit may be revoked if the person or entity issued the permit fails to satisfy all the application requirements and regulations set forth in this chapter at any time after issuance of the permit, and the unsatisfied application requirement or regulation cannot be remedied within the time specified in the notice of revocation sent to the person or entity.

C. A permit may be suspended if the person or entity issued the permit fails to satisfy an application requirement or regulation set forth in this chapter at any time after issuance of the permit, but the unsatisfied application requirement or regulation can be remedied within the time specified in the notice of suspension sent to the person or entity. Upon satisfaction of the application requirement or regulation, the notice of suspension will be withdrawn. [Ord. 1333 § 11, 2014.]

5.25.120 Appeal procedure.

A. If an application is denied or a permit is revoked or suspended, the applicant or permit holder may appeal the denial, revocation or suspension to the hearings officer. Appeals must be in writing and filed within 15 days after receipt of notice of the denial, revocation, or suspension. The appeal shall be filed in the office of the Marion County planning division, accompanied by a nonrefundable appeal fee to cover the costs incurred by the county in processing the appeal.

B. The appeal shall set forth the following:

1. The name and address of the applicant or permit holder;

2. The proposed (for a denial) or current (for a revocation or suspension) location of the facility in question;

3. Whether the decision being appealed is a denial, revocation, or suspension; and

4. The reason the decision is incorrect.

C. The hearings officer shall hear the appeal within a reasonable time of the receipt of the appeal. At least 10 days prior to the hearing, the county shall mail notice of the time and location of the hearing to the applicant or permit holder.

D. The hearings officer shall determine whether the applicant or permit holder satisfies all the application requirements and regulations set forth in this chapter on the basis of the appellant's written statement and any relevant additional evidence submitted. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The planning division may appear with or without counsel. The planning division may present testimony and oral argument personally or by counsel. The burden of proof shall be on the planning division by a preponderance of the evidence.

E. The hearings officer shall issue a written decision within a reasonable time of the hearing date. The written decision of the hearings officer is final. Appeal of the hearings officer's decision shall be only by writ of review under ORS Chapter 34. [Ord. 1333 § 12, 2014.]

5.25.130 Fees.

Fees specified in this chapter shall be set by board order. [Ord. 1333 § 13, 2014.]

5.25.140 Findings.

A. Nature of the Legislative Proceeding. This matter is before the Marion County Board of Commissioners pursuant to its legislative authority under ORS 203.035 to by ordinance "exercise authority within the county over matters of county concern, to the fullest extent allowed by Constitutions and laws of the United States and of this state," and that this power "...shall be liberally construed, to the end that counties have all powers over matters of county concern that it is possible for them to have under the Constitutions and laws of the United States and of this state." The board held work sessions regarding medical marijuana dispensaries on November 25, 2013, and February 10, 2014, discussed the topic at Management Update on January 27, 2014, held a community forum with the Marion County Public Safety Coordinating Council on February 11, 2014, and received public comment at its business sessions on February 5, 12 and 19, 2014, as well as receiving written comment then and at other times. In addition, the commissioners individually have informed themselves on the topic through various means, including but not limited to meetings, conferences, news media, research articles, citizen input, and discussions with other public officials.

B. Federal Law. Since 1970, federal law has prohibited the manufacture and possession of marijuana as a Schedule I drug, based on the federal government's categorization of marijuana as having a "high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment." *Gonzales v. Raich*, 545 U.S. 1, 14 (2005), Controlled Substances Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq.

On August 29, 2013, the U.S. Department of Justice (USDOJ) issued a memorandum to all United States Attorneys, acknowledging that several states had adopted laws authorizing marijuana production, distribution and possession by establishing a regulatory scheme for these purposes.

In this memo, the DOJ advised that in recent years, the USDOJ has "focused its efforts on certain law enforcement priorities that are particularly important to the federal government," such as (a) preventing the distribution of marijuana to minors; (b) preventing revenue from the sale of marijuana

from going to criminal enterprises, gangs, cartels; (c) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (d) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (e) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (f) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (g) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands: and (h) preventing marijuana possession and use on federal property.

Also, in this memo, the USDOJ warned that "[i]f state enforcement efforts are not sufficiently robust to protect against the harms [identified above] the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms," and USDOJ further warned that a regulatory system adequate to this task "must not only contain robust controls and procedures on paper, it must also be effective in practice."

The USDOJ advised that "in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities [listed above]" and that federal prosecutors "should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including but not limited to whether the operation is demonstrably in compliance with a strong and effective state regulatory system."

On this same date, the U.S. Attorney for the District of Oregon, S. Amanda Marshall, issued a press release reiterating the priorities related to enforcing federal marijuana laws and further stating that "in Oregon, federal prosecutors will remain aggressive when it comes to protecting these eight federal enforcement interests" and will exercise "their prosecutorial discretion to investigate and prosecute individuals who infringe against any of these stated federal interests, regardless of state law."

The Oregon U.S. Attorney further warned that the USDOJ expects strict regulatory schemes with strong, state-based enforcement efforts, backed by adequate funding, that it will take a "trust but verify approach" that the state regulatory scheme is adequate, and if the state does not follow through imposing strict controls regulating marijuana-related conduct that "the federal prosecutors will act aggressively to bring individual prosecutions and may challenge the regulatory scheme themselves."

A decision by the USDOJ to "not enforce" criminal laws does not make medical marijuana lawful under federal law. The opinion of the USDOJ and Oregon's U.S. Attorney is that medical marijuana is unlawful under federal law. The USDOJ policy regarding enforcement of this law has flipped back and forth from enforcement to qualified non-enforcement over the last few years. For example, on June 3, 2011, the U.S. Attorney for the District of Oregon in response to a memo from the USDOJ issued a notice to the owners, operators and landlords of medical marijuana dispensaries that marijuana dispensaries were unlawful under federal and state law and that people and businesses involved could face risk of prosecution, civil forfeiture, and seizure of assets. Although this has now changed to a policy of qualified nonenforcement, there are no guarantees that USDOJ's stance on enforcement will not change once again, so long as marijuana is illegal under federal law.

Furthermore, Marion County has entered into federal grants and contracts that include in the required terms and conditions compliance with the Controlled Substances Act. In the award or implementation of these grants and contracts, these agencies are not bound by the USDOJ's current position of nonenforcement of federal criminal laws. Contractual remedies against Marion County could include disqualification, nonselection, debarment, fines, penalties, or repayment of federal funds.

Local governments are not the only entities concerned about the fact that marijuana, including medical marijuana, is illegal under federal law. Banks, credit card companies, and other financial institutions across the nation are refusing or reluctant to offer banking services to marijuana businesses out of caution that they could be found to have violated federal laws and regulations such as money laundering, that could subject the financial institutions to civil or criminal penalties. On February 14, 2014, the U.S. Treasury and Justice Department issued new regulations for banks wishing to do business with marijuana dealers; however, both the Colorado Bankers Association and the Washington Bankers Association have stated that it is not enough to issue guidelines that are not permanent and can change from administration to administration, with the only real and lasting solution being an act of Congress to change federal law. NBC News, 02/14/14, *Out of the Shadows: Pot sellers can now do business with banks.*

Until such time as marijuana is not listed as an unlawful drug under the CSA, or federal law recognizes medical marijuana as lawful, marijuana, including medical marijuana, is unlawful under federal law. The county is put in a conflict of laws position by the state to pick and choose which federal laws it will recognize or with which it must comply, or which federal contractual requirement it may ignore, and the individual county officers are placed in a conflict as to their oaths of office.

C. State Law. As with federal law, marijuana is considered a controlled substance under the Oregon Uniform Controlled Substances Act, Oregon Revised Statutes (ORS) 475.005 to 475.285. The unlawful manufacture, cultivation, transportation or possession of a controlled substance is a crime under ORS Chapter 167 and ORS 475.752 to 475.980.

Oregon has adopted laws relating to medical marijuana, with the intent that a person with one of certain "debilitating medical condition[s], the person's primary caregiver and the person responsible for a marijuana grow site that is producing [for the registered cardholder]," is exempted from certain criminal laws related to the possession, delivery, or production of marijuana, ORS 475.309, ORS 475.300 to 475.346.

The Oregon State Legislature passed House Bill 3460 in 2013, now codified in ORS Chapter 475, that added the person responsible for or employed by a medical marijuana facility (dispensary) to the list of persons exempt from certain criminal laws so long as they do not commit the acts anywhere other than at the medical marijuana facility, and directed the Oregon Health Authority (OHA) to establish rules for a medical marijuana facility registration system with an operative date of March 1, 2014. HB 3460 requires medical marijuana facilities to be a registered business, to only be located in areas zoned for commercial, industrial, mixed use, or agricultural, but not at the same location as a marijuana grow site, not be within 1,000 feet of public or private elementary, secondary or career schools attended primarily by minors, or within 1,000 feet of another dispensary, comply with authority rules related to security and health, and allow the authority to conduct a criminal background

check only of the person listed as responsible for the medical marijuana facility for prior convictions of manufacture or delivery of a Schedule I or Schedule II controlled substance.

The statutory provisions of HB 3460 and the OHA temporary rules, Oregon Administrative Rules (OAR) 333-008-1000 to 333-008-0120, establish the state medical marijuana facility registration system, administrative, physical and technical facility requirements, and rules related to facility operations; however, the county has no assurances that this proposed state regulatory scheme is sufficiently robust or satisfies the enforcement priorities established by the federal government, and has serious concerns that the proposed staffing and funding are inadequate for meaningful review, inspection and enforcement of medical marijuana facilities. The state granted itself immunity under HB 3460 for any actions that it takes, or doesn't take, under the medical marijuana facility registry program. Local government has no such immunity despite having many responsibilities related to businesses, land use and public safety.

Many deficiencies in the law were pointed out during the rulemaking process, but may need a legislative fix. See, for example, letter from Rob Bovett, Lincoln County District Attorney, dated November 22, 2013. The Association of Oregon Counties (AOC), of which Marion County is a member, took a position at its December 9, 2013, and January 13, 2014 meetings, to support legislation that would allow local governments to opt out of having marijuana businesses, and to support fixing the many problems and inadequacies with the Oregon medical marijuana dispensary law and program. Although there is legislation currently before the 2014 Oregon legislature that would acknowledge local authority for some time, place and manner restrictions, SB 1531, that bill has already been stripped of a local opt out, and there is no guarantee of its final form, or if it will pass and be signed by the governor. The current state law is HB 3460, as codified, and the OHA regulations.

There is no guarantee or word from the Oregon U.S. Attorney or USDOJ's office that the provisions of HB 3460 or OHA's implementing regulations are sufficient to meet the eight federal priorities. For example, Oregon's law only prohibits a medical marijuana facility within 1,000 feet of a public or private elementary, secondary or career school attended primarily by minors. A USDOJ priority is to prevent the distribution of marijuana to minors. Models of ordinances from Washington State banning or regulating medical marijuana dispensaries prior to the recreational marijuana rule development, as well as the current rule at Washington Administrative Code (WAC) 314-55-050, additionally prohibit a marijuana facility within 1,000 feet of a playground, recreational facility, child care center, public park, public transit center, library, or a game arcade where admission is not restricted to age 21 years or older. Under Colorado's law and rules, a local government may either ban entirely, or impose separate local licensing and approval requirements, including additional buffer zones, 1 CCR R-1401. The Colorado State Licensing Authority specifically noted that United States Deputy Attorney General James M. Cole said that the federal interest in preventing the distribution of marijuana to minors "would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors." Both Washington and Colorado have specific rules regarding the packaging and marketing of marijuana and marijuana-infused products to prevent appeal to children or minors. Preventing packaging and

marketing attractive to minors is a significant concern raised by AOC this session, as well as the fact that current law would not restrict a dispensary located near a preschool.

Another issue is that state law requires a limited background check of the one person listed as responsible for the facility, who could be an owner, operator or other person legally responsible for the facility, but does not require any background checks of employees or other individuals who may be dispensing a controlled substance. This is not sufficiently robust to prevent a facility from being run by a criminal enterprise, gang or cartel, or being used as a cover for the trafficking of other illegal drugs or activities. Marion County's District Attorney has recommended a short list of 11 additional felonies that should be considered in relation to the eight federal priorities, as well as a more comprehensive list. Washington law requires a background check of all applicants, financiers and anyone who exercises control of the business. Under its point system, anyone who has a felony conviction within the last 10 years would exceed the points to qualify for a license. WAC 314-55-040. In Colorado, any applicant with a felony in the last five years would not qualify. 1 CCR R-231. Oregon state law disqualifies an applicant only if he or she has been convicted either more than once, or within five years, for the manufacture or delivery of a Schedule I or II controlled substance. It does not consider any other felonies related to the federal enforcement priorities, and as written, would allow a facility to operate based on a limited criminal history record of an absentee owner.

A significant complication is that HB 3460 required that the business location of the medical marijuana facility and the name of the person responsible for the medical marijuana facility be kept confidential by OHA. Under the OHA rules, applicants will be asked, but not required, to sign an authorization to allow OHA to publish the location of the registered facility, but not the name of the person responsible for the facility. The law also states that OHA shall not publicly disclose the location or the person responsible for the facility, and will verify information on the list only to authorized law enforcement with adequate identification and badge number. Verify means confirm only. For example, as the law and rules read, law enforcement responding to a dispatch to a particular location may call OHA to verify that the location is a registered medical marijuana facility, but OHA would be prohibited from telling law enforcement the name of the person responsible for the facility to contact.

Keeping the location of a registered medical marijuana facility and the person responsible for that facility confidential does not make sense for a registered business. No protected health information or individually identifiable health information would be disclosed by allowing the public disclosure to local government of the location of a registered medical marijuana dispensary and the person responsible for that facility. These confidentiality restrictions are also contrary to public comment received by the board from some medical marijuana facility business owners and individuals who want to operate in an open, above board business manner.

Due to the lack of transparency and confidentiality of the location of medical marijuana facilities and the identity of the person responsible for the facility under state law, the county is significantly impeded or finds it impossible to carry out many of its local responsibilities related to medical marijuana facilities including but not limited to assessment and taxation of the real and personal property of the business, land use planning and permitting, public health and safety, and contract compliance. Voluntary disclosure to local government by some medical marijuana dispensary facilities, but not required of all, does not allow for consistent implementation of local responsibilities

or equal treatment of medical marijuana facilities. For these reasons, Marion County's position is that medical marijuana dispensary facilities are banned unless the facility has obtained a Marion County ban exemption permit.

D. Zoning. Some of the provisions of HB 3460 and its implementing OHA rules are in conflict with other state laws, particularly land use laws, insofar as registering and thereby purporting to allow medical marijuana facilities in agricultural zones. Zoning and land use approval lies within the jurisdiction of local government under a proscribed state scheme. The Department of Land Conservation and Development (DLCD), the state agency charged with overseeing the state land use system, specifically commented that registration of a medical marijuana facility by OHA neither equates to, nor substitutes for land use approval. Letter from Katherine Daniels, DLCD, submitted to OHA rulemaking, October 25, 2013. Communications with DLCD staff state that not all commercial, industrial, mixed use and agricultural zones are appropriate for medical marijuana facilities. "For instance, neighborhood commercial zones might not be suitable locations, and exclusive farm use zones don't permit such facilities." "[L]ocal zoning must be consistent with state standards for exclusive farm use zones, forest zones, and mixed farm-forest zones. The standards allow only certain specified uses in these zones, none of which could be interpreted to allow m[edical] m [arijuana] facilities." E-mail from Katherine Daniels, DLCD staff, dated October 8, 2013. While not binding on DLCD, it is illustrative of the agency's position, with DLCD having standing to appeal a county decision permitting a medical marijuana facility in a farm or forest zone.

First, when considering the proper zone for a new use or facility, the board may refer to the Standard Industrial Classification Manual (SIC) to interpret if the use or facility can fall within an SIC category. The November 18, 2013 memo from planning suggested two possible SIC categories for medical marijuana dispensary facilities, a health care facility and a pharmacy. OHA's rules generally prohibit consumption or other use on the premises, which is more like a pharmacy dispensing product than a health care facility where treatment is provided. OAR 333-008-1200. Also, because of the prohibition against use on the premises, the state medical marijuana dispensary facility law does not authorize registration of facilities that operate as a medical marijuana social club as opposed to a pharmacy model business. Public comment received by the board from medical marijuana dispensary owners, growers and cardholders describe the facilities as store front "dispensaries of medicine," supporting that a pharmacy SIC code would be most similar. They also commented that access and transportation to the facility are considerations for their clients, which is more of an urban-type development concern.

Within Marion County, a pharmacy-type business would be a permitted use in the Commercial Retail, Commercial General and Industrial Commercial zones under the Urban Zone Code, MCC Title 16, and a permitted use in the Commercial zone, a conditional use in the Interchange District zone, and a permitted or conditional use in the Community Commercial zone under the Rural Zone Code, MCC Title 17. However, a medical marijuana dispensary facility, or a pharmacy generally, would not be an allowed use in the Exclusive Farm Use (EFU), Special Agriculture, or forest zones.

E. Agricultural Land. Oregon has a long history of comprehensive land use planning implemented at the local level through state acknowledged comprehensive plans, zoning, subdivision and other ordinances. Included in state law is a strong and highly protective agricultural land use policy that: 1) conserves open agricultural land as a natural resource and an important physical, social, aesthetic

and economic asset; 2) preserves the maximum amount of the limited supply of agricultural land; 3) finds that the expansion of urban development into rural areas is a matter of public concern that increases costs of community services, results in conflicts between urban and farm activities, and results in a loss of natural resources; and 4) finds that "[e]xclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land..." ORS 215.243. See also, Oregon's Statewide Planning Goals and Guidelines, Goal 3: Agricultural Lands, OAR 660-015-0000(3). A "farm use" in relevant part, means the current employment of land for the primary purpose of obtaining a profit by raising, harvesting and selling crops, including the preparation, storage and disposal by marketing or otherwise of the products raised on such land and the on-site construction and maintenance of equipment and facilities to support farm activities. Farm use does not include timber or forest uses, except land used exclusively for growing cultured Christmas trees. ORS 215.203. Other than the farm use itself, Marion County Rural Zone Code also lists buildings customarily in conjunction with a farm use, a farm stand, a facility for processing farm crops if a percentage comes from that farm land, or a commercial activity in conjunction with the farm use at that location.

The Marion County Board of Commissioners likewise has a strong public policy to preserve agricultural lands in Marion County for farm use, and to that effect adopted Resolution No. 13-1 on January 2, 2013, declaring that agriculture holds a high priority in economic development for Marion County. According to OSU Extension Service, Marion County has the highest value of agricultural production of any county in Oregon, and is in the top five in the nation in growing many crops and Christmas trees.

HB 3460 has an internal contradiction in that it states that a medical marijuana facility must be in certain zones, including on agricultural land, yet then specifically states that the medical marijuana facility may not be located at the same address as a grow site. By prohibiting a medical marijuana facility from being located at a grow site, this also disqualifies the facility from consideration as a building customarily in conjunction with a farm use, a farm stand, a processing facility for farm crops, or a commercial activity in conjunction with farm use at that location. Furthermore, a medical marijuana facility may receive transfers of marijuana from more than one grower, or from grow sites that are not located on farm land at all. As stated above, even the state's own agency responsible for land use finds that it would not be appropriate to locate a medical marijuana facility in a farm or forest zone.

To the extent that medical marijuana dispensary facilities are allowed, they should be located in appropriate zones for similar uses of a commercial, storefront pharmacy. Public comment described a number of marijuana-infused products available at the dispensaries, including edibles, organic capsules, oils and tinctures, much like one would find at a pharmacy or health store. Accessibility to facilities by patients was a concern, including transportation to and from the facility. Locating a dispensary miles away from any urban center on farm land would result in an encroachment of urban uses into rural areas. It would also remove or distance the facility from access to other public services, like law enforcement, be less likely to have an inspection from the state or other authorities, and more prone to abuses as a pretext for other illegal activities or criminal cartels.

F. Pre-emption. Local governments are in a precarious position between federal law, which has declared marijuana for all purposes unlawful, state law, which is certifying certain individuals growing, dispensing and using medical marijuana as exempt from criminal prosecution, and the rights of local

government to enact local laws reflective of its citizenry and public policies. Pre-emption is the rule of construction where a higher authority law trumps or takes precedence over a lower authority law. It can happen in one of two ways: 1) a higher level law can expressly pre-empt any lower level laws, or 2) a higher law can be so pervasive as to completely occupy a field from any lower level laws.

On November 5, 2013, Legislative Counsel for the State of Oregon issued an informational opinion to a state representative who asked if local governments were pre-empted from restricting or prohibiting the operation of state-registered medical marijuana facilities in that local governments are pre-empted from most municipal laws on medical marijuana facilities, and that Senate Bill 863, a bill enacted in order to prevent local regulation of genetically modified seeds or crops, might also pre-empt local regulation of medical marijuana facilities despite no apparent legislative intent to do so. However, the opinion does not analyze preemption relative to other contexts like land use laws or contracts, and is not to be relied upon as legal advice for any individual, city or county. Some local government attorneys have expressed disagreement with some or all of the conclusions reached in this legislative counsel opinion. See, for example, League of Oregon Cities' rebuttal to the legislative counsel opinion by Sean O'Day; memo from John R. Huttl, Medford City Attorney, September 5, 2013; memorandum in support of SB 1531 submitted by Bill Kirby, Beaverton City Attorney, February 11, 2014. While SB 863 does contain express pre-emption language, in order for it to prohibit regulation of medical marijuana dispensaries, the state would be asserting that this bill also pre-empts federal law, specifically the CSA. This may be an unconstitutionally overbroad reading of SB 863.

A second opinion issued by Legislative Counsel on February 5, 2014, addressed the question of whether or not ORS 475.314 pre-empted local regulation of medical marijuana facilities in light of several local governments' announced intention to deny a business license on the grounds that it would violate the CSA. This opinion notes that ORS 475.314 does not contain express pre-emption language. It opines that a local government cannot impose additional requirements on the state registration or require local registration, although it further acknowledges that the state has not fully occupied the field so some insignificant local regulation may be allowed. What is noteworthy is that the opinion describes federal pre-emption over state law as a positive conflict so that the two laws cannot consistently stand together, or more commonly "where state law stands as an obstacle to accomplishing and executing the full purposes and objectives of the federal law." However, for this opinion, the discussion was limited to how local law is restricted by state or federal law. According to legislative counsel, "[w]e expressly do not venture any examination for potential conflicts between ORS 475.314 and the CSA"; in other words, the state would have local governments ignore the positive conflict between state and federal law.

A full discussion of the legal basis for pre-emption is beyond the scope of these findings, and a matter that will ultimately need to be decided by the courts or rectified through changes in federal or state law. As acknowledged by the second legislative counsel opinion, the state has not completely occupied the field and ORS 475.314 does not contain express pre-emption language. The attempts to bootstrap SB 863 into a prohibition against local regulation of medical marijuana dispensaries is an overbroad interpretation. [Ord. 1333 Exh. A, 2014.]

5.25.150 References.

1. Marion County Resolution 14-R, Feb. 5, 2014.

2. ORS 203.035.

3. *Gonzales v. Raich*, 545 U.S. 1, 14 (2005).

4. Controlled Substances Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq.

5. U.S. Department of Justice (USDOJ) memorandum from Deputy Attorney General James M. Cole (Cole II), August 29, 2013.

6. USDOJ memo from U.S. Attorney for the District of Oregon, S. Amanda Marshall, August 29, 2013.

7. USDOJ memo from the U.S. Attorney for the District of Oregon, June 3, 2011.

8. NBC News, 02/14/14, *Out of the Shadows: Pot sellers can now do business with banks.*

9. Oregon Uniform Controlled Substances Act, Oregon Revised Statutes (ORS) 475.005 to 475.285.

10. Oregon Criminal Statutes, ORS Chapter 167.

11. Oregon Medical Marijuana Program, ORS 475.300 to 475.346.

12. Oregon Legislature 2013, House Bill 3460.

13. Oregon Health Authority (OHA) temporary rules, Oregon Administrative Rules (OAR) 333-008-1000 to 333-008-0120.

14. Letter from Rob Bovett, Lincoln County District Attorney, dated November 22, 2013, member of Rules Advisory Committee.

15. Association of Oregon Counties (AOC), AOC Position on Marijuana Issues, January 13, 2014.

16. Draft ordinance for Washington cities adopting business license regulations, September 23, 2013; draft ordinance for Washington cities banning medical marijuana dispensaries, October 16, 2013.

17. Washington Administrative Code (WAC) 314-55-050.

18. Colorado Law and Rules, 1 CCR R-1401.

19. Colorado Department of Revenue, Statement of Basis and Purpose – Colorado Rules Governing Retail Marijuana, September 9, 2013.

20. AOC "Top 10 Deficiencies with House Bill 3460 and the OMMP"; AOC written testimony in support of Senate Bill 1531 and the Dash-3 and Dash-4 amendments, February 11, 2014.

21. Memos from Kurt W. Miller, Marion County Deputy District Attorney, to Walter M. Beglau, Marion County District Attorney, January 31, 2014, and February 3, 2014.

22. WAC 314-55-040.

23. 1 CCR R-231.

24. ORS 475.

25. ORS 475.

26. Letter from Katherine Daniels, DLCD, submitted to OHA rulemaking, October 25, 2013.

27. E-mail from Katherine Daniels, DLCD staff, dated October 8, 2013.

28. Memo from Marion County Public Work/Planning to Marion County Board of Commissioners, November 18, 2013.

29. Marion County Urban Zone Code, Marion County Code Chapter 16.

30. Marion County Rural Zone Code, Marion County Code Chapter 17.

31. ORS 215.243.

32. Oregon's Statewide Planning Goals and Guidelines, Goal 3: Agricultural Lands, OAR 660-015-0000(3).

33. ORS 215.203.

34. Marion County Resolution No. 13-1, January 2, 2013.

35. Oregon Legislative Counsel opinion, November 5, 2013.

36. SB 863.

37. League of Oregon Cities, Sean O'Day rebuttal to the legislative counsel opinion.

38. Memo from John R. Huttl, Medford City Attorney, September 5, 2013.

39. Memorandum in support of SB 1531 submitted by Bill Kirby, Beaverton City Attorney, February 11, 2014.

40. Oregon Legislative Counsel opinion, February 5, 2014. [Ord. 1333, 2014.]

The Marion County Code is current through Ordinance 1346, passed August 6, 2014.
Disclaimer: The Clerk of the Board's Office has the official version of the Marion County Code. Users should contact the Clerk of the Board's Office for ordinances passed subsequent to the ordinance cited above.