



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

File No.: AM-2015-100
Applicant: City of Prineville
Location: City of Prineville
Notice to DLCD: 01/27/15
PC Workshops: 02/03/15 & 02/17/15
Newspaper Notice: 02/20/15
PC Public Hearing: 03/03/15
Staff: Joshua Smith
Senior Planner

Proposal: The City of Prineville is proposing to amend its Land use Code. The purpose of the proposed amendment is to create rules and regulations for managing Medical Marijuana Activities. This proposal will create a separate chapter (153A) instead of integrating the proposal into the existing land use code; chapter 153.

Staff Findings: The Commission discussed this amendment in two workshops prior to this public hearing on 02/03/2015 and 02/17/2015.

The following is the language and findings for the proposed amendment to the City's land use code, creating Chapter 153A regulating medical marijuana in the City of Prineville.

153A.001 - PURPOSE

This Chapter establishes regulations for growing, processing and dispensing of medical marijuana. State Law has authorized the City of Prineville to allow Oregon Medical Marijuana Act activities. 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 to making a decision.

153A.002 – GENERAL PROVISIONS

All Medical Marijuana activities shall comply with the provisions of this chapter and Oregon State Law as amended. State laws regarding Medical Marijuana can be found in Oregon Revised Statutes 475.300 through 475.346.

Medical Marijuana activities may be allowed, subject to the Medical Marijuana Overlay zone adopted as part of this Chapter and the underlying zone criteria in Chapter 153. No growing, processing or dispensing of Medical 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 medical marijuana. The second paragraph restricts medical marijuana activities to an overlay zone and requires the reviewing authority (*which is both the City and OHA*) to ensure that all requirements of this chapter and State law are met. The overlay is discussed further in Finding 7.

153A.003 – DEFINITIONS

For the purposes of this Chapter, the following definitions shall be used as well as those listed in State law ORS 475.302 pertaining to Medical Marijuana.

MEDICAL MARIJUANA DISPENSORY (MMD) – means a location registered under ORS 475.314 where medical marijuana is dispensed to a registry identification cardholder.

MEDICAL MARIJUANA GROW SITE (MMG) - means a location registered under ORS 475.304 where marijuana is grown and processed for use by a registry identification cardholder.

MEDICAL MARIJUANA FACILITY (MMF) - means a location that is growing and/or processing and dispensing Medical Marijuana.

MEDICAL MARIJUANA ACTIVITY (MMA) – means any combination of growing, processing or dispensing Medical Marijuana.

MEDICAL MARIJUANA OVERLAY (MM) – means a designated areas of the City where MMFs, MMGs and MMDs are allowed.

MINOR – means an individual under the age of 18.

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: Some of these definitions are found in state law and others like Medical Marijuana Facilities and Medical Marijuana Activities were created for the purpose of writing this code. These definitions are meant to work in conjunction with the same or similar phrases defined in other laws.

153A.004 – STANDARDS FOR MEDICAL 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 with the State in accordance with the Medical Marijuana Act and as stated in ORS 475.300 – 475.346 as amended.

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 MMA shall be located within the approved MM overlay.*
2. *A MMA shall not be mobile.*
3. *A MMD shall not be located at the same address as a MMG.*
4. *A MMD shall not be located within 1000ft. of another MMD.*
5. *A MMA 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. *Public library; or,*
 4. *Public park; or,*
 5. *County Court House or City Hall*

FINDING 5: State law requires a 1000 ft. buffer from schools and between dispensaries. It also does not allow dispensaries to be located at the same address as a grow operation.

To meet the purpose of limiting the exposure of this industry to minors, the City has also included the County Court House, City Hall, public library, public parks and licensed daycares within the 1000 ft. buffer. The Court house and City Hall have large open spaces where minors can and do congregate.

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). 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: First, keeping marijuana plants and products from public view is consistent with 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. Second, 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 Chapter 153A includes adoption of the MM overlay zone map attached to this code.

2. The MM 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 MM overlay using the same criteria listed above in section (B) and the criteria below in section (D)(4).

4. Approval of additional area or areas within the MM 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 the City Land Use Code Chapter 153. Requests for additional areas within the MM 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 on a commercially or industrially zoned property whose property line is 100ft. from a residential zone or property line of a residential use.

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

e. Overlay areas may be restricted to a specific type of use such as a dispensary only or grow operation only.

FINDING 7: With the complexity of locating Medical Marijuana activities on the valley floor due to potential incompatible uses such as residences and required 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 buffer. Second the property shall only be in 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.

153A.006 – APPLICATION PROCESS

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

B. Applications for Medical Marijuana Activities 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.

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

D. The underlying zone criteria shall govern the construction of any new structures within the overlay zone, however the use of that structure as an MMA 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.

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 and 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 that would have gotten notice without the 100ft. buffer.

The underlying zone will still govern all new construction within the overlay. If the intent is to use the structure as an MMA 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 an MMA in the event someone else is approved for a use that may prevent an MMA.

AM-2015-100
Medical Marijuana

Conclusions

City planning staff believes the forgoing code is a balanced and reasonable approach to 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.

EXHIBITS

Exhibit A – MM 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.

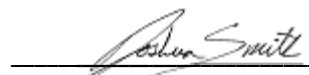
MOTION IN FAVOR

*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 24th day of February 2015



Joshua Smith, Senior Planner