



City of Prineville
DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
PLANNING COMMISSION STAFF REPORT

File No.:	AM-2015-101
Applicant:	City of Prineville
Notice to DLCD:	04/14/15
Mailed notice:	04/27/15
PC Workshops:	05/05/15
Newspaper Notice:	05/08/15
PC Public Hearing:	05/19/15
Staff:	Joshua Smith Senior Planner

Proposal: The City of Prineville is proposing to amend its Land Use Code Title XV and its General Regulation Code Title IX. The purpose of the proposed amendments is to create rules and regulations for managing Marijuana Activities as allowed by State law, due to the voter passed initiative "Measure 91". These proposals will create new Chapters within their perspective Titles. Chapter "153B" for land use and Chapter "97" for General Regulations.

Staff Findings: The Planning Commission discussed these amendments in a workshop on 05/05/2015.

The following is the language and Findings for the proposed Chapter 153B, followed by language and Findings for the proposed Chapter 97.

153B.001 - PURPOSE

This Chapter establishes regulations for growing, processing and selling of marijuana, here after referred to as "marijuana". State Law has authorized the City of Prineville to allow Marijuana activities, through the voter passed initiative, Measure 91. The purpose of this Chapter is to minimize adverse impacts on the community including but not limited to impacts on traffic, adjacent properties, schools, parks and other places where minors congregate, and other land uses potentially incompatible with such facilities.

FINDING 1: The purpose statement is written to provide a broad context to the intent of the proposed amendment. If a situation arises that the code does not address or addresses inadequately, the purpose statement is used as a final measure in making a decision.

153B.002 – GENERAL PROVISIONS

All marijuana activities shall comply with the provisions of this chapter and Oregon State Law as may be amended from time to time.

Marijuana activities may be allowed, subject to the Marijuana Overlay zone adopted as part of this Chapter and the underlying zone criteria in Chapter 153 of the Code of Prineville. No growing, processing or dispensing of marijuana shall be located within the City unless the reviewing authority finds that it satisfies all the requirements of this Chapter and State law.

FINDING 2: General Provisions are provisions that apply to all uses this amendment is intended to allow. The first paragraph requires compliance with State law and any amendments made to those laws as they pertain to marijuana. The second paragraph restricts marijuana activities to an overlay zone and requires the reviewing authority (*which is both the City and OLCC*) to ensure that all requirements of this chapter and State law are met. The overlay is discussed further in Finding 7.

153B.003 – DEFINITIONS

For the purposes of this Chapter, the following definitions shall be used as well as those listed in State law pertaining to Marijuana and those contained in Chapter 153 of the Code of Prineville.

MARIJUANA DISPENSARY (MD) – means a location where marijuana is sold to a customer.

MARIJUANA GROW SITE (MG) - means a location that grows and/or processes marijuana that exceeds the amounts allowed by State law for an individual or household.

MARIJUANA FACILITY (MF) - means a location that is a combination of a MG and a MD.

MARIJUANA ACTIVITY (MA) – means any use of a location for a MG, MD or MF.

MARIJUANA OVERLAY – means designated areas of the City where MFs, MGs and MDs are allowed.

MINOR – means an individual under the age of 21.

PUBLIC PARK – For the purposes of this Chapter a public park is defined as a public area managed for recreation and attended primarily by minors but excluding bike and pedestrian paths or trail systems and staging areas.

REVIEWING AUTHORITY – means the City of Prineville and/or applicable State agency.

SCHOOL - CAREER SCHOOL – means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training or preparing persons for any profession at a physical location attended primarily by minors.

PRE-SCHOOL – means a school of instruction attended primarily by pre-kindergarten or age level equivalent (ages 2-5).

PRIMARY SCHOOL – (aka elementary school) means a learning institution containing one or any combination of grades kindergarten through 8th grade or age level equivalent.

SECONDARY SCHOOL – means a learning institution containing one or any combination of grades 9 through 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

FINDING 3: These definitions were created for the purpose of writing this code. These definitions are meant to work in conjunction with definitions in State law and other municipal laws.

153B.004 – STANDARDS FOR MARIJUANA ACTIVITIES

The following standards are in addition to laws and regulations set forth by the State of Oregon.

A. License/Registration.

1. An applicant shall provide proof of being registered and/or licensed with the State.

2. An applicant shall obtain a license from the City of Prineville as applicable.

FINDING 4: Requiring proof of a state license as part of the approval process ensures that an applicant is following the state regulations. A city license may be required separately if such a license is created or a business license in general is created.

B. Location.

- 1. A MA shall be located within the approved overlay zone.***
- 2. A MA shall not be mobile.***
- 3. A MD shall not be located within 1000ft. of another MD.***
- 4. A MA may be co-located with a medical marijuana activity so long as the location is in the appropriate overlay zone and meets State Law.***
- 5. A MA shall not be located:***
 - a. Within 1,000 feet of the real property comprising a:***
 - 1. Public or private preschool, elementary, secondary or career school attended primarily by minors; or,***
 - 2. Licensed daycare center; or***
 - 3. County Court House or City Hall; or,***
 - 4. Public library; or,***
 - 5. Public park; except industrially zoned properties above the rimrock***

FINDING 5: It is the intent of this code to regulate recreational marijuana activities similarly to medical marijuana with regard to location. Measure 91 does not have buffer requirements from specific types of uses other than deliveries within a 1000 feet of schools.

To meet the purpose of limiting the exposure of this industry to minors, the City has included the same buffer requirements as the recently passed Medical Marijuana code Chapter 153A.

The City is further restricting the location of marijuana activities to an overlay zone proposed in the south western most portion of the City, commonly referred to as “the hill” or “the grade” (see overlay map). This Overlay map is identical to the Medical Marijuana Overlay in Chapter 153A. The location of the overlay zone serves multiple purposes. First, this location seeks to balance the impact of this new industry by placing it only on currently industrially zoned property that is physically separated from the core of the City. This separation provides a natural buffer from minors and residential property and some surety to an applicant that no schools, parks or daycares will be within 1000 ft. of their business. Second, this location has adequate infrastructure with regard to power, water and sewer to sustain what could be large grow operations. Finally concentrating the activities to one area reduces staff time when determining a legal location and enforcing regulations at the City and State level.

C. Operation.

- 1. Marijuana plants and products shall not be visible to the public other than within the facility itself.***
- 2. Marijuana products shall not be sold through a drive through window.***
- 3. There shall be no burning of plant waste. Plant waste may be composted or disposed of at the County landfill with the County's approval.***

FINDING 6: Keeping marijuana plants and products from public view is consistent with Measure 91 and helps to minimizing the impacts to the community and minors. It also aids in the security of the business by not advertising the amount of product available. Selling marijuana products through a drive through window would bring a more visible aspect to the business and therefore to minors. It may also promote illegal activity that is difficult to enforce. Finally, the City is already having issues with air quality and does not need to add to the problem by allowing this industry to burn its plant waste. Composting is an option and the County landfill may be an option.

D. Overlay Zone.

1. The adoption of this Chapter includes adoption of the Marijuana Overlay zone map attached to this code.

2. The Marijuana Overlay zone is in addition to any requirements of the underlying city zone and shall not be interpreted to supersede any city code or ordinance.

3. Annexation of property within the Urban Growth Boundary (UGB) does not automatically include the property within the MM Overlay. As part of the annexation process the City Council with a recommendation from the Planning Commission shall make the determination on whether to include the property in the Marijuana Overlay using the same criteria listed in 153B.004 (B) and (D)(4).

4. Approval of additional area or areas within the Marijuana Overlay other than through an annexation process requires a zone change which places the overlay upon a property. The Zone Change process shall be in accordance with this Chapter and requirements found in Chapter 153 of the Code of Prineville. Requests for additional areas within the Marijuana Overlay is at the discretion of the City Council, based on the criteria above in section (B) and the following:

a. Shall ensure the health, safety and welfare of minors. The intent is to minimize the exposure of marijuana to minors.

b. Shall only be located within commercial or industrial zones.

c. Shall not be located within the C1 downtown commercial zone.

d. Shall not be located on a commercially or industrially zoned property whose property line is 100ft. from a residential zone or property line of a residential use.

e. Access to the property shall not be primarily through a residential neighborhood except for arterial or major collector streets.

f. Overlay areas may be restricted to a specific type of marijuana activity.

FINDING 7: With the complexity of locating marijuana activities on the valley floor due to potential incompatible uses such as residences and desired buffers from other types of uses. The City has created an overlay zone with the potential to expand if a property can be shown to meet certain criteria. Through the annexation process the City Council may include a property within the overlay without a zone change process; however, the property shall meet the criteria of this chapter. The purpose of this is primarily for properties on the grade that are currently within the UGB but not in City limits and therefore cannot be included in the overlay at this time.

To include a property, an applicant must first demonstrate how the location will ensure the health, safety and welfare of minors. This statement is intended to be broad in order to include other activities not included in the buffer areas; that Council may determine to be

just as important to buffer. Second the property shall only be in a commercial or industrial zoned property. Third, within those zones a buffer of 100ft. is required from a residential zone or property line of a residential use. The purpose of the buffer is to further isolate these uses within the commercial and industrial zones and away from minors. A 100ft. buffer was chosen because it is also the standard notice requirement for any commercial use. Logically, if over 100 ft. is adequate not to receive a notice for any use, then it should create a reasonable buffer. The fourth criteria is again looking out for residential areas by ensuring that the primary access to a commercial or industrial property is not through a residential neighborhood. This type of criteria is not unique to this type of use and is found in other parts of the City's zoning code; such as RV parks and multifamily dwelling complexes. Finally, the City may decide that only a specific type of activity is appropriate at a location and limit the inclusion into the overlay to that activity. The purpose of this is to not exclude a proposal for activities an applicant does not intend to pursue.

153B.006 – APPLICATION PROCESS

A. Applications shall only be processed for properties within the City approved overlay zone.

B. Application shall be processed by the City's Planning Department.

C. Applications for marijuana activities within the overlay zone shall be processed as a Type 1 conditional use as defined in Chapter 153. Application fees shall be consistent with the City's fee schedule for the type of application; such as a change of use or new construction.

D. Notice shall be given to owners of record of property within 200 feet of property that is subject of the notice as shown on the most recent property tax assessment rolls.

E. The underlying zone criteria shall govern the construction of any new structures within the overlay zone, however the use of that structure as an MA shall also meet the criteria of this chapter. Applications for new construction and use may be combined into one application with the fee being the greater of the two.

153B.007 – ENFORCEMENT

The City's Planning Director and Chief of Police are charged with enforcement of the provisions of this Chapter.

153B.008 – PENALTY

Any person or persons who are convicted of violating any provisions of this Chapter shall be fined not more than \$500 for each offense. Each day's violation of this Chapter constitutes a separate offense.

FINDING 8: The application process will function the same as any other application in the City. Applications will be processed as a Type 1 conditional use. This allows an administrative review with the opportunity for a hearing if one or more objections are received. It also allows the conditional use criteria to be utilized by staff to mitigate objections without a hearings process.

The 100ft. buffer described in Finding 7 essentially expands the influence of a residential zone or use. Therefore the notice distance has been increased to 200ft. in order to capture the properties beyond the 100ft. buffer from a residential zone or use.

The underlying zone will still govern all new construction within the overlay. If the intent is to use the structure for a marijuana activity the City should be notified at the time of construction. In that way the City can approve both the structure and the use at the same time. This would ensure that the location meets the requirements of this chapter prior to construction and secure the location as a marijuana activity in the event someone else is approved for a use that may prevent the activity.

97.01 TITLE

This chapter shall be referred to and cited as the “Personnel Marijuana Ordinance” of the City.

97.02 DEFINITIONS

For the purposes of this chapter, the following definitions shall be used as well as those listed in State law pertaining to marijuana.

MARIJUANA – *means all parts of the plant Cannabis family Moraceae, whether growing or not, other than marijuana extracts.*

MARIJUANA EXTRACT – *means a product obtained by separating resins from marijuana by solvent extraction, using solvents other than vegetable glycerin, such as butane, hexane, isopropyl alcohol, ethanol, and carbon dioxide.*

MARIJUANA PRODUCTS – *means products that contain marijuana or marijuana extracts and are intended for human consumption.*

MATURE MARIJUANA PLANT – *means any marijuana plant that is not an immature marijuana plant.*

IMMATURE MARIJUANA PLANT – *means a marijuana plant with no observable flowers or buds.*

97.03 GROWING

(A) The growing of marijuana plants shall not exceed the limits mandated by the State of Oregon.

(B) All marijuana plants shall be grown in an area that can be and shall be secured by a lock, such as a home or other structure such as a greenhouse.

(C) All lighting shall be shielded and directed away from neighboring properties or rights-of-way so as not to create a nuisance.

97.04 PROCESSING

(A) No person shall produce marijuana extract within or adjacent to real property of a residential use.

97.05 POSSESSION

(A) The possession of marijuana shall not exceed the limits mandated by the State of Oregon.

97.06 PENALTY

(A) Any person or persons who shall be convicted or otherwise guilty of a violation of any of the provisions of this chapter, shall be fined not less than \$10, nor more than \$50 for the first offense, and for the second and all subsequent offenses, not less than \$25, nor more than \$500.

(1) All persons responsible shall be liable for any injuries resulting from a violation of any of provisions of this chapter.

(B) Each day's violation of a provision of this chapter constitutes a separate offense.

(1) The abatement of the violation is not a penalty for violating this chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the violation; however, abatement of a violation within ten days of the date of notice to abate, or if a

written protest has been filed, then abatement within ten days of Council determination that a violation exists, will relieve the person responsible from the imposition of any fine or imprisonment under division (A) of this section.

FINDING 9: The purpose of the proposed Chapter 97 is to regulate marijuana at an individual level outside of the land use process, similar to nuisance ordinances found in Chapter 93. The City Council expressed a desire to see how such things as securing home marijuana grows would look like in City code.

Conclusions

City planning staff believes the forgoing code is a balanced and reasonable approach to initially allow this new industry to operate within the City without detrimental impact to the community. Staff respectfully requests the Planning Commission make a formal recommendation to the City Council on the following items:

- Chapter 153B as written or with amendments.
- Chapter 97 as written or with amendments.
- Whether to prohibit marijuana use until the federal law changes other than Medical Marijuana by means of one or all of the following:
 - City License
 - Comprehensive Plan language
 - Land Use Code language

EXHIBITS

Marijuana Overlay Map

PLEASE NOTE: IT IS VERY IMPORTANT THAT THE WORDING OF A MOTION FOR DECIDING ON A LAND USE APPLICATION BE STATED AS PROVIDED BELOW, PRIMARILY TO ENSURE THAT THE STAFF REPORT AND PUBLIC RECORD ARE INCORPORATED INTO THE DECISION AS PART OF THE FINDINGS OF FACT.

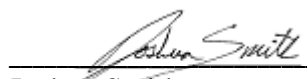
MOTION IN FAVOR

*The Staff Report and record of tonight's proceedings are hereby incorporated as Findings of Fact in Favor of this Amendment. I Move that the application be **Recommended** to City Council for approval.*

MOTION IN OPPOSITION

*The Staff Report and record of tonight's proceedings are hereby incorporated as Findings of Fact in Opposition to this Amendment I Move that the request be **DENIED** based upon Findings of Fact in opposition to the application.*

Date this 8th day of May 2015



Joshua Smith,
Senior Planner