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LEGAL COUNSEL



For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County Code
Title 18, Deschutes County Zoning, to Extend
Recreational Marijuana Retail Hours of Operation.

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ORDINANCE NO. 2021-011

WHEREAS, the Deschutes County Community Development Department (CDD) initiated amendments (Planning Division File No. 247-21-000579-TA) to the Deschutes County Code (DCC) Title 18, Chapter 18.116, Supplementary Provisions, to extend the permitted hours of operation of marijuana retail businesses; and

WHEREAS, the Deschutes County Planning Commission reviewed the proposed changes on July 22, 2021 and forwarded to the Deschutes County Board of County Commissioners ("Board") a unanimous recommendation of approval pending minor clarifications to the proposed language; and

WHEREAS, the Board considered this matter after a duly noticed public hearing on August 25, 2021 and concluded that the public will benefit from the proposed changes to the Deschutes County Code Title 18; now, therefore,

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

Section 1. AMENDMENT. DCC 18.116. Supplementary Provisions, is amended to read as described in Exhibit "A", attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

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

Dated this 8 of September 2021

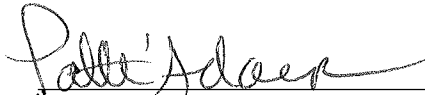
BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


ANTHONY DEBONE, Chair


PHILIP CHANG, Vice Chair

ATTEST:

Recording Secretary


PATTI ADAIR

Date of 1st Reading: 25 day of August, 2021.

Date of 2nd Reading: 8 day of September, 2021.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Anthony DeBone	X	—	—	—
Philip Chang	X	—	—	—
Patti Adair	X	—	—	—

Effective date: 7 day of December, 2021.

Chapter 18.116. SUPPLEMENTARY PROVISIONS

18.116.330 Marijuana Production, Processing, Retailing, and Wholesaling

* * *

- C. Marijuana Retailing. Marijuana retailing, including recreational and medical marijuana sales, shall be subject to the following standards and criteria:
1. Hours. Hours of operation shall be no earlier than 9:00 a.m. and no later than 7:00 p.m. on the same day.
 2. Odor. The building, or portion thereof, used for marijuana retailing shall be designed or equipped to prevent detection of marijuana plant odor off premise by a person of normal sensitivity.
 3. Window Service. The use shall not have a walk-up or drive-thru window service.
 4. Secure Waste Disposal. Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.
 5. Minors. No person under the age of 21 shall be permitted to be present in the building, or portion thereof, occupied by the marijuana retailer, except as allowed by state law.
 6. Co-Location of Related Activities and Uses. Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by the marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot or parcel or within the same building with any marijuana social club or marijuana smoking club.
 7. Separation Distances. Minimum separation distances shall apply as follows:
 - a. The use shall be located a minimum of 1,000 feet from:
 - i. A public elementary or secondary school for which attendance is compulsory under Oregon Revised Statutes 339.010, et seq., including any parking lot appurtenant thereto and any property used by the school;
 - ii. A private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot appurtenant thereto and any property used by the school;
 - iii. A licensed child care center or licensed preschool, including any parking lot appurtenant thereto and any property used by the child care center or preschool. This does not include licensed or unlicensed family child care which occurs at or in residential structures;
 - iv. National monuments and state parks; and
 - v. Any other marijuana retail facility licensed by the OLCC or marijuana dispensary registered with the OHA.
 - b. For purposes of DCC 18.116.330(B)(7), distance shall be measured from the lot line of the affected property to the closest point of the building space occupied by the marijuana retailer. For purposes of DCC 18.116.330(B)(7)(a)(vi), distance shall be measured from the closest point of the building space occupied by one marijuana retailer to the closest point of the building space occupied by the other marijuana retailer.
 - c. A change in use to another property to a use identified in DCC 18.116.330(B)(7), after a marijuana retailer has been licensed by or registered with the State of Oregon shall not result in the marijuana retailer being in violation of DCC 18.116.330(B)(7).

(Ord. 2021-011 §1, 2021; Ord. 2021-004 §7, 2021; Ord. 2020-007 §16, 2020; Ord. 2019-012, 2019; Ord. 2018-012 §3, 2018; Ord. 2016-015 §10, 2016)

FINDINGS

I. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning. The changes are as follows:

- DCC 18.116.330(C)(1): Changes hours of operation for marijuana retailing from 9:00 a.m. – 7:00 p.m. to 7:00 a.m. – 10:00 p.m., in line with OLCC hours.

II. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing a legislative plan amendment. Nonetheless, since Deschutes County is initiating one, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan.

A. Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments were provided to the *Bulletin* for the Board public hearing.

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgments plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on June 9, 2021. The Planning Commission held a public hearing on July 22, 2021 and the Board of County Commissioners held a public hearing on August 25, 2021. The Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands: The proposed amendments do not make changes regarding marijuana's status as a farm crop, or the appropriate location of commercial grow sites and processing operations, and therefore continue to support Statewide Goal 3, to preserve and maintain agricultural lands. The proposed amendments to the County Code are consistent with these provisions of state law and are therefore consistent with Goal 3.

Goal 4: Forest Lands: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 4, and therefore are in compliance.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: Complies because the text amendment does not propose to change the County's Plan policies or implementing regulations for Goal 5 open spaces, scenic and historic areas, and natural resources.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6, and therefore are in compliance.

Goal 7: Areas Subject to Natural Disasters and Hazards: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding natural disasters and hazards; therefore, they are in compliance.

Goal 8: Recreational Needs: Complies because the text amendment does not propose to change the County's Plan or implementing regulations regarding recreational needs.

Goal 9: Economy of the State: Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans. The proposed amendments apply to rural lands but do not propose to amend the Comprehensive Plan. Nevertheless, there are currently two retail marijuana businesses in unincorporated Deschutes County. DCC 18.116.330(C)(1) permits hours of operation from 9am to 7pm for marijuana retail; however, the OLCC permits hours of operation from 7am to 10pm. Increasing the allowable hours has the potential to increase those retail businesses' economic opportunities with respect to sales as well as employment.

Goal 10: Housing: This goal is not applicable because, unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

Goal 11: Public Facilities and Services: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding public facilities and services.

Goal 12: Transportation: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding the Transportation System Plan; therefore, they are in compliance.

Goal 13: Energy Conservation: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding energy conservation.

Goal 14: Urbanization: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding urbanization.

Goals 15 through 19 are not applicable to the proposed text amendments because the County does not contain these types of lands.

D. Deschutes County Comprehensive Plan

Chapter 1, Comprehensive Planning: This chapter sets the Goals and Policies of how the County will involve the community and conduct land use planning. As described above, the proposed regulations will be discussed at work sessions with the Board of County Commissioners, as well as to the Planning Commission, which is the County's official committee for public involvement. Both will conduct separate public hearings.

These actions also satisfy the Goals and relevant Policies of Section 1.3, Land Use Planning Policies. Goal 1 of this section is to "maintain an open and public land use process in which decisions are based on the objective evaluation of facts." Staff, the Planning Commission, and the Board reviewed the text amendments.

Chapter 2, Resource Management: This chapter sets the Goals and Policies of how the County will protect resource lands, including but not limited to, Agriculture and Forest as well as Water Resources and Environmental Quality.

Section 2.2, Agricultural Lands Policies, states that Goal 1 is to "preserve and maintain agricultural lands and the agricultural industry." Retail businesses are not permitted on agricultural lands.

Goal 2 promotes a diversified, sustainable, revenue-generating agricultural sector. Policy 2.2.10 calls for the promotion of economically viable opportunities and practices while Policy 2.2.11 encourages small farming

enterprises including but not limited to, niche markets and organic farming and valued-added projects. The proposed text amendments do not change existing marijuana businesses' ability to operate as a revenue generating agricultural businesses.

Goal 3 specifies the Exclusive Farm Use (EFU) policies, classifications, and codes are consistent with local and emerging agricultural conditions and markets. As noted above, retail businesses are not permitted on agricultural lands so this Goal does not apply.



BOARD OF
COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 8, 2021

SUBJECT: Second Reading: Marijuana Retail Hours Text Amendments (Ord. No. 2021-011)

BACKGROUND AND POLICY IMPLICATIONS:

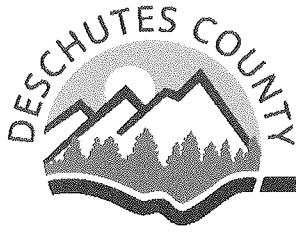
The Board of County Commissioners will conduct a second reading of Ordinance No. 2021-011 on September 8, 2021. The Board held a public hearing on August 25 concerning Ordinance No. 2021-011, legislative amendments to 1) extend the permitted hours for marijuana retail businesses and 2) modify marijuana annual reporting requirements. During deliberations, the Board chose to decouple the two components of Ordinance 2021-011. The amendments addressing the extension of marijuana retail hours were maintained in Ordinance No. 2021-011 and the requisite exhibits; the Board voted to approve the modified ordinance at that time and conducted first reading.

BUDGET IMPACTS:

None.

ATTENDANCE:

Tanya Saltzman, Senior Planner

**MEMORANDUM**

TO: Deschutes County Board of Commissioners

FROM: Tanya Saltzman, AICP, Senior Planner

DATE: September 2, 2021

SUBJECT: Second Reading: Marijuana Retail Hours Text Amendments (Ordinance No. 2021-011)

The Board of County Commissioners (Board) will conduct a second reading of Ordinance No. 2021-011 on September 8, 2021. The Board held a public hearing on August 25 concerning Ordinance No. 2021-011, legislative amendments to 1) extend the permitted hours for marijuana retail businesses and 2) modify marijuana annual reporting requirements.¹ During deliberations, the Board chose to decouple the two parts of Ordinance 2021-011. The amendments addressing the extension of marijuana retail hours were maintained in Ordinance No. 2021-011 and the requisite exhibits; the Board voted to approve the modified ordinance at that time and conducted first reading. The other half of the original text amendment package concerning marijuana annual reporting shall be repackaged into a new ordinance for the Board's separate consideration.

Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on June 9, 2021. Staff initially brought these issues to the Planning Commission for a preliminary discussion on May 13,² and had a subsequent discussion with the Board of County Commissioners on May 24,³ at which time the Board directed staff to initiate the text amendment process. Staff held a public hearing before the Planning Commission on July 22, 2021, at which time the Planning Commission recommended approval of the amendments addressing the change in retail hours. A summary of the proposed amendments and background information was provided to the Board in the packet submitted for its August 18, 2021 work session.⁴

I. PROPOSAL

The proposed text amendments are as follows:

¹ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-4>

² https://deschutescountyor.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2770

³ https://deschutescountyor.iqm2.com/Citizens/Detail_Meeting.aspx?ID=2701

⁴ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-40>

- DCC 18.116.330(C)(1): Changes hours of operation for marijuana retailing from 9:00 a.m. – 7:00 p.m. to 7:00 a.m. – 10:00 p.m., in line with OLCC hours.

The applicant, in this case Deschutes County Community Development, has submitted findings summarizing the amendments and stating that the text amendments are in compliance with the Statewide Planning Goals, and applicable policies of the Deschutes County Comprehensive Plan.

Attachments:

1. Ordinance No. 2021-011
2. Corresponding Exhibits to Ordinance No. 2021-011:
 - Exhibit A – DCC Chapter 18.116, Supplementary Provisions
 - Exhibit B – Findings