

Guide to Recreational Marijuana in Exclusive Farm Use Zones - 2015

September 14, 2015

House Bill 3400 (2015), which applies primarily to recreational marijuana, became effective June 30, 2015. The bill makes numerous amendments to Measure 91, which was passed by Oregon voters November 4, 2014. This guide addresses land use issues in exclusive farm use zones related to recreational marijuana raised by HB 3400 and Measure 91 by summarizing the land-use related provisions in sections 33 and 34 that apply beyond permitted personal use.

The guide is not intended to provide legal advice for counties or to substitute for department rulemaking. **Counties should seek guidance from legal counsel in responding to HB 3400.** HB 3400 is a complex bill addressing much more than land use and County codes vary considerably.

Additional information may be found on the Oregon Liquor Control Commission website: <http://www.oregon.gov/olcc/marijuana/Pages/Frequently-Asked-Questions.aspx>.

Questions and Answers:

Q. When did Measure 91 go into effect?

A. The home grow/personal possession provisions of the measure were effective on July 1, 2015. The Oregon Liquor Control Commission will begin issuing commercial recreational marijuana licenses to growers, processors, wholesalers and retailers in 2016.

Q: Is the growing of marijuana a farm use?

A: Yes. Subsection 34(1)(a) of HB 3400 identifies marijuana as a crop for the purposes of determining a "farm use" as defined at ORS 215.203.

Q: What is the significance of defining the growing of marijuana as a farm use?

A: Because the production of marijuana is a farm use as defined at ORS 215.203, and ORS 215.203 applies to exclusive farm use (EFU) zones, it would generally follow that any use that is authorized in EFU zones in conjunction with farm use would also be authorized in conjunction with growing marijuana. However, in anticipation of this possibility, the legislature chose to prohibit certain uses in conjunction with the growing of marijuana.

Q: What uses are prohibited in conjunction with a marijuana crop?

A: Subsection 34(2) of HB 3400 lists the types of uses that are prohibited in conjunction with a marijuana crop. New dwellings in conjunction with a marijuana crop are not allowed. DLCD

interprets this to apply to primary farm dwellings, accessory farm dwellings and relative farm help dwellings. The prohibition applies to all dwellings, and therefore includes both primary farm dwellings subject to an income test, and primary farm dwellings subject to a minimum parcel size test or the capability test. In addition, farm stands used in conjunction with a marijuana crop are prohibited. DLCD interprets this to mean that the sale of marijuana or marijuana products at farm stands is prohibited, as would be any promotional activities in conjunction with marijuana. Finally, commercial activities in conjunction with a marijuana crop are prohibited in EFU zones.

Q: What farm-related uses in conjunction with a marijuana crop are allowable?

A: Besides growing marijuana, agricultural buildings are allowed in EFU zones in conjunction with a marijuana crop, as are small-scale processing facilities under ORS 215.213(1)(u) and 215.283(1)(r). Larger-scale processing facilities would not be allowed, because commercial uses in conjunction with farm use are precluded by HB 3400.

Q: What does marijuana processing include?

A: Marijuana processing includes the processing, compounding or conversion of marijuana into cannabinoid products, concentrates or extracts. It does not include packaging or labeling of marijuana items. Marijuana processing does not include drying marijuana by a marijuana producer, which DLCD considers to be “preparation” of farm products and part of the definition of farm use at OAR 660-033-0020(7)(b)(A).

Q: May counties allow the growing of marijuana in zones other than EFU?

A: Yes. Subsection 34(3) of HB 3400 states that counties may “allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as is the production of marijuana in EFU zones. Because marijuana is identified as a crop for purposes of determining a farm use at ORS 215.203, DLCD interprets this to mean that growing marijuana is allowed in any zone that adopts the statutory definition of farm use in ORS 215.203. The exception would be zones for which counties have adopted a different definition of farm use for non-EFU zones. The other option open to counties that do not wish to permit the growing of marijuana in non-EFU zones is to amend those zones to no longer allow farm use.

Q: How will OLCC permitting be coordinated with local land use approvals?

A: Section 34(4) of HB 3400 requires the OLCC to obtain a land use compatibility statement from both counties and cities for licenses for the production, processing and wholesale and retail sales of recreational marijuana.

Q: Can marijuana products be sold in farm and forest zones?

A: Other than wholesale farm product sales that would be considered to be a farm use, there is no authorization in HB 3400 for marijuana or marijuana product sales in EFU or forest zones.

Q: Can counties otherwise regulate the production, processing or wholesale or retail sale of marijuana and marijuana products?

A: HB 3400, Section 33, states that cities and counties may adopt reasonable conditions on the manner in which a marijuana producer, processor, wholesaler or retailer may produce, process or sell recreational marijuana or marijuana items. Counties considering such conditions should also consider the right-to-farm protections against local nuisance or trespass regulations for producers under ORS 30.93.

Q: Can counties prohibit the growing, processing or sale of marijuana?

A: HB 3400, Sections 133 to 136, describe the circumstances under which counties can adopt ordinances prohibiting the operation or establishment of recreational growers, processors, wholesalers or retailers.