

DEPARTMENT OF COMMUNITY SERVICES
LAND USE PLANNING DIVISION
MULTNOMAH COUNTY PLANNING COMMISSION

MINUTES OF DECEMBER 7, 2015

- I. Call to Order:** Chair John Ingle called the meeting to order at 6:30 p.m. on Monday, December 7, 2015 at the Multnomah Building, Room 101, located at 501 SE Hawthorne Blvd., Portland, OR.
- II. Roll Call:** Present - Ingle, Vice-Chair Jim Kessinger, Katharina Lorenz, Chris Foster, Bill Kabeiseman Susan Silodor
Absent - Alicia Denney, Jeremy Sievert
- III. Approval of Minutes: October 5, 2015.**
Motion by Kabeiseman; seconded by Kessinger.
Motion passed.
- IV. Opportunity to Comment on Non-Agenda Items:**
Siva Weilert, who lives by Multnomah Channel, asked why the MUA-20 zones will not permit wholesale marijuana. It was noted that this is actually an agenda item. Adam Barber, Senior Planner, asked if the Commissioners would consider taking public comment, even though this is a worksession. Ingle said they would consider it after the staff report.
- V. Worksession: Marijuana Land Use Regulation in Unincorporated Multnomah County (PC-2015-4551)**
Barber introduced Rithy Khut, Staff Planner, and said they would be giving the staff report in tandem. Barber also introduced the new Land Use Planning Director, Michael Cerbone, and Katherine Thomas, a new Assistant County Attorney, who has been helping with the legal aspects of the marijuana regulations.

Barber updated the Commissioners on the process to date, while Khut provided information on the technical code amendments. There was discussion about the production, processing, wholesaling and retailing in the various zones. The question put to the Planning Commission is where do they feel the regulations should be applied.

There was discussion about the fencing requirements in the Significant Environmental Concern (SEC) zone. Foster mentioned that there is an exemption for agriculture in that zone and wondered how that was going to work. Khut said that if an Ag use in an SEC zone is exempt, marijuana would be exempt just like any other farm use. We're not trying to regulate on a farm crop. Foster said these are industrial type buildings that don't really need to be in some of these zones, and allowing them to be exempt from SEC habitat (SEC-h) fencing regulations does not really serve any purpose. Farmers need to be exempt because they need to contain animals or keep wildlife out of their crops, but if you're talking about an enclosed building, does it make sense to exempt them from SEC fence standards?

Barber said that is something we've thought about as well. We have SEC-h overlays over huge portions of our jurisdiction, and one concern is saying agricultural fences are exempt from these standards, except for marijuana. Foster said just for indoor facilities, just for enclosed buildings. Barber said how would an indoor grow be able to be sited in an area that has a wildlife habitat

overlay, if the standards would disallow the type of fencing or walls that the OLCC (Oregon Liquor Control Commission) is going to require to get the permit. Foster said I'm not sure that they exactly align, the OLCC and the SEC. You could still meet the OLCC, but not go so far as to exempt them completely from SEC. It seems like there is room to comply with OLCC, but still apply, to some degree, the fencing requirement, since it really isn't functional if it weren't for the OLCC, because they're enclosed buildings.

Barber said that is a great point and asked if anyone had any other thoughts, because we have struggled with this. Khut said if we did decide that SEC-h fencing standards would be different for enclosed buildings, that would be one possible route. The idea with the fencing, in addition to security, is screening for an outdoor grow. That might be an avenue; if it's for screening, then you would have to plant some type of hedges, or something like that.

Foster said if it's in the habitat zone and it's ten acres and you're farming that, you can fence the whole ten acres. The OLCC is not requiring you to fence the whole ten acres. So by exempting them, you're allowing them to fence the whole ten acres, and I'm saying that's not necessary.

Kabeiseman said I'm struggling with the idea that this is agriculture and we have to treat it like agriculture. I'm not certain there's an Ag or DLCD regulation that deals with our ability to do that. At the same time, there is a fairly good chance that we'll see a lot of fencing because of security concerns about some of these operations. So how to deal with that, I don't know.

Kessinger said OLCC is only referring to outdoor grows when it talks about fencing. Foster thought the OLCC wants to enclose buildings also. Kabeiseman said I think even indoor grows are going to see fencing for security reasons. Kessinger asked if that was optional. Foster said right now, the way it's written, we're going to exempt them from all SEC-h fencing standards. I'm saying that maybe in this case, that's not necessary because it's not like a typical farm where you're trying to fence your animals or keep wildlife out. Kessinger said for an outdoor grow you would want to have that ability. Foster said we're really not going to see grows in Multnomah County, they're going to be buildings. Kessinger said then it doesn't seem like the fencing standard applies; why do we need a fence around a building? Foster said that's my point, you may need some fencing, but you don't need to fence the whole ten acres.

Adam said this specific standard is something we've thought about and need to do more work on. What I've heard from my colleagues in southern Oregon is marijuana grows tend to have chain link fences with black plastic to screen views, and we had some concerns that we might start to see that in our jurisdiction. So we started to draft rules that were more restrictive, but since we really aren't sure how fencing might evolve over time, we backed off and said that fencing must meet applicable standards. Frankly, I had forgotten about the exemption. I'm not sure that exemption would apply to wholesaling, processing and retail, but it would for production, so I think you're right, we do have a gap that we need to look at.

Silodor said I don't think we can move forward on the assumption that there will not be any outdoor grows in Multnomah County. I think that will get us in trouble in the long run because it's entirely possible there could be. So, as long as we keep the entire picture in the picture, we'll be better served, rather than brushing outdoor grows to the side, because I think that will be a mistake in the long run.

Khut continued on with the staff report, which included home occupations and commercial activities in relation to marijuana and whether or not we allow them. For now, we will not allow marijuana businesses as home occupations, primarily because the OLCC will not enter residences for compliance inspections.

Barber brought up a concern about the Commercial Forest Use (CFU) zone, because they are not always used strictly for forest operations, you can also have farming and residential lands. Right now, the draft rules are proposing either outdoor or indoor production, and we are concerned about the OLCC rules allowing buildings up to 10,000 s.f. for indoor grows. We do not ordinarily see buildings that large in our forest zone. Currently, in our code, if a proposed accessory structure exceeds 2,500 s.f., we need to do a discretionary land use decision to see if it's customarily accessory to similar uses in the area. If we leave the code as proposed, that's fine for the marijuana business. But if the property changes hands and no one is growing in that building any longer, there may not be an appropriate use to backfill that building to fit in that zoning district. We don't share that concern in the farm zone because barns and farm buildings tend to be large, but in the CFU, we don't see as much development. If the Commission shares that concern, we could limit CFU zones to outdoor grows only, or allow indoor grows with non-rigid structures, such as greenhouses and hoop houses so they're not intended to be permanent and the structures could be easily decommissioned. Another option would be to set a limit in the code for buildings, which could extend to other zones outside of the Commercial Forest Use district. The Orient Commercial Industrial (OCI) zone allows small scale, low impact commercial uses up to 4,000 s.f., so that could be a possible benchmark.

Foster said I would support something like that. However, can you put a limit on the building size under the OLCC rules? I think you're stuck with their rules. And aren't there two tiers of building sizes, a 5,000 and a 10,000? Barber said yes. Foster said could you just allow the lower tier? Barber said maybe that's one way to go, but that seems like a legal question. Cerbone clarified that the 5,000 s.f. canopy size in the OLCC rules refers to the grow area, and there could be other support facilities that would exceed that. Foster said I would support reeling it in a bit in the CFU because these are industrial buildings that really don't need to be there.

Kabeiseman said I share the same concern, and the fact that we don't have such structures in the CFU, I would support some limitations as well. Foster said maybe you could give us a range. Kabeiseman said I would even consider outdoor only in the CFU. Foster concurred. Or the temporary structures, if there's some way to make that work.

Lorenz said I haven't seen it in any other jurisdictions, except in reference to retail, about the restriction of a 1,000 foot setback from schools; do we want to look at that for production as well? Barber said if we exclude production within 1,000 feet of a school, and a producer comes in, we would say you can't start a production facility here. But if a production facility was there and a school came in, I'd be a little nervous about saying you can't site your school there. Cerbone said we would treat that as a non-conforming use.

Lorenz said I realize you can't do anything about that aspect of it, but I think at this point, you want to prevent someone from coming in next to a school. Cerbone said the city I worked for prior to coming here put a 1,000 foot buffer off state licensed day care facilities on their medical ordinance. The question I ask is, what is the intent of doing that? With retail, people could potentially purchase it for a young person, but with a grow facility or wholesale, those things are a lot more controlled in terms of what comes in and what goes out, so the likelihood of them being

able to get something out of the building is pretty unlikely. Lorenz said I wasn't thinking of the wholesale or the processing, just growing, especially if it's an outdoor grow facility. Khut said, again, marijuana would have to be screened and it would be an 8-ft fence, so security measures would be in place. Cerbone said I think in terms of the outdoor, it's something we can take a look at.

Ingle said we typically do not have public testimony for a worksession, but given the nature of the small group, we will allow public comment.

Ms. Weilert declined, stating that her questions had been answered during the discussion.

William (did not spell last name) wanted clarity on outdoor grows. His leased facility is located in the OCI and is about 10,000 s.f., along with hoop houses. We chose that area to get away from the city. We thought we were doing our due diligence by making sure we weren't near schools, etc. He also mentioned that he does see outdoor grow facilities in Multnomah County.

Barber said because the OCI is one of our densest zones, the concept was to limit impacts to neighbors by limiting it to indoors only. Currently, as it's proposed, there would be no outdoor growing in the OCI zoning district.

Barber closed with stating that staff has a list of things to research, such as fencing standards and CFU zones. We are planning on a February 1st hearing on this topic and anticipate a large audience.

VI. Director's Comments:

Barber talked in depth about the proposed 2016 work program, explaining the reasoning behind the priorities.

Barber told the Commissioners that we are in the process of hiring a compliance planner. This is a new land use planner position that will be focused on resolving compliance issues with the community. We intend it to be a proactive role, someone who is out in the community and can talk about trends and issues and opportunities. We hope to use this position to engage with the community to see how the compliance program is being perceived and how effective it appears to be. We also hope this person will be able to help with field inspections related to conditions of approval to ensure the approval criteria are met.

Barber announced that Rithy Khut has accepted a position as a current planner, so he will be transitioning from long range planning.

We are also in the process of recruiting for former Commissioner DeBonis's seat and hope to have someone seated soon.

Barber announced that our January meeting will be cancelled because we need to focus on the marijuana hearing for February.

Cerbone gave an update on the Comprehensive Plan process. He said we are probably looking at September or October for the County Commission. We anticipate having a preliminary draft Comprehensive Plan available for public review mid-March, with open houses the end of March.

If that schedule holds, we will be coming to the Planning Commission for a worksession in April with a May public hearing.

Silodor asked about the Dark Skies ordinance, especially with regards to signage. She brought up the illuminated sign that the Fire District on Sauvie Island recently unveiled. Barber said we initially did not want to get into the sign code because it is already pretty detailed, but he was surprised that County code allows illuminated signs in the rural area, so this could be an opportunity to make some changes. The project is close to going to hearing, but we still need to do a bit of work so we don't set up a system that will be problematic for our compliance staff or landowners.

Meeting adjourned at 8:50 p.m.

The next Planning Commission meeting is tentatively scheduled for February 1, 2016.

Recording Secretary,

Kathy Fisher