

**BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF CLATSOP**

In the Matter of:

An Ordinance adopting a Marijuana Code for Unincorporated Clatsop County establishing time, place and manner requirements for marijuana-related businesses

ORDINANCE NO. 18-05

Doc # _____

Recording Date: _____

RECITALS

WHEREAS, Clatsop County Board of Commissioners finds that medical and recreational marijuana exist in a unique regulatory environment; and

WHEREAS, the Clatsop County Board of Commissioners finds that the County has little experience with these types of businesses; and

WHEREAS, the Clatsop County Board of Commissioners finds that it is in the public interest to protect and enhance the County's rural character and appearance; and

WHEREAS, the Clatsop County Board of Commissioners finds that County regulation of the time, place and manner for the establishment and conduct of marijuana-related businesses is in the public interest; and

WHEREAS, the Clatsop County Board of Commissioners finds that Title 5 of the Clatsop County Code, adopted by Ordinance 12-06, concerns business regulations; and

WHEREAS, the Clatsop County Board of Commissioners finds it in the public interest add Section 5.12 to the Clatsop County Code regarding the time, place and manner for the establishment and conduct of marijuana-related businesses;

THE BOARD OF COMMISSIONERS OF CLATSOP COUNTY ORDAINS AS FOLLOWS:

SECTION 1. ADOPTION

The Board of County Commissioners hereby adopts the Clatsop County Marijuana Code as shown in Exhibit A, attached hereto and incorporated herein by this reference.

SECTION 2. SEPARABILITY

The provisions of this ordinance are severable. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 3. CONFORMANCE OF STATE LAW

This Ordinance shall not substitute for nor eliminate the necessity for conformity with any and all laws or rules of the state of Oregon, or its agencies, or any ordinance, rule, or regulation of Clatsop County.

SECTION 4. INCONSISTENT PROVISIONS

This Ordinance shall supersede, control and repeal any inconsistent provision of any County Ordinance as amended or any other regulations made by Clatsop County.

SECTION 5. APPLICABILITY

This Ordinance shall apply within the unincorporated areas of Clatsop County but shall not apply within the boundaries of any incorporated City.

SECTION 6. EFFECTIVE DATE

This Ordinance shall take effect on the 30th day following adoption by the Board of Commissioners as provided in Chapter III, Section 8(B) of the Home Rule Chapter for the Government of Clatsop County.

Approved this ___ day of July, 2018

THE BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON

By _____
Scott Lee, Chair

Date _____

By _____
Theresa Dursse, Recording Secretary

First Reading: _____

Second Reading: _____

Effective Date _____

EXHIBIT A
Chapter 5.12
CLATSOP COUNTY MARIJUANA CODE

Sections:

5.12.010 Policy and purpose.

5.12.020 Definitions.

5.12.030 Applicability.

5.12.040 Standards applicable to all marijuana activities

5.12.050 Marijuana production.

5.12.060 Marijuana processing.

5.12.070 Marijuana wholesaling.

5.12.080 Marijuana retailing.

5.12.090 Marijuana research and testing.

5.12.100 Approval period.

5.12.010 Policy and purpose.

A. The purpose of this Chapter is to establish reasonable time, place, and manner requirements for medical and recreational marijuana production, processing, wholesaling, retailing, research and testing in unincorporated Clatsop County. This is accomplished by providing clear and objective standards for marijuana businesses that minimize conflicts with other uses in underlying zoning districts, as well as protect the public health, safety, and general welfare of the citizens of Clatsop County.

5.12.020 Definitions.

“Production” means the manufacture, planting, cultivation, growing, trimming or harvesting of marijuana or the drying of marijuana leaves and flowers at a location registered under ORS 475B.810 where medical marijuana is produced for use by an Oregon Health Authority (OHA) registry identification cardholder, or produced by a marijuana producer issued a production license by the Oregon Liquor Control Commission (OLCC).

“Processing” means the compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts at a marijuana processing site registered with the OHA or licensed by the OLCC. Processing does not include packaging or labeling.

“Research” means those activities specified in an OLCC-approved research proposal that are conducted by qualified public or private researchers that are in possession of a valid OLCC Marijuana Research Certificate pursuant to OAR 845-025-5300.

“Retail” means the selling of marijuana items to a consumer at site registered as a marijuana dispensary by the OHA or licensed as a retail location by the OLCC.

“Testing” means the testing of marijuana in a laboratory certified by the authority under ORS 438.605 to 438.620 and for the purposes specified within OAR 845-025.

“Wholesale” means the purchasing of recreation marijuana items for resale to a person other than a consumer at a site licensed by the OLCC.

5.12.030 Applicability.

A. Marijuana production, processing, wholesaling, retailing, research, and testing are allowed as a use permitted outright or a use permitted through a Type II review in specific zoning districts as shown on Table 1.

B. Marijuana uses are subject to the applicable standards as described in this Chapter, the underlying zoning district standards, and general provisions of the Land and Water Development and Use

Ordinance #80-14. Where a provision of this Chapter is not consistent with another provision of the Land and Water Development and Use Ordinance #80-14, the more restrictive standards apply.

C. The requirements of this Chapter do not affect the provisions regarding personal use of recreation marijuana found in ORS Chapter 475B and OAR Chapter 845, Division 25 or personal use of medical marijuana under the Oregon Medical Marijuana Program, as allowed by state law.

5.12.040 Standards applicable to all marijuana activities

A. The following standards shall apply to all production, processing, wholesaling, retailing, research and testing facilities and activities:

1. **Odor.** As used in this section, building means the building, or portion thereof, used for indoor production, processing, wholesaling, retailing, research or testing. This section does not apply to a building approved as part of outdoor production.
 - a. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
 - b. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
 - c. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
 - d. Negative air pressure shall be maintained inside the building.
 - e. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
 - f. The filtration system shall be designed by a mechanical engineer licensed in the State of Oregon. The engineer shall stamp the design and certify that it complies with all requirements of Clatsop County Code Section 5.12.040(A)(1).
 - g. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.
2. **Noise.** The applicant shall submit a noise study by an acoustic engineer licensed in the State of Oregon. The study shall demonstrate that generators, as well as mechanical equipment used for heating, ventilating, air conditioning, or odor control will not produce sound that, when measured at any property line of the subject property, exceeds 50dB(A).
3. **Security Cameras.** If security cameras are used, they shall be directed to record only the subject property and public right-of-way, except as required to comply with licensing requirements of the Oregon Liquor Control Commission (OLCC) or registration requirements of the Oregon Health Authority (OHA).
4. **Waste Management.** 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. Outdoor storage of marijuana waste is prohibited. Marijuana waste burning is prohibited.

5.12.050 Marijuana production.

A. Marijuana production is limited to the zoning districts shown on Table 1 and shall be subject to the following standards and criteria:

1. **Setbacks.** Outdoor production shall be a minimum of 100 feet from all property lines. Any structure used for indoor production shall comply with the structural setback standards of the underlying zone or be located a minimum of 100 feet from an existing dwelling that is not located on the same property as marijuana production use, whichever is greater.

2. **Access.** The subject property shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject property. However, the easement standard will be waived if the property takes access via a private road or easement which also serves other properties and evidence is provided by the applicant, in the form of a petition, that all other property owners who have access rights to the private road or easement agree to allow the specific marijuana production described in the application. Such evidence shall include any conditions stipulated in the agreement.
3. **Lighting.** Lighting shall be regulated as follows:
 - a. Light cast by light fixtures inside a building used for marijuana production shall not be visible outside the building between the hours of 7:00 p.m. to 7:00 a.m.
 - b. Outdoor marijuana grow lights shall not be illuminated from 7:00 p.m. to 7:00 a.m.
 - c. Light cast by exterior light fixtures other than marijuana grow lights (e.g., security lights, driveway lights) shall not be directed skyward and shall be directed within the boundaries of the subject property.
4. **Water.** The applicant shall submit:
 - a. A water right permit or certificate number for the proposed marijuana production;
 - b. A statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or
 - c. Proof from the Oregon Water Resources Department that the water to be used for marijuana production is from a source that does not require a water right.
5. **Fencing.** Fencing, walls, or other barriers, as required by state law, shall not be constructed of temporary materials such as plastic sheeting, hay bales, tarps, etc. Fencing shall not be electrified, use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security features designed to discourage ingress through the potential of bodily harm.
6. **Sketch.** Pursuant to OAR 845-025-1030(6)(c), a map or sketch showing the defined boundaries of the premises and location of any primary residence located on the same tax lot is required to be submitted as part of an application for outdoor marijuana production.
7. **Size.** Marijuana production is subject to the size limitations found in OAR 845-025-2040.

5.12.060 Marijuana processing.

A. Marijuana processing is limited to the zoning districts shown on Table 1 and shall be subject to the following standards and criteria:

1. No on-site retail sales are allowed.
2. No outdoor storage of marijuana in any form, including remnants, by-products, and waste is allowed.
3. All marijuana processing shall be located entirely within one or more completely enclosed buildings.
4. Marijuana processing is subject to the lighting, odor, noise, security camera, water, and waste management criteria and standards described in Section 5.12.040, above.
5. Marijuana processing is permitted only on properties located within the boundaries of a fire protection district.

5.12.070 Marijuana wholesaling.

A. Marijuana wholesaling is limited to the zoning districts shown on Table 1 and shall be subject to the following standards and criteria:

1. Wholesale of marijuana to the general public is prohibited.
2. A sample of usable recreational marijuana or a cannabinoid product, concentrate, or extract may be provided to a marijuana wholesaler, retailer, or processor licensee for the purpose of licensee determining whether to purchase the product. The product may not be consumed on the property.

5.12.080 Marijuana retailing.

A. Marijuana retailing is limited to the zoning districts shown on Table 1 and shall be subject to the following standards and criteria:

1. **Hours.** A marijuana retailer may only sell to consumers between the hours of 10:00 a.m. and 8:00 p.m. and may only permit consumers to be present in the building space occupied by the marijuana retailer between the hours of 10:00 a.m. and 8:00 p.m.
2. **Window Service:** The use shall not have a walk-up window or drive-thru window service.
3. **Minors.** No one under the age of 21 shall be permitted to be present in the building space occupied by the marijuana retailer, except as allowed by state law.
4. **On-site Consumption.** Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building or on the property occupied by a marijuana retailer.
5. **Minimum Separation Distances.** Minimum separation distances shall apply as follows:
 - a. 1,500 feet from a public elementary or secondary school for which attendance is compulsory under ORS 339.020, including any parking lot accessory to and any property used by the school; or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot accessory to and any property used by the school.
 - b. 1,500 feet from a public park, public playground, government-owned recreational use, licensed treatment center, transit stop, bus stop, or a multifamily dwelling owned by a public housing authority.
 - c. 1,500 feet from a licensed daycare facility or licensed preschool, including any parking lot accessory to any property used by the daycare facility or preschool.
 - d. 1,500 feet from a house of worship, including any parking lot accessory to and any property used by the house of worship.
 - e. 100 feet from a residentially zoned property, unless the property has frontage on a principal arterial, minor arterial, or major collector, as identified in the Clatsop County Transportation System Plan.
 - f. Pursuant to ORS 475B.486, a marijuana retail facility shall be located a minimum of 1,000 feet from any other medical marijuana dispensary.
 - g. Pursuant to ORS 475B.858, a medical marijuana dispensary shall be located a minimum of 1,000 feet from any other medical marijuana dispensary.
 - h. For purposes of items a-e of this section, distance shall be measured from the lot line of the affected property (e.g., a school) to the closest point of the building space occupied by the marijuana retailer.
 - i. For purposes of items f-g of this section, 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.
 - j. Section 5.12.080(a-g) does not apply to any medical marijuana dispensary or marijuana retailer that has obtained land use approval to operate the facility on or before the adoption date of this Chapter.
 - k. A change in use, including a zone change, on another property to a use identified above after a complete application for a marijuana retailing facility has been filed shall not result in the marijuana retailer being in violation of this section.

5.12.090 Marijuana research and testing.

A. Marijuana research and testing shall be limited to the zoning districts shown on Table 1 and shall be subject to the following standards and criteria:

1. Marijuana testing laboratory use must be conducted entirely indoors.
2. Marijuana research may be conducted in conjunction with marijuana production and processing or as a standalone use as specified in the applicable zoning districts.

5.12.100 Approval period.

A. Approval of a permit pursuant to this section is valid for two (2) years from the date of final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this two-year period, the approval shall be implemented, or the approval will become void.

1. Implemented, as it applied to marijuana production and processing, means all major development permits shall be obtained and maintained for the approved use. If no major development permits are required to initiate the permitted use, implemented means all other necessary County development permits (e.g., grading permit, building permit for an access structure) shall be obtained and maintained. A major development permit is:
 - a. A building permit for a new primary structure that is part of the approved development; or
 - b. A permit issued by the County for parking lot or road improvements required by the approved development.
2. Implemented, as it applied to retailing, wholesaling, research and testing, means that the facility has begun operation and is open for consumer business. Notwithstanding the two-year implementation period, a complete application for a marijuana retailing, wholesaling, research or testing license shall be filed with Oregon Liquor Control Commission, or a complete application for a medical marijuana dispensary registration shall be filed with the Oregon health Authority, within three months of the date of the county's final decision, or the approval will become void.