

Guide to the Oregon Building Code and Marijuana Operations

The Oregon Building Codes Division has received numerous inquiries regarding the application of the Oregon Building Code in conjunction with marijuana operations. To provide some guidance, the division has developed a series of questions and answers. This document is not intended to provide legal advice to local building officials or substitute for department rule making.

For additional information, please contact:

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Questions and Answers

Q: In general, how does the Oregon Building Code address the construction of buildings/facilities related to marijuana operations?

A: Facilities used for marijuana operations are treated like other facilities under the Oregon Building Code. The code is comprised of a set of specialty codes, each applied based on a building's use and occupancy classification, which establish uniform performance standards that provide protections for the health, safety, welfare, comfort, and security of the building's occupants and users. The code currently provides adequate safeguards, based on the relative hazard and location, for any facility or building that houses activities related to the marijuana industry, including sales and agricultural growing and processing facilities. *There is no special use or occupancy classification for marijuana operations.*

However, there is an exemption from the provisions of the Oregon Structural Specialty Code for some agricultural buildings. Oregon Revised Statutes (ORS) 455.315 exempts agricultural buildings that are located on land that is zoned exclusive farm use (EFU) or forest/mixed farm and forest use from the structural permitting requirements. These agricultural buildings must still meet all other specialty areas of the state building code.

This exemption also applies to marijuana operations. House Bill 3400 (effective June 30, 2015) identifies marijuana as a crop for the purposes of "farm use" as defined in ORS 215.203. As a result, new agricultural buildings associated with marijuana operations that meet the exemption requirements are not subject to the Oregon Structural Specialty Code, but are subject to all other state specialty code requirements. Note: marijuana-related uses that are specifically prohibited in EFU zones by HB 3400 include new farm dwellings, farm stands, or commercial activities in conjunction with marijuana. *Building officials should consult with their local planning department to further understand local zoning regulations in association with marijuana operations.*

Q: How does the Oregon Building Code classify facilities related to marijuana operations?

A: Buildings used for marijuana operations are classified like other buildings under the Oregon Building Code. Regardless of the local land use designation or zoning, the code requires that structures be classified in the group that the occupancy most nearly resembles.

Buildings used for marijuana operations are classified based on the relative hazard associated with their anticipated use. A building's "use" is determined by the primary use of the structure. Buildings associated with marijuana operations would generally contain the following uses:

- **Production/Growing** includes planting, cultivating, growing, manufacturing, or harvesting of the plant.
- **Processing** includes activities that take place once the plant or any product from the plant is repurposed.
- **Storage** includes housing the plant or any products processed from the plant after harvest.
- **Sale** includes displaying and selling the plant or any product processed from the plant in a retail environment.

Occupancy classifications are prescribed based on the use of the building. They provide standards for construction. For mixed-use buildings, the building must meet all standards for each potential use. Classifications are listed below in order of escalating building requirements intended to mitigate potential risk to occupants.

- **U** occupancies include buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy.
- **R** or residential occupancies are primarily homes. *The state building code does not create additional provisions for the growing or keeping of plants in a residence.*
- **M** or mercantile occupancies include any building for the display and sale of merchandise, including drug stores, markets, and retail or wholesale stores.
- **F** or factory industrial occupancies include buildings used for processing and packaging. Buildings for processing high-alcohol volume beverages, food, and hemp products are classified as moderate-hazard factories, or F-1.¹
- **S** or storage occupancies include any building used for storage that is not classified as hazardous.¹

The table below is a guideline for occupancy classification associated with marijuana operation uses within a specified land use designation.

Occupancy Classifications for Facilities

| Land Use | Production/Growing | Processing | Storage | Sale |
|----------------------------------|--------------------|------------|---------|------|
| Agricultural, Exempt Farm | N/A | N/A | N/A | N/A |
| Agricultural, Non-Exempt | U-Agricultural | F-1 | S-1 | M |
| Commercial / Industrial | U | F-1 | S-1 | M |
| Residential | R-3 or U-Accessory | F-1 | S-1 | M |

Q. Specifically, how does the Oregon Building Code address buildings used for crop production or processing, including marijuana?

A. There are no additional requirements if a building qualifies as agricultural exempt. For other facilities constructed as marijuana operations, they would be reviewed, permitted, and inspected just like any other crop operation. Generally, these facilities would be within cities or the urban growth boundary. As with other non-agricultural exempt production facilities, the larger or more complex the growing or processing operation, the more safety provisions the Oregon Building Code will require. For example, a commercial processing operation that uses flammable solvents to create extracts may require special safety provisions for high-hazard buildings. These could include fire-rated construction materials, special ventilation, fire protection systems, spill containment, back-up power, and other safety provisions.

Q. What flexibility do local building departments have regarding the application of the state building code in conjunction with marijuana operations?

A. In general, local building officials should apply the state building code uniformly, regardless of land use zoning, building classification, or occupancy. ORS 455.040 directs that the building code shall be applicable and uniform throughout the state and in all municipalities, and no municipality shall enact or enforce any ordinance, rule, or

¹ The presence and quantity of materials that pose a safety hazard or that readily support combustion may require construction requirements for H (high-hazard) occupancy.

regulation relating to the same matters encompassed by the building code but which provides different requirements, unless authorized by the director of the Department of Consumer and Business Services.

That being said, the passage of Measure 91 in 2014 and subsequent adoption of HB 3400 in 2015 has presented some new and unique challenges for Oregon's cities and counties. Local planning and building departments are seeking guidance from state agencies to regard to the appropriate and successful application of state statutes and administrative rules in association with local zoning regulations and new marijuana operations.

BCD is generally open to consideration and review of an ordinance requested by cities and counties, provided the statute and rule requirements are met. Cities and counties are prohibited from enacting any ordinance that requires installation of equipment or other codes and standards that are not contained in the Oregon Building Code. As an example, some communities are considering requiring additional equipment for odor control. This is prohibited unless approved by the department (ORS 455.040, OAR 918-020-0370).