

ORDINANCE NO. 2016-07

**ORDINANCE AMENDING FOREST GROVE DEVELOPMENT CODE ARTICLE 3, ARTICLE 7, AND ARTICLE 8 TO ADDRESS MARIJUANA FACILITIES;
FILE NO. 311-15-00028-PLNG**

WHEREAS, the City Council on April 28, 2015, adopted Ordinance Numbers 2015-02 and 2015-03 amending the Development and City codes to establish regulations for the development and operation of Medical Marijuana Dispensaries;

WHEREAS, the Oregon Legislature enacted House Bill 3400 (ORS 475B 2015), which pertains to laws for regulation and control of marijuana related activities;

WHEREAS, House Bill 3400, authorizes local jurisdictions to adopt time, place and manner regulations for the operation of marijuana facilities;

WHEREAS, House Bill 3400 prohibits medical and commercial marijuana processors if processing marijuana extracts and marijuana dispensaries and commercial retail stores in exclusively zoned residential districts;

WHEREAS, staff has prepared a code analysis pertaining to the allowance by zone district, and development and operational requirements for all regulated marijuana activities regulated by the State;

WHEREAS, residential zone districts in Forest Grove may not be considered exclusively zoned residential districts because other uses such as neighborhood stores, parks and other non-residential uses are allowed in the various residential zone districts;

WHEREAS, the City Council during work sessions held on September 14 and November 9, 2015, expressed that marijuana facilities regulated by the State should not be banned in Forest Grove but should be properly placed including avoiding any facilities in residential areas;

WHEREAS, the City has prepared proposed amendments to the Development Code pertaining to the placement and requirements for marijuana activities; and

WHEREAS, the Planning Commission held a duly-noticed Public Hearing on the proposed amendments to the Development Code on January 19, 2016.

WHEREAS, the Planning Commission's Decision No. 16-03 recommends the City Council approve the proposed changes to the Development Code with amendments; and

WHEREAS, the City Council held a duly-noticed Public Hearing on March 14 and

continued the hearing on March 28, 2016, to consider the Planning Commission's recommendation.

NOW, THEREFORE, THE CITY OF FOREST GROVE ORDAINS AS FOLLOWS:

Section 1. The City Council adopts the Planning Commission findings dated February 4, 2016.

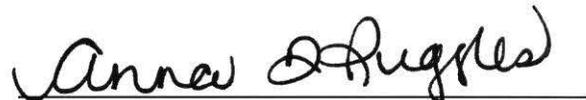
Section 2. Based on the findings set forth in Section 1, the City Council adopts the Planning Commission recommendation and approves the Development Code text amendment as shown on Exhibit A.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 4. This ordinance shall be effective 30 days following its enactment by the City Council.

PRESENTED AND PASSED the first reading this 14th day of March, 2016.

PASSED the second reading this 28th day of March, 2016.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 28th day of March, 2016.



Peter B. Truax, Mayor

Exhibit A

Marijuana Activities

Development Code Amendments as Adopted by City Council

File Number 311-15-000028 - PLNG

The following are proposed amendments to the Development Code pertaining to marijuana related activities:

1. Prohibit Marijuana Retail Sales in Residential Districts

Amend Footnote 10 from Table 3-2 – Residential Zones. It pertains to General Retail Sales – Oriented use in the Residential Zone Districts including R-10, R-7, R-5, RML and RMH. The amendment would be as follows:

[10] A neighborhood store, limited to a size of 2,000 square feet, is permitted with approval of a conditional use permit. Any No retail outlet regulated by the Oregon Liquor Control Commission other than operating under an Off-Premises Sales License is not allowed in any residential zone district. Stores must be located along a collector street.

~~Off-Premises Sales License pertains to the sale of sealed malt beverages, wine and cider. This amendment would prohibit any retail outlet for marijuana or hard liquor in residential areas (in the event an initiative is approved to allow hard liquor sales in stores) while allowing typical convenience store items such as beer, wine and cider.~~

2. ~~Amend the definition of “Neighborhood Stores” to explicitly exclude marijuana retail outlets in Residential Districts~~

~~Amend Development Code Section 10.12.210 N1 to revise definition of “neighborhood store” to not allow retailers to locate in residential districts as follows:~~

~~N1 Neighborhood Store. A commercial structure of 2,000 square feet or less providing goods and services to a neighborhood area. Such store is intended to provide convenience items to reduce the need for longer trips, and is not intended to provide goods and services which would encourage trips from throughout the community. Stores for marijuana retail use is not included in the definition of neighborhood store.~~

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3. Prohibit Marijuana Grow Sites within Residential Zone Districts

Amend Footnote 11 on Table 3-2, Residential Zones: Use Tables to prohibit grow sites in Residential Districts as follows:

[11] Agriculture uses such as truck farming and horticulture are permitted. Commercial agriculture uses including but not limited to marijuana grow site for commercial or medical purposes as regulated by the State and buildings and the keeping of livestock and poultry (other than ordinary household pets, and domesticated fowl as identified in footnote (1+2)) are not permitted}.

4. Prohibit Marijuana Retail outlets in the Neighborhood Commercial District ~~and prohibit taverns, lounges or other commercial uses intended for the on-site consumption of marijuana related products~~

Amend Table 3-10, Commercial Use Zones Use Table as follows:

TABLE 3-10 Commercial Zones Use Table

USE CATEGORY	NC	CC
<u>RESIDENTIAL</u>		
Household Living	L ^[1]	L ^[2]
Group Living	N	P
Transitional Housing	N	C
Home Occupation	L ^[3]	L ^[3]
Bed and Breakfast	L ^[4]	P
<u>CIVIC / INSTITUTIONAL</u>		
Basic Utilities	P	P
Major Utility Transmission Facilities	C	C
Colleges	N	C
Community Recreation	N	P
Cultural Institutions	P	P
Day Care	P	P
Emergency Services	C	C
Postal Services	C	P
Religious Institutions	C	P
Schools	C	C
Social/ Fraternal Clubs / Lodges	C	P
<u>COMMERCIAL</u>		
Commercial Lodging	N	L ^[5]

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Eating and Drinking Establishments	L ^{[6] [7]}	P ^[7]
Entertainment – Oriented: - Major Event Entertainment	N	N
- Outdoor Entertainment	N	N
- Indoor Entertainment	N	P ^[7]
General Retail: - Sales – Oriented	P L ^{[8] [7]}	P L ^{[8] [7]}
- Personal Services	P	P
- Repair – Oriented	P	P
- Bulk Sales	N	P
- Outdoor Sales	L ^{[7] [8]}	L ^{[7] [8]}
- Animal – Related	N	P
Medical Centers	N	L ^{[11] [12]}
Motor Vehicle Related: - Motor Vehicles Sale / Rental	N	L ^{[8] [9] [9]}
- Motor Vehicle Servicing / Repair	N	P
- Motor Vehicle Fuel Sales	P ^[9]	P
Non-Accessory Parking	N	P
Office	P	P
Self-Service Storage	N	C
<u>INDUSTRIAL</u>		
Industrial Services	N	N
Manufacturing and Production: - Light Industrial	N	C ^{[10] [11] [11]}
- General Industrial	N	N
Railroad Yards	N	N
Research and Development	N	N
Warehouse / Freight Movement	N	N
Waste – Related	N	N
Wholesale Sales	N	N
<u>OTHER</u>		
Agriculture / Horticulture	L ^{[13] [15] [14]}	L ^{[13] [15] [14]}
Cemeteries	N	N
Detention Facilities	N	N
Mining	N	N
Wireless Communication Facilities	L ^{[12] [14] [13]}	L ^{[12] [14] [13]}

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P=Permitted

L=Limited

C=Conditional Use

N=Not Permitted

Footnotes:

- [1] Residential units are permitted in conjunction with a mixed-use development in the NC zone, at a minimum density of 3.48 and a maximum density of 4.35 dwelling units/net acre.
- [2] Residential units are permitted as a stand-alone use or as part of a mixed-use development in the CC zone, at a minimum density of 16.22 units/net acre and a maximum density of 20.28 units/net acre. Stand-alone residential projects shall have a minimum density of 16.22 units/net acre. There is no minimum density requirement when residential units are constructed over first floor commercial uses.
- [3] Home occupations permitted as an accessory use to residential development, subject to compliance with the home occupation standards in Article 7.
- [4] Bed & breakfast inn limited to three (3) guest rooms in the NC zone, subject to compliance with the bed & breakfast inn standards in Article 7.
- [5] Recreational Vehicle Parks require obtaining a conditional use permit and compliance with the requirements of Section 10.5.500 et. seq. All other commercial lodging uses are permitted.
- [6] Restaurants are permitted in the NC zone (drive-through service is prohibited).
- [7] ~~Establishments are prohibited where a portion or all of the facility is intended for the on-site consumption of marijuana, cannabinoid concentrate or cannabinoid extract.~~
- [~~8~~ 7] Marijuana retailers are prohibited in the Neighborhood Commercial Zone District and permitted within the Community Commercial Zone District consistent with the locational requirements of state law and comply with the requirements of Section 10.8.1100 of this code.
- [~~7~~ ~~9~~ 8] Outdoor sales in the NC zone are limited to plants and produce. Outdoor sales areas in the CC zone must be set back at least ten (10) feet from street lot lines and lot lines abutting residential zones and the setback area must be landscaped.
- [~~8~~ ~~10~~ 9] Cleaning, sales and repair of motor vehicles and light equipment is permitted outright in the CC zone; sales and rental or heavy vehicles and farm equipment and/or storage of recreational vehicles and boats permitted with conditional use approval.
- [~~9~~ ~~11~~ 10] Automobile service station in the NC zone is limited to fuel sales and incidental repair service.

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[~~10~~ ~~12~~ 11] As a conditional use pursuant to Section 10.2.200 et. seq., light industrial uses limited within a building no larger than 5,000 square feet in size with no visible emissions or odor outside the building, and with the added criteria that such use does not detract from the commercial viability of the area.

[~~11~~ ~~13~~ 12] Medical marijuana dispensaries must be located consistent with the requirements of ~~ORS 475.314~~ state law and comply with the provisions of Section 10.8.1100 of this code.

[~~12~~ ~~14~~ 13] Wireless communication facilities are regulated by the standards in Article 7.

[~~13~~ ~~15~~ 14] Domesticated fowl are allowed in conjunction with existing single-family uses and primarily for personal use. Domesticated fowl are allowed subject to these conditions.

- a. Up to 4 adult fowl over 6 months of age may be kept on any lot with a minimum area of 5,000 square feet. One additional adult fowl shall be permitted for each 2,000 square feet of additional lot area, up to a maximum of 12 fowl.
- b. No roosters shall be permitted.
- c. Animal waste matter shall not be allowed to accumulate.
- d. All animal food shall be stored in metal or other rodent-proof containers.
- e. Fencing shall be designed and constructed to confine all animals to the owner's property.
- f. All structures that house fowl shall be located at least 20 feet from all residences (except the animal owner's).
- g. All structures that house fowl shall be located at least 5 feet from any side or rear property line.

5. Allow Medical Marijuana Dispensaries and Marijuana Retail activities and ~~prohibit taverns, lounges or other commercial uses intended for the on-site consumption of marijuana related products within the Town Center Zone Districts~~

Amend Table 3-12, Town Center Zones: Use Table to allow medical marijuana dispensaries and marijuana retailers to locate in Town Center Districts.

**TABLE 3-12
Town Center Zones: Use Table**

USE CATEGORY	TC-Core	TC-Transition	TC-Support
<u>RESIDENTIAL</u> Household Living	L ^[1]	L ^[1]	L ^[1]
Group Living	P ^[1]	P	P
Transitional Housing	N	C	C
Home Occupation	L ^[2]	L ^[2]	L ^[2]

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Bed and Breakfast	C ^[2]	P	P
<u>CIVIC / INSTITUTIONAL</u> Basic Utilities	P	P	P
Major Utility Transmission Facilities	C	C	C
Colleges	C	C	C
Community Recreation	N	P	P
Cultural Institutions	P	P	P
Day Care	P	P	P
Emergency Services	C	C	C
Postal Services	C	P	P
Religious Institutions	C	P	P
Schools	C	C	C
Social/ Fraternal Clubs / Lodges	C	P	P

<u>COMMERCIAL</u> Commercial Lodging	L ^[3]	L ^[3]	L ^[3]
Eating and Drinking Establishments	p ^[4] p^[5]	p ^[4] p^[5]	p ^[5]
Entertainment – Oriented: - Major Event Entertainment	N	N	C ^[5]
- Outdoor Entertainment	N	N	N
- Indoor Entertainment	p ^[5]	p ^[5]	p ^[5]
General Retail: - Sales – Oriented	p ^[7-6]	p ^[7-6]	p ^[7-6]
- Personal Services	P	P	P
- Repair – Oriented	P	P	P
- Bulk Sales	L ^[5-6-5]	L ^[5-6-5]	L ^[5-6-5]
- Outdoor Sales	N	N	N
- Animal – Related	N	N	N
Medical Centers	N	C ^[6-7-6]	C ^[6-7-6]
Motor Vehicle Related: - Motor Vehicles Sale / Rental	N	N	N
- Motor Vehicle Servicing / Repair	N	N	N
- Motor Vehicle Fuel Sales	N	N	N

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Non-Accessory Parking	N	C	C
Office	L ^[3]	P	P
Self-Service Storage	N	N	N

<u>INDUSTRIAL</u>			
Industrial Services	N	N	N
Manufacturing and Production:			
- Light Industrial	N	C	C
- General Industrial	N	N	N
Call Centers	L ^{[7][8] [8][9] [7][8]}	L ^{[7][8] [8][9] [7]}	L ^{[7][8] [8][9] [7]}
Railroad Yards	N	N	N
Research and Development	N	N	P
Warehouse / Freight Movement	N	N	N
Waste – Related	N	N	N
Wholesale Sales	N	N	N
<u>OTHER</u>		N	N
Agriculture / Horticulture	N		
Cemeteries	N	N	N
Detention Facilities	N	N	N
Mining	N	N	N
Wireless Communication Facilities	L ^{[8] [9] 9]}	L ^{[8] [9] 9]}	L ^{[8] [9] 9]}
Information	L ^{[9][10] [11][12] [10][11]}	L ^{[9] [11] 10]}	L ^{[9] [11] 10]}

P = Permitted L = Limited C = Conditional Use N = Not Permitted

Footnotes:

- [1] New dwellings in the TCC zone are only permitted on or above the 2nd floor. There are no minimum density requirements when housing is part of a mixed-use building. In the TCT and TCS zones new dwellings are permitted as “stand-alone” developments or as part of mixed-use developments, but must meet density requirements.
- [2] Home occupations are permitted as an accessory use to residential uses, subject to compliance with the home occupation standards in Article 7.
- [3] Offices only permitted as part of a ground-floor retail or personal service use or as a stand-alone use above the first floor in the TC-Core zone. Recreational vehicle parks are prohibited in all districts.
- [4] Drive through service is prohibited from restaurants in the TC-Core and TC-Transition zones.

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- ~~[5] Establishments are prohibited where a portion or all of the facility is intended for the on-site consumption of marijuana, cannabinoid concentrate or cannabinoid extract.~~
- [5 ~~6~~ 5] Bulk sales stores with a ground floor building footprint smaller than 10,000 square feet are permitted. All merchandise must be enclosed within a building. All other bulk sales are prohibited.
- ~~[6 7 6]~~ Medical marijuana dispensaries are prohibited and marijuana retailers are permitted consistent with the locational requirements of state law and comply with the requirements of Section 10.8.1100 of this code.
- [7 ~~8~~ 7] Permitted where there are no off premise impacts and no product is transported from the site. Centers with any offsite impacts or transport products from the site are to be located in either Light or General Industrial districts.
- [8 ~~9~~ 8] Call Centers shall not be allowed on the ground floor in the TC-Core Zone District.
- [9 ~~10~~ 9] Wireless communication facilities are regulated by the standards in Article 7.
- [10 ~~11~~ 10] Permitted where there are no off premise impacts.
- [11 ~~12~~ 11] Information business is not allowed on the ground floor in the TC-Core Zone District.

6. Prohibit Marijuana related activities as a Home Occupation

Amend Section 10.7.065, Standards to prohibit marijuana related activities as a home occupation as follows:

- 10.7.065 STANDARDS

The home occupation shall not change the residential character of the dwelling and shall meet all of the following standards and limitations:

- A. Any product produced on-site for sale must be hand manufactured or grown using only hand tools or domestic mechanical equipment. Such domestic mechanical equipment shall not exceed horsepower or other measurements of power, which would typically be used by a residential homeowner.
- B. There shall be no outdoor storage of material or products on the premises. Indoor storage of material or products shall not exceed the limitations imposed by the Building, Fire, Health and Housing Codes.
- C. The home occupation shall not generate vehicular traffic measurably in excess of that normally associated with single-family uses.

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- D. No more than 20% of the floor area of the dwelling shall be used for the home occupation.
- E. One sign shall be permitted, not exceeding six (6) square feet in area, non-illuminated and professionally prepared.
- F. The home occupation shall not cause the elimination of required off-street parking.
- G. The home occupation shall not cause any external effects such as increased noise, excessive lighting, or excessive odor that is incompatible with the characteristics of the residential zone, or in violation of any applicable government code.
- H. There shall be no more than two (2) outside paid employees.
- I. A business occupancy permit is required for the home occupation.
- J. All marijuana related activities are prohibited as a home occupation.

7. Revise Development Standards to apply to Marijuana retailer activities

Amend Section 10.8.1100 to include marijuana retailers with development requirements:

10.8.1100 MEDICAL MARIJUANA DISPENSARIES AND MARIJUANA RETAILERS

A medical marijuana dispensary and marijuana retailer activities shall comply with the following design standards and operational requirements in addition to all other applicable City requirements:

- A. The application shall demonstrate compliance with the locational requirements of ~~State law~~ ORS 475B and must maintain State certification at all times.
- B. ~~A medical marijuana dispensary m~~ May not be open to the public between the hours of 10:00 p.m. and 8:00 a.m.
- C. Entrances and off-street parking areas ~~for the medical marijuana facility~~ shall be well-lit and not visually obscured from public view / right-of-way.
- D. The facility must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the facility is prohibited.

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- E. Any modification to the site or the exterior of the building housing the facility must be consistent with the Design Standards of Section 10.8.700 et. seq. Security bars or grates on windows and doors are prohibited unless integrated into the design.
- F. The dispensary or retail operation may not have facilities for drive-up use.
- G. The dispensary must provide for secure disposal or render impotent marijuana remnants or by-products, or items with marijuana residue of any kind.

8. Add new Development Standards to apply to marijuana activities other than dispensaries and retailers

Currently, there are no development standards that would apply to marijuana activities except for dispensaries and subject to approval, marijuana retail outlets. In review of the requirements, staff did not believe the development requirements for the outlets and dispensaries were appropriate for these other activities. As a result, a new Section 10.8.1110 is proposed as follows:

10.8.1110 OTHER MARIJUANA FACILITIES

The following requirements to marijuana related warehouse, processing and grow facilities.

- A. The application shall demonstrate compliance with the locational requirements of State law ORS 475B and must maintain State certification at all times.
- B. Entrances and off-street parking areas shall be well-lit and not visually obscured from public view / right-of-way.
- C. With the exception of outdoor grow operations including the use of removable greenhouses, the facility must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the facility is prohibited.
- D. The facility must provide for secure disposal or render impotent marijuana remnants or by-products, or items with marijuana residue of any kind.
- E. All production, processors, indoor grow operations and outdoor grow operations with greenhouses shall provide a method to control odors. Such facilities shall install and maintain enhanced ventilation systems designed to prevent detection of marijuana odor from adjacent properties or the public right-of-way. The systems shall include the following features:

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1. Installation of activated carbon filters on all exhaust outlets to the building exterior;
2. Location of exhaust outlets a minimum of 10 feet from the property line; 3 feet from exterior walls; and 10 feet above finished grade; and
3. Maintenance of negative air pressure within the facility; or
4. An alternative odor control system approved by the Building Official based on a report by a mechanical engineer licensed in the State of Oregon, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.

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