



## CITY COUNCIL AGENDA

APRIL 6, 2015, 7:00 PM

**PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

### Mission Statement

*The City of Newberg serves its citizens, promotes safety, and maintains a healthy community.*

### Vision Statement

*Newberg will cultivate a healthy, safe environment where citizens can work, play and grow in a friendly, dynamic and diverse community valuing partnerships and opportunity.*

## I. EXECUTIVE SESSION

1. Pursuant to ORS 192.660 (i) Performance Evaluations of Public Officers and Employees

## II. CALL MEETING TO ORDER to be determined

## III. ROLL CALL

## IV. PLEDGE OF ALLEGIANCE

## V. PRESENTATIONS

1. Proclaim April 12-18, 2015 as National Public Safety Telecommunicators Week Pages 1-2

## VI. CITY MANAGER'S REPORT

## VII. PUBLIC COMMENTS

(30 minutes maximum, which may be extended at the Mayor's discretion, with an opportunity to speak for no more than 5 minutes per speaker allowed)

## VIII. CONSENT CALENDAR

1. Approve Minutes from March 16, 2015 Pages 3-6

## IV. NEW BUSINESS

1. Audit Report and Financial Statements for June 30, 2014 – Accept via Council motion of the annual auditor's report and financial statements for the fiscal year that ended June 30, 2014. Page 7
2. Resolution 2015-3179, Authorizing the City to purchase property located at 520 West 3<sup>rd</sup> Street from the current owner Glacier Northwest; sell property at 2716 Wyooski Road to Glacier Northwest Pages 8-10

## X. PUBLIC HEARING

1. Ordinance 2015-2780, Amend the Newberg Municipal Code regarding Medical Marijuana Dispensaries Pages 11-117
2. Resolution 2015-3184, Recommending that Yamhill County approve the proposed conditional use permit for a winery at 4008 NE Zimri Drive, Tax Lot 3209-1400 Pages 118-154

## XI. COUNCIL BUSINESS

## XII. ADJOURNMENT

*ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the City Recorder's Office of any special physical or language accommodations you may need as far in advance of the meeting as possible and no later than two business days prior to the meeting. To request these arrangements, please contact the City Recorder at (503) 537-1283. For TTY services please dial 711.*

**Council accepts comments on agenda items during the meeting. Fill out a form identifying the item you wish to speak on prior to the agenda item beginning and turn it into the City Recorder. Speakers who wish the Council to consider written material are encouraged to submit written information in writing by 12:00 p.m. (noon) the day of the meeting.**

The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: April 6, 2015**

Order \_\_\_      Ordinance \_\_\_      Resolution \_\_\_      Motion XX      Information \_\_\_  
No.              No.                      No.                                                                \_\_\_

**SUBJECT: Approve a proclamation declaring April 12-18, 2015, as National Public Safety Telecommunicator Week**

**Contact Person (Preparer) for this Motion: Mary Newell  
Dept.: Police Department  
File No.:**

**RECOMMENDATION:** Approve a proclamation declaring April 12-18, 2015 as National Public Safety Telecommunicators Week.

**EXECUTIVE SUMMARY:** The Newberg-Dundee Communications Center joins other 9-1-1 communications centers across the nation in celebrating the week of April 12–18, 2015, as National Public Safety Telecommunicators Week. During this week, the Association of Public Safety Communications Officials (APCO) International honors the thousands of men and women who respond to emergency calls, dispatch emergency police, fire and EMS responders, and provide life saving assistance to citizens throughout the United States.

Additionally, our Newberg-Dundee telecommunicators, commonly referred to as dispatchers, answer business lines for Newberg-Dundee Police, and after-hour emergency calls for Newberg and Dundee for fire and public works departments.

**FISCAL IMPACT:** None

**STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):** With great appreciation and gratitude, we recognize and celebrate the hard work of these largely unseen professionals who work in tandem with police, fire and EMS to ensure the safety and security of our citizens.



## PROCLAMATION

### **A PROCLAMATION DECLARING APRIL 12-18, 2015, AS NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK**

*WHEREAS*, emergencies can occur at any time, requiring police, fire or emergency medical services; and

*WHEREAS*, when an emergency occurs the prompt response of police officers, firefighters, and paramedics is critical to the protection of life and preservation of property; and

*WHEREAS*, the safety of our police officers and firefighters is dependant upon the quality and accuracy of information obtained from citizens who telephone the Newberg-Dundee Communications Center; and

*WHEREAS*, public safety dispatchers are the single vital link for our law enforcement and fire personnel by monitoring their activities by radio, providing them information and ensuring their safety; and

*WHEREAS*, public safety dispatchers are the first and most critical contact our citizens have with emergency services and their duties are seldom observed by the public; and

*WHEREAS*, recognizing the City of Newberg considers the services of the public safety dispatchers to be vital to the interest of the community.

***NOW, THEREFORE, IT IS PROCLAIMED*** by the Mayor and City Council of the City of Newberg, Oregon, the week of April 12–18, 2015, to be National Public Safety Telecommunicators Week in Newberg, and all residents of the city of Newberg are invited to observe this event.

**IN WITNESS WHEREOF**, I have hereunto set my hand and cause the Seal of the City of Newberg to be affixed on this \_\_\_\_ day of April, 2015.

\_\_\_\_\_  
Bob Andrews, Mayor

# *REQUEST FOR COUNCIL ACTION*

**DATE ACTION REQUESTED: April 6, 2015**

<b>Order</b> ___ <b>No.</b>	<b>Ordinance</b> ___ <b>No.</b>	<b>Resolution</b> ___ <b>No.</b>	<b>Motion</b> <u>XX</u>	<b>Information</b> ___
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**SUBJECT: Minutes**

**Contact Person (Preparer) for this  
Motion: Sue Ryan, City Recorder  
Dept.: Administration  
File No.:**

**RECOMMENDATION:**

Approve City Council minutes from March 16, 2015.

**NEWBERG CITY COUNCIL MINUTES  
MARCH 16, 2015, 7:00 PM  
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)**

A work session was held at 6:00 p.m. preceding the meeting. Present were Mayor Bob Andrews, Councilors Tony Rourke, Lesley Woodruff, Mike Corey, Scott Essin, Stephen McKinney, and Denise Bacon. Also present were City Manager Jacque Betz, City Recorder Sue Ryan, City Attorney Truman Stone, Finance Director Matt Zook and Public Works Director Jay Harris.

CM Betz, CA Stone, and FD Zook presented Transient Lodging Tax 101(TLT). CM Betz reviewed the City ordinances that established and amended the TLT. The hotel/motel operators were able to retain 5% of the tax. CA Stone discussed the 2003 laws and administrative restrictions. There was a 6% tax that a minimum of 17.6% of that revenue had to be used for tourism promotion or facilities and the rest could be used for any General Fund purpose, and a 3% tax requiring 70% to be used for tourism and 30% could be used for City services.

FD Zook showed scenarios based on the 6% and 3% taxes and a combination of both percentages together. When blending them together, for every tax dollar received, a minimum of 35% went to tourism. The 3% tax rate would be effective July 1, 2015. The City was anticipating around ten million dollars of hotel/motel sales revenue and running it through the formulas that would generate \$900,000. Of that amount, 5% would be retained by operators, or \$45,000 and the City would receive \$855,000. Using the percentages just discussed, nearly \$300,000 would go towards tourism and the rest towards City services. For the \$300,000, there was a contract to be discussed later that night with the Chehalem Valley Chamber of Commerce that would be \$137,000 and the \$162,000 could be spent at the City's discretion.

There was discussion regarding what other jurisdictions did regarding transient taxes and how the tourism funds would be used. CM Betz clarified the Code exempted collecting transient tax on vacation rentals. She thought the funds could be distributed through a competitive process with criteria decided by the Council. There was further discussion regarding the intent of the State law for transient taxes and examples of tourism facilities.

**CALL MEETING TO ORDER**

**ROLL CALL**

Members Present: Mayor Bob Andrews Mike Corey Tony Rourke  
Scott Essin Stephen McKinney Lesley Woodruff  
Denise Bacon

Staff Present: Jacque Betz, City Manager Truman Stone, City Attorney  
Sue Ryan, City Recorder Leah Griffith, Library Director  
Jay Harris, Public Works Director Doug Rux, Community Development Director

**PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was performed.

**CITY MANAGER'S REPORT:** City Manager Jacque Betz had no further additions to the Manager's report.

**CONSENT CALENDAR:**

**MOTION: McKinney/Corey** moved to accept the Consent Calendar, including the March 2, 2015 meeting minutes as amended and the January 2015 Financial Report. Motion carried (7 Yes/ 0 No).

**REPORTS:** Chehalem Valley Chamber of Commerce quarterly marketing report: Sheryl Kelsh, Executive Director of the Chamber of Commerce, highlighted activities, industry information, and Chamber budget in the quarterly report. Councilor Essin clarified the majority of the marketing budget came from Newberg's hotels. Ms. Kelsh said that was correct except for \$2,500 per year which came from the City of Dundee. The Chamber represented Newberg, Dundee, and St. Paul. There was discussion on how the transient tax was collected and spent in Newberg.

Newberg Cultural District: Library Director Leah Griffith presented the district's annual report. She explained the location of the District, IGA between the City and District, Executive Board makeup and duties, accomplishments in

2014, parking mitigation, and upcoming events. For 2015 they would be developing a design guide for outdoor furniture, revising the parking plan, formalizing the reservation process, continuing to develop their website, and enhancing the area so it was a destination in Newberg.

**PUBLIC HEARING:** Resolution 2015-3180: Mayor Andrews opened the hearing at 7:33 p.m. He asked if there were any abstentions, bias, ex-parte contacts, conflicts of interest, or objections to jurisdiction. There were none.

**Staff Report:** CM Betz said the reason for the public hearing was to consider a resolution approving a new five-year marketing agreement with the Chehalem Valley Chamber of Commerce (CVCC) and approve an exemption in Exhibit A of the Resolution. The current funding allocations is 25% of collected transient lodging tax. There was overall satisfaction and agreement to renew, but there were different opinions about keeping the same percentage of funding. CM Betz explained the Chamber's share had increased from \$60,000 to more than \$130,000 and projected that the Chamber would receive more than \$200,000 in the future. Staff recommended approving the agreement and capping the amount at \$137,000 annually with an annual CPI. She recommended Council serve as the Newberg Tourism Committee with the authority to administer the additional marketing funds. CA Stone explained the exemption in Exhibit A. Staff proposed to exempt the Chamber from the normal contract solicitation methods. The Council had authority to exempt certain contracts, and this would make it so there did not need to be RFPs for the Visitor Center but the City could renew the long-standing relationship with the Chamber. Exemptions required public notice and hearing.

There was discussion on the cap amount, oversight function of the Council as Tourism Committee and that under a cap the remaining funds would still go toward tourism. There was additional discussion about the Tourism Committee's function.

**Public Testimony:** Sheryl Kelsh, CEO of the Chehalem Valley Chamber of Commerce, gave a history of the relationship between the City and Chamber for the Visitor Center and how the additional funding helped to expand their marketing services. She then reviewed how the Chamber was helping promote and expand tourism for Newberg through events and publications. She thought that adding a cap would limit the potential performance of the contract. The Chamber had consistently showed performance and collaboration with the City. She suggested the contract terms for marketing services be continued at 25% and have the Chamber continue to manage the funds.

There was discussion regarding the Chamber's marketing plan and budget, setting the Chamber as the tourism committee, events that were funded through the Chamber, events that were revenue generators, and Tunes on Tuesday being handed off to young professionals. Councilor McKinney said he heard Ms. Kelsh was open to creating oversight of new programs and new ideas and preventing duplication of services but would the 25% be enough to perform those duties? Ms. Kelsh would have to take it to her Executive Committee before she could give an answer.

There was further discussion regarding the amount of support that came from the City of Newberg for the region and the funding received from the other cities in the region. Ms. Kelsh said when visitors came, they looked at the entire area for tourism. The majority of the money came from Newberg and she knew she was accountable to bring visitors to Newberg. She confirmed she was willing to do a tourism contract with the City and take care of all the concerns.

Councilor Corey was in favor of the cap and recommended using the Economic Development Director for allocating the funds instead of forming a committee. Mayor Andrews clarified if the Chamber was in charge of allocating the funds, they would make the decisions on how the funds would be spent. If the City was in charge, they would decide and the Chamber could apply outside of what the City gave them for certain programs or events.

CM Betz said what was before the Council tonight was a five-year marketing services agreement with the Chamber. She said the question of what to do with the additional funds for tourism would come back to Council at a later date. The City Council could be the Tourism Committee, it could be run through the Community Development department, or have the

Ms. Kelsh clarified she was opposed to the cap.

Mayor Andrews closed the public testimony at 8:35 p.m.

**Staff recommendation:**

CM Betz said the recommendation was to approve passage of Resolution 2015-3180.

Mayor Andrews closed the hearing at 8:38 p.m.

**MOTION:** Councilor Essin moved to adopt Resolution 2015-3180 but keep the 25% allocation as it currently was. Motion died for lack of a second.

Action by the City Council:

**AMENDMENT TO THE MOTION: McKinney/Essin** moved to amend the motion to change the cap in the proposed contract in Exhibit B to Resolution 2015-3180 to \$150,000. (3 Yes/4 No [Andrews, Corey, Rourke, Woodruff]).

**MOTION: Rourke/Woodruff** moved to approve Resolution 2015-3180, a Marketing Services Agreement with the Chehalem Valley Chamber of Commerce for visitor information services, as proposed. (5 Yes/2 No [Essin/McKinney]).

Deliberation of Council:

Councilor Bacon supported the motion to bring in bigger projects. Councilor McKinney did not support the motion as \$137,000 was insufficient but would support it if the cap was \$150,000 - \$175,000. Councilor Rourke supported the motion and wanted to see a more specific plan for how the funds would be used. He would likely support giving the Chamber more funding with a thoughtful plan. Councilor Corey thought it was a good agreement as both the City and Chamber would have an opportunity to promote tourism. The Chamber could return to the City with a plan for other projects.

Councilor Bacon said there was a difference between operating the Visitors Center and promoting the area. Councilor Essin was opposed to the motion as he thought the cap should be higher. Councilor McKinney asked the maker of the motion to remove the motion. Councilor Rourke would not withdraw the motion. There was discussion regarding the cap. Councilor Essin said the Chamber was spending in excess of \$150,000 in order to compete. He said Ms. Kelsh was opposed to the cap because it was not enough. Councilor Rourke said \$137,000 was not arbitrary, but was calculated from percentages from FY 14-15. Councilor McKinney wanted to talk about sufficient funding for a trusted partner to be able to do their job. CM Betz explained the reasoning behind the \$137,000 figure. The City had proposed \$130,000 and Ms. Kelsh said she had budgeted for \$137,000. Councilor Essin said it was a difference of \$13,000.

**EXECUTIVE SESSION:** Executive session pursuant to ORS 192.660 (2) (e) relating to real property transactions. The Council entered Executive Session #1 at 9:05 p.m. Council exited Executive Session #1 at 9:15 p.m. Council entered Executive Session #2 at 9:15 p.m. Council exited Executive Session #2 at 9:44 p.m. The Council re-entered open session at 9:45 p.m.

**COUNCIL BUSINESS:** Councilor Essin had concerns about the safety of the City's police officers given the unrest in certain parts of the country. He thought the police officers should be recognized for their work. Mayor Andrews thought they were being recognized on an ongoing basis. The department worked well and he did not think it needed public rhetoric to keep it going. It was something they should not forget.

Mayor Andrews said that the safety corridor on Highway 18 was being abandoned by the Oregon Department of Transportation. Councilor Bacon reminded the Council their ethics report needed to be filled out.

**ADJOURNMENT:** The meeting was adjourned at 9:55 p.m.

**ADOPTED** by the Newberg City Council this 6th day of April, 2015.

\_\_\_\_\_  
Sue Ryan, City Recorder

**ATTESTED** by the Mayor this \_\_\_<sup>th</sup> day of April, 2015.

\_\_\_\_\_  
Bob Andrews, Mayor

# *REQUEST FOR COUNCIL ACTION*

**DATE ACTION REQUESTED: April 6, 2015**

<b>Order</b> ___	<b>Ordinance</b> ___	<b>Resolution</b> ___	<b>Motion</b> <u>XX</u>	<b>Information</b> ___
<b>No.</b>	<b>No.</b>	<b>No.</b>		

**SUBJECT: Audit report and Financial Statements for June 30, 2014**

**Contact Person (Preparer) for this Item: Matt Zook  
 Dept.: Finance**

**RECOMMENDATION:**

Acceptance via Council motion of the annual auditor’s report and financial statements for the fiscal year that ended June 30, 2014.

**EXECUTIVE SUMMARY:**

Each fiscal year, the City is required to engage a qualified municipal auditing firm to conduct an audit of the City’s finances and review the financial statements of the City for the purpose of expressing an independent opinion on these financial statements. For the July 1, 2013 to June 30, 2014 fiscal year, the City engaged Boldt, Carlisle + Smith of Salem, Oregon to conduct this annual audit and review the financial statements. On March 16, 2015, the City receive an unmodified opinion on the financial statements. You have individually been provided a hard copy of these financial statements and multiple letters from Boldt, Carlisle + Smith communicating the results of the audit. The public can find these financial statements electronically at the City’s website under the Finance Department documents. At the April 6 Council meeting, Mr. Brad Bingenheimer, partner, of Boldt, Carlisle, + Smith, will present a verbal report to the Council regarding the audit and financial statements.

Regarding the timing of the annual audit, the State of Oregon requires that these annual audits be concluded by December 31 following the close of the fiscal year. In the fall of 2014, the City contracted with two consultants to assist in the operations of the finance department as well as the audit in the absence of the former finance director and financial analyst. The consultants were unable to prepare the financial statements prior to the December 31 deadline and was subsequently granted an extension to the end of February. In late January, the City terminated the services of the consultants and engaged Boldt, Carlisle + Smith to finish the preparation of the financial statements. An additional extension was granted to March 15, 2015.

The Finance staff is already looking forward to the audit for the June 30, 2015 fiscal year and expanding the responsibility and training of existing staff to resume a timely delivery of future audits. Filling the vacancy of the financial analyst will also be an additional step in this process. Finance staff will be evaluating additional software to streamline prior practices and gain efficiency in our limited resources.



# *REQUEST FOR COUNCIL ACTION*

**DATE ACTION REQUESTED: April 6, 2015**

<b>Order</b> ___	<b>Ordinance</b> ___	<b>Resolution</b> <u>XX</u>	<b>Motion</b> ___	<b>Information</b> ___
<b>No.</b>	<b>No.</b>	<b>No. 2015-3179</b>		

**SUBJECT: Authorization to purchase property located at 520 West 3<sup>rd</sup> Street from the current owners Glacier Northwest; to sell property located at 2716 NE Wynooski Road to Glacier Northwest and authorizing the city manager to execute documents to complete the purchase and sale.**

**Contact Person (Preparer) for this Resolution: James (Jay) O. Harris, Public Works Director  
 Dept.: Public Works**

**RECOMMENDATION:**

Adopt **Resolution No. 2015-3179** authorizing the City to purchase property located at 520 West 3<sup>rd</sup> Street from the current owner Glacier Northwest; sell property at 2716 Wynooski Road to Glacier Northwest and authorizing the city manager to sign documents to complete the purchase and sale.

**EXECUTIVE SUMMARY:**

1. The City has outgrown our existing 2.1 acre Public Works Maintenance Yard on West 3<sup>rd</sup> Street. A long term facility plan completed in 2009 identified this need and projected a new facility be constructed on City property on Sandoz Road.
2. City staff and consultants contacted the property owner adjacent and west of the existing public works maintenance yard to discuss the potential of the City leasing a portion of the site for material and equipment storage. Glacier Northwest the property owner was receptive but then indicated that they may be interested in relocating their operations in Tualatin to Newberg.
3. Discussion then began about the potential for trading the undeveloped 3.34 acre City property at 2716 Wynooski Road (a future water treatment plant site purchased in 2013) for the developed 3.9 acre site on West 3<sup>rd</sup> adjacent to our existing Maintenance Yard.
4. Expansion of the existing maintenance yard onto this site over time is the least costly option for the City, compared to constructing a new facility on Sandoz Road. The new water treatment plant can be located on this property instead.
5. Staff met with council in executive session on February 2, 2015 and March 16, 2015 to discuss the real property transaction. The seller and the City agreed on the terms of the property sale, which began the due diligence/study period that ends **April 20, 2015**. Closing of the property purchase will commence at the end of the due diligence period.
6. The 520 W. 3<sup>rd</sup> Street property will be exchanged for the 2176 Wynooski property plus a cash amount of \$473,615.49. This is based on the purchase price established by Mary Martin Miller in December of 2014 after comparing the values of both properties.

**FISCAL IMPACT:**

A supplemental budget request in the amount of \$ 628,210 will be presented to Council at the April 20<sup>th</sup> meeting to complete the property purchase. This cost is based on:

Purchase price:	\$473,615
Site studies:	\$ 30,000
SDC Incentives:	\$ 96,565
Realtor commission:	\$ 18,000
Contingency:	\$ 10,000

The funds for the transaction will be 80% split equally from the water, wastewater, street and storm drainage rate funds. The other 20% will be split equally from the water, wastewater, street and storm drainage system development funds.

**STRATEGIC ASSESSMENT:**

The 3.9 acre property purchase will allow the City to expand the existing the maintenance yard to accommodate the city's existing and future needs for the next 50 plus years.



## RESOLUTION No. 2015-3179

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**A RESOLUTION AUTHORIZING THE CITY TO PURCHASE PROPERTY LOCATED AT 520 WEST 3<sup>RD</sup> STREET FROM THE CURRENT OWNER GLACIER NORTHWEST; SELL PROPERTY AT 2716 WYNOOSKI ROAD TO GLACIER NORTHWEST AND AUTHORIZING THE CITY MANAGER TO SIGN DOCUMENTS TO COMPLETE THE PURCHASE AND SALE**

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### RECITALS:

1. City staff and consultants have identified the property at 520 West 3<sup>rd</sup> Street as an ideal site for the expansion of the city's maintenance yard.
2. The City and the property owners, Glacier Northwest, agreed on the terms for the property transaction on January 14, 2015.
3. City staff and outside consultants have completed layout plans, studies, and reports, confirming the suitability of the property for use as a maintenance yard.
4. The property owner Glacier Northwest, has agreed to exchange this property for the City owned 2176 Wynooski site plus \$473,615.49.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. **Purchase Conditions** – The City shall proceed with the purchase of the 3.9 acre site located at 520 West 3<sup>rd</sup> Street. The purchase price shall be the city owned property at 2176 Wynooski and \$473,615.49, plus normal consultant costs and closing expenses.
2. **City Manager Authority** – The city council delegates to the city manager the authority to execute the necessary documents to complete the purchase of the property located at 520 West 3<sup>rd</sup> Street and the sale of 2716 Wynooski Road with Glacier Northwest. The city manager is further authorized to negotiate any provisions of the sale agreement and to sign all necessary documents to perfect the agreement. All documents and agreements shall be approved as to form and content by the city attorney.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 7, 2015.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 6<sup>th</sup> day of April 2015.

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Sue Ryan, City Recorder

**ATTEST** by the Mayor this 8<sup>th</sup> day of April 2015.

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Bob Andrews, Mayor

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: April 6, 2015

Order \_\_\_ Ordinance XX Resolution \_\_\_ Motion \_\_\_ Information \_\_\_  
No. No. 2015-2780 No.

**SUBJECT: Amend the Newberg Development Code regarding medical marijuana dispensaries.**

Contact Person (Preparer) for this Motion: Steve Olson, Associate Planner  
Dept.: Community Development  
File No.: DCA-15-001

HEARING TYPE:  LEGISLATIVE  QUASI-JUDICIAL  NOT APPLICABLE

## RECOMMENDATION:

Adopt Ordinance No. 2015-2780, amending the Newberg Development Code to add medical marijuana dispensaries (MMD) as allowed uses in some Commercial zoning districts, not allow them in other zoning districts, establish buffers around schools and parks where dispensaries would not be allowed, and establish operating hours.

## EXECUTIVE SUMMARY:

**A. SUMMARY:** The proposed Development Code amendments do the following:

- Add medical marijuana dispensaries (MMD) as a commercial sales use, allowed in C-2 and C-3 zones (Newberg's main commercial zones).
- MMD would not be allowed in other commercial zones or industrial zones.
- Establish a 1,000-foot buffer around schools and parks. MMD would not be allowed within 1,000 feet of a park or a public or private elementary, secondary or career school.
- Operating hours: MMD would be limited to operating between 9 AM and 8 PM.

## B. BACKGROUND:

State law allows medical marijuana dispensaries (MMD) in commercial, industrial, mixed use, or agricultural zones. MMD are not allowed:

- At the same address as a state-registered medical marijuana grow site
- Within 1,000 feet of a public or private elementary, secondary or career school
- Within 1,000 feet of another MMD

On March 19, 2014, Senate Bill (SB) 1531 was signed into law. SB 1531 gives local governments the ability to impose certain regulations and restrictions on the operation of medical marijuana dispensaries, including the ability to impose a moratorium for a period of time up until May 1, 2015. The city adopted a moratorium on April 7, 2014.

On February 2, 2015, the Newberg City Council initiated a potential amendment to Newberg's Development Code regarding medical marijuana dispensaries.

Some other cities have chosen to add restrictions to MMD, while others have not. For example, Portland and Eugene do not have additional restrictions, so MMD are allowed to operate wherever state law allows. Some cities, such as Pendleton, are excluding MMD by refusing to issue business licenses if a business does not comply with federal law. Other cities, such as LaGrande, have added a

requirement for MMD to be at least 1,000 feet from uses such as parks.

The following summary of other jurisdictions was excerpted from a City of Tigard report:

Washington County

- Limited to hours between 8:00am and 10:00pm.
- Allowed in specified commercial and industrial districts, with square footage limited to 3,000 square feet within the Industrial (IND), General Commercial (GC), and Rural Commercial (R-COM) Land Use Districts.
- Minimum 2,000 feet between dispensaries.
- Minimum 1,500 feet from any light rail platform.
- Entrances and off-street parking areas must be well lit and not visually obscured from public view.

City of Salem

- Limited to hours between 10:00am and 8:00pm.
- Cannot be located within:
  - Central Business Zoning District.
  - Within a residence or mixed-use property that includes a residence.
  - Within 500 feet of a public park or public playground.
  - Within 100 feet of a residentially zoned property unless the location abuts a major arterial or parkway.
  - Within 100 feet of a certified child care facility.
- Drive-through windows prohibited.
- All odors must be contained to premises.

City of Beaverton:

- Limited to hours between 7:00am and 10:00pm.
- Limited to three zones: GC (General Commercial), CS (Community Service), and CC (Corridor Commercial).

City of Ashland

- Limited to hours between 9:00am and 7:00pm.
- Limited to properties adjacent to a boulevard, and prohibited within the Downtown Design Standards Zone.
- Design standards
  - Must be located within a permanent building.
  - Drive-through windows prohibited.
  - Security bars and grates prohibited.
  - Establishes off-site odor standards.

City of McMinnville

- Limited to hours between 10am and 7pm.
- Minimum 1,000 foot buffer from a preschool, public library, aquatic center, and community center.

City of Albany

- Minimum 300 foot distance buffer from any property zoned residential, mixed-use, Office Professional, or Neighborhood Commercial.
- Restrictions do not apply to property zoned Industrial Park, Light Industrial, or Heavy Industrial.

The Newberg Planning Commission held a public hearing on March 12, 2015, heard public testimony, and approved Resolution 2015-306, which recommended that the City Council:

- Add medical marijuana dispensaries (MMD) as a commercial sales use, allowed in C-2 and C-3 zones (Newberg's main commercial zones).
- Not allow MMD in other commercial zones or industrial zones.
- Establish a 1,000-foot buffer around schools and parks. MMD would not be allowed within 1,000 feet of a park or a public or private elementary, secondary or career school.
- Limit MMD operating hours to between 9 AM and 8 PM.

**C. PROCESS:** A development code amendment is a Type IV application and follows the procedures in Newberg Development Code 15.100.060. Important dates related to this application are as follows:

1. 2/2/15: The Newberg City Council initiated the Development Code amendment.
2. 3/12/15: After proper notice, the Planning Commission held a legislative hearing to consider the item, took public comment, and approved Resolution 2015-306.
3. 4/6/15: After proper notice, the City Council held a legislative hearing to consider the item.

**D. PUBLIC COMMENTS:** As of the writing of this report, the city has received three written comments on the proposed amendment. These comments are included in Attachment 2. Several people also testified at the Planning Commission hearing.

One written comment was a copy of the Chehalem Valley Dance Academy's mission statement, which indicates that they offer pre-professional training.

The second written comment included articles about medical marijuana dispensaries and their effect on crime, about use of marijuana by teens, and about whether dispensaries are good neighbors. It also submitted photos of existing dispensaries, and a summary of state rules for MMD. The authors of the articles generally concluded that MMD are not a magnet for crime, that legalization of marijuana in Colorado did not lead to an increase in use by teens, and that MMD are generally good neighbors and generate few complaints.

The third written comment included articles that questioned the effectiveness and fairness of drug-free zones.

Other issues raised during oral testimony:

- Are recreational marijuana dispensaries being addressed as well?
- Many cities are considering similar regulations for MMD, but there are a broad range of approaches. Some are tightly limiting them, while others are accommodating them.
- Some MMD now take debit cards, and there is a bank starting that will work with MMD. MMD will not need to be "cash only" businesses in the future.
- MMD need to be accessible for patients, so don't create buffers that exclude MMD.
- Some communities are talking about regulating signage.

## E. ANALYSIS:

1. **Use:** A MMD is similar to a pharmacy, because customers are required to have a prescription in order to purchase. Sales are indoors, and there is no on-site use by customers.
2. **Existing zones:** A pharmacy falls within the “retail sales – general” use category in Newberg’s Development Code, and would be allowed in all of Newberg’s commercial zones: C-1 (neighborhood commercial), C-2 (community commercial, along Portland Road), C-3 (downtown commercial), and C-4 (riverfront commercial). A “retail sales-general” use is not allowed in Newberg industrial zones, in order to preserve the land for industrial businesses. Many other cities have adopted restrictions on which zones MMD are allowed in.
3. **Buffer from other MMD:** State law requires a 1,000 foot buffer zone from other MMD, and does not allow a MMD at the same address as a state-registered grow site.
4. **Buffer from schools:** State law also requires a 1,000 foot buffer zone around elementary and secondary schools, presumably in order to minimize adverse impacts on places where minor children congregate, and minimize the diversion (illegal resale) of medical marijuana to minors. State law does not require a buffer zone around preschools or daycare facilities, presumably because children in these facilities are under adult supervision at all times and there is no concern about diversion of medical marijuana to children in these facilities.
5. **Career schools:** The buffer applies to career schools as well as regular public or private elementary or secondary schools. Chehalem Valley Dance Academy is considered a career school because, according to their website, one of their missions is to prepare students for a potential career as a professional dancer. Their students are primarily minors.
6. **Parks:** Parks in Newberg have outdoor play areas where minor children congregate, sometimes unsupervised. Some other cities have adopted buffer zones for MMD around parks.
7. **Day care:** Some cities have adopted buffers around day care uses. The Planning Commission does not propose adding buffers around daycare uses, because there are many small daycares in residential areas around the city; they have state licenses (Registered Family Child Care Homes) but do not require city permits, so they are not simple to locate. Large day care centers (Certified Child Care Centers) are fewer in number, and can be located and mapped (Attachment 2). Children in these centers are under adult supervision at all times, however, and it would be inconsistent to buffer these centers while not buffering residential day care near commercial areas. Buffering certified child care centers would also leave only a handful of properties for possible MMD. The Planning Commission proposes to follow the lead of State law, and not add buffers around day care centers.
8. **C-1 zoned sites (neighborhood commercial)** are small commercial sites surrounded by residential areas, so allowing a MMD in C-1 would essentially allow it in a residential area. The Planning Commission proposes to limit MMD to the C-2 and C-3 zones, which are Newberg’s main commercial zones, and not allow MMD in C-1.
9. **Crime:** The public comments that were submitted included articles that concluded that MMD were not magnets for crime. One article pointed out that MMD are currently only able

to conduct business in cash, which could potentially increase the risk of crime for dispensaries and customers. One person, however, commented at the Planning Commission hearing that some MMD now take debit cards, and that there is a bank that will work with MMD. The Police Chief suggested adding limits on operating hours so dispensaries were not open late at night. Many other cities have adopted operating hour limits. The Planning Commission has recommended limiting operating hours to between 9 AM and 8 PM.

**10. Recreational marijuana dispensaries:** The Legislature is still drafting administrative rules for recreational marijuana dispensaries (RMD), so the Planning Commission thought that it was premature to address RMD at this point. Staff will develop a draft code amendment for RMD in the coming months.

**11. Measurement of 1,000 foot buffers:** Staff proposed that the 1,000 foot buffers be measured from the property line of the school or park to the property line of the MMD site. The Planning Commission retained the same language in their recommendation to the City Council. Staff has since learned, however, that the final State rules for MMD have a different measurement standard. The State rules say that distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public or private elementary, secondary or career school to the closest point of the premises of a facility. The State Medical Marijuana Dispensary program considers the “premises” to be the dispensary building itself, or, in the case of a large building, the portion of the building used for the dispensary. Staff therefore recommends that the City Council change the Planning Commission’s recommended code language slightly to match the State measurement standard (see below).

The Newberg Planning Commission held a public hearing on March 12, 2015, heard public testimony, and approved Resolution 2015-306, which recommended that the City Council:

- Add medical marijuana dispensaries (MMD) as a commercial sales use, allowed in C-2 and C-3 zones (Newberg’s main commercial zones).
- Not allow MMD in other commercial zones or industrial zones.
- Establish a 1,000-foot buffer around schools and parks. MMD would not be allowed within 1,000 feet of a park or a public or private elementary, secondary or career school.
- Limit MMD operating hours to between 9 AM and 8 PM.

Staff has proposed one change to this code amendment, in order to match how the State measures the 1,000-foot buffers:

- *“Distance is measured from property line to property line”* should be replaced with *“Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public or private elementary, secondary or career school to the closest point of the premises of a dispensary. The premises consist of the dispensary building, or the portion of the building used for a dispensary.”* This language is included in the attached Exhibit A.

**FISCAL IMPACT:** The city may receive some additional tax funds from a local MMD tax and State revenue sharing. The city may also have additional law enforcement costs related to MMD.



**STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):**

MMD are a legal business under state law, and the city wishes to allow businesses the opportunity to operate in the city. Zoning restrictions on MMD are appropriate to address potential adverse impacts on adjacent uses and areas where minor children congregate unsupervised.

**ATTACHMENTS:**

Ordinance 2015-2780 with

Exhibit "A": Proposed Development Code Text Amendment

Exhibit "B": Findings

1. Maps of 1,000-foot buffers
2. Public Comments/Correspondence Received
3. Planning Commission Resolution 2015-306
4. City Council Resolution 2015-3177
5. Senate Bill 1531
6. Final Rules on Medical Marijuana Dispensaries



## **ORDINANCE No. 2015-2780**

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### **AN ORDINANCE AMENDING THE NEWBERG DEVELOPMENT CODE REGARDING MEDICAL MARIJUANA DISPENSARIES**

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#### **RECITALS:**

1. On March 19, 2014, Senate Bill 1531 was signed into law. SB 1531 gives local governments the ability to impose certain regulations and restrictions on the operation of medical marijuana dispensaries, including the ability to impose a moratorium for a period of time up until May 1, 2015. Newberg enacted such a moratorium on April 7, 2014.
2. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding medical marijuana dispensaries on February 2, 2015, under City Council Resolution 2015-3177.
3. After proper notice, the Newberg Planning Commission held a hearing on March 12, 2015 to consider the amendment. The Commission considered testimony, deliberated, and found that adding regulations for medical marijuana dispensaries would be in the best interests of the city. They approved Resolution 2015-306, which recommends that the City Council adopt the proposed amendments to the Newberg Development Code. Staff recommends one change to the code amendment language, to make the buffer distance measurement match how the State measures buffer distances.
4. After proper notice, the Newberg City Council held a hearing on April 6, 2015 to consider the proposed amendment. The Council considered testimony and deliberated.

#### **THE CITY OF NEWBERG ORDAINS AS FOLLOWS:**

1. The Council finds that adding regulations for medical marijuana dispensaries would be in the best interests of the city. The Council adopts the amendments to the Newberg Development Code as shown in Exhibit "A". Exhibit "A" is hereby adopted and by this reference incorporated.
2. The findings shown in Exhibit "B" are hereby adopted. Exhibit "B" is by this reference incorporated.

3. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect immediately upon passage by the council and signature of the mayor.

➤ **EFFECTIVE DATE** of this ordinance is: April 7th, 2015.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 6<sup>th</sup> day of April, 2015, by the following votes: **AYE:**      **NAY:**      **ABSENT:**      **ABSTAIN:**

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Sue Ryan, City Recorder

**ATTEST** by the Mayor this 7th day of April, 2015.

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Bob Andrews, Mayor

List of Exhibits:

Exhibit "A": Development Code Text Amendments  
Exhibit "B": Findings

**Exhibit “A” to Ordinance 2015-2780  
Development Code Amendments –File DCA-15-001  
Medical Marijuana Dispensaries**

**Section 1. The Newberg Development Code 15.05.030 shall be amended as follows:**

**Note: Existing text is shown in regular font.  
Added text is shown in double-underline  
Deleted text is shown in ~~strikethrough~~.**

**15.05.030 Definitions**

For the purpose of this title, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Medical marijuana dispensary” means a medical marijuana facility registered by the Oregon Health Authority and in compliance with all other provisions of Oregon law.

“Park category” means a category of uses under Chapter 15.303 NMC that provide areas for outdoor recreation, whether passive or active. Parks may be privately or publicly operated, but no admission fee is charged.

“School, primary or secondary category” means a category of uses under Chapter 15.303 NMC that includes public and private schools, secular or parochial, at the primary, elementary, middle, junior high, or high school level that provide state mandated basic education primarily to minors.

“School, career”, for the purposes of medical marijuana dispensaries, means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.

**15.303.342 Park category.**

A. Characteristics. Park uses provide areas for outdoor recreation, whether passive or active. Parks may be privately or publicly operated, but no admission fee is charged.

B. Accessory Uses. Accessory uses may include pavilions, club houses, maintenance facilities, concessions, caretaker’s quarters, and parking.

C. Examples. Playgrounds, community sports fields, public squares, picnic pavilions.

D. Exclusions. Commercial recreational uses are a separate category. Open spaces without access or with only trails or observation areas are classified as open space. Recreational facilities accessory to a school, church, or public community center use, regardless of whether admission is charged, are part of the primary use. Golf courses are a separate use.

**Section 2. Newberg Development Code Section 15.305.020 shall be amended as follows:**

**15.305.020 Zoning use table**

**15.305.010 Classification of uses.**

The zoning use table under NMC 15.305.020 identifies the land uses that are allowed in the various zoning districts. The specific land use categories are described in Chapter 15.303 NMC. The table identifies each use as one of the following:

- P Permitted Use. The use is a permitted use within the zone. Note that the use still may require design review, building permits, or other approval in order to operate.
- C Conditional Use. A conditional use permit is required for the use. See Chapter 15.225 NMC.
- S Special Use. The use is subject to specific standards as identified within this code. The applicable section is included in the last column of the table.
- (#) A note indicates specific limits on the use. These notes are listed at the bottom of the table.
- X Prohibited Use. The use is specifically prohibited.

If none of the codes above are indicated, then the use is not permitted within the zone. [Ord. 2763 § 1 (Exh. A § 6), 9-16-13.]

**15.305.020 Zoning use table.**

**Newberg Development Code – Zoning Use Table**

#	Use	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards	
420	<b>COMMERCIAL SALES AND RENTALS</b>																				
421	Retail sales – General						P (20)	P (15) (21)	P	P		P (23)									
422	Retail sales – Bulk outdoor							P	C			P									
423	Retail sales – Convenience						P (20)	P (21)	P	P		P (24)			P(25)						
Def.	Temporary merchant							S	S (21)												NMC 5.15.050 et seq.
	<u>Medical marijuana dispensary</u>							<u>P (35)</u>	<u>P (35)</u>												

Notes.

(35) Shall not be located at the same address as a state-registered marijuana grow site, or within 1,000 feet of the real property comprising a public park, a public or private primary, elementary, secondary or career school. Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public or private elementary, secondary or career school to the closest point of the premises of a dispensary. The premises consist of the dispensary building, or the portion of the building used for a dispensary. Shall not be located within 1,000 feet of another medical marijuana dispensary. Operating hours are limited to the hours between 9:00 AM and 8:00 PM.

**Exhibit “B” to Ordinance 2015-2780  
Findings –File DCA-15-001  
Medical Marijuana Dispensaries**

**I. Statewide Planning Goals - relevant goals**

**Goal 1, Citizen Involvement**, requires the provision of opportunities for citizens to be involved in all phases of the planning process.

**Finding:** The City Council initiated the potential development code amendment at a public meeting on February 2, 2015. The Planning Commission, after proper notice, held a public hearing on March 12, 2015. The City Council, after proper notice, held a public hearing on April 6, 2015, deliberated, and decided to adopt the proposed code amendment. The development code amendment process provides opportunity for public comments throughout the planning process.

**Goal 2, Land Use Planning**, requires the development of a process and policy framework that acts as a basis for all land use decisions.

**Finding:** The Medical Marijuana Dispensary proposal is supportive of this goal because it was developed following city procedures for legislative action.

**II. Newberg Comprehensive Plan - relevant policies**

**A. CITIZEN INVOLVEMENT GOAL:** To maintain a Citizen Involvement Program that offers citizens the opportunity for involvement in all phases of the planning process.

**Finding:** The City Council initiated the potential development code amendment at a public meeting on February 2, 2015. The Planning Commission, after proper notice, held a public hearing on March 12, 2015. The City Council, after proper notice, held a public hearing on April 6, 2015, deliberated, and decided to adopt the proposed code amendment. The development code amendment process provides opportunity for public comments throughout the planning process.

**B. LAND USE PLANNING GOAL:** To maintain an on-going land use planning program to implement statewide and local goals. The program shall be consistent with natural and cultural resources and needs.

**Finding:** The Medical Marijuana Dispensary proposal is supportive of this goal because it was developed following city procedures for legislative action.

**H. THE ECONOMY GOAL:** To develop a diverse and stable economic base.

1. General Policies

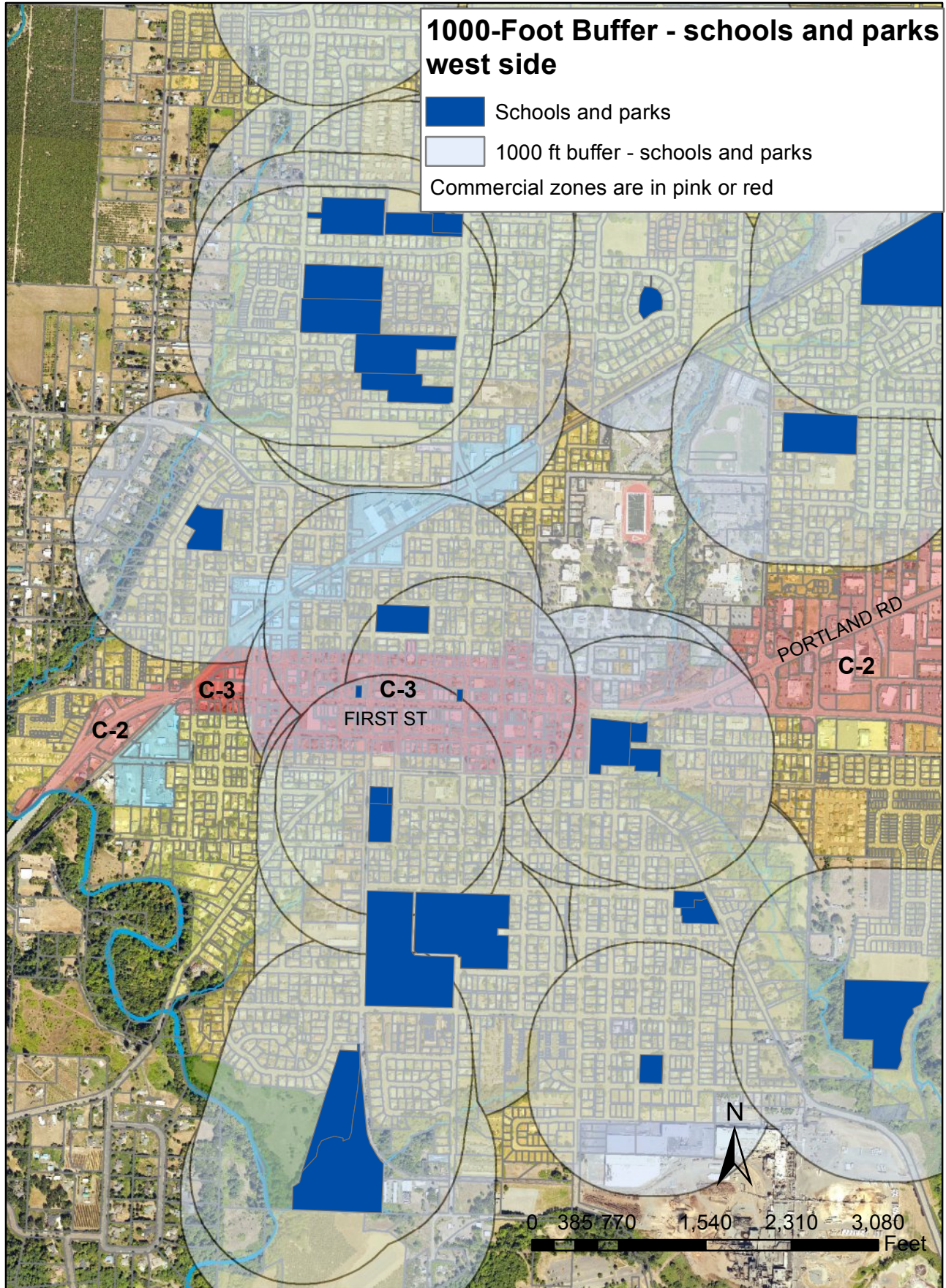
- c. The City will encourage the creation of a diversified employment base, the strengthening of trade centers and the attraction of both capital and labor intensive enterprises.
- g. The City shall encourage business and industry to locate within the Newberg City limits.

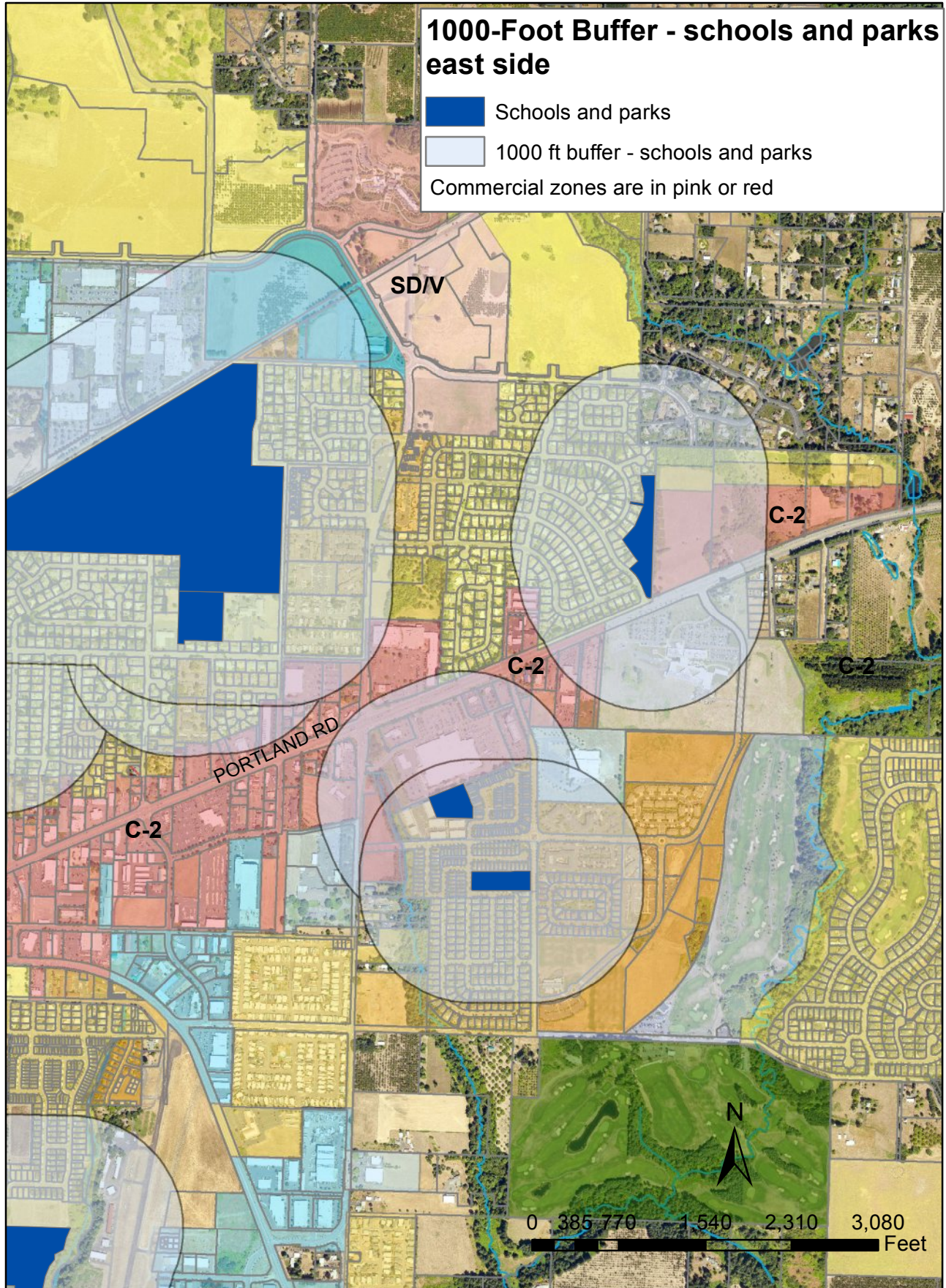
**Finding:** The city encourages new businesses to develop within the city. State law authorizes the operation of medical marijuana facilities and provides those facilities with immunity from state criminal prosecution. City regulations on the time and place where these facilities operate are appropriate, and are consistent with this Comprehensive Plan goal.

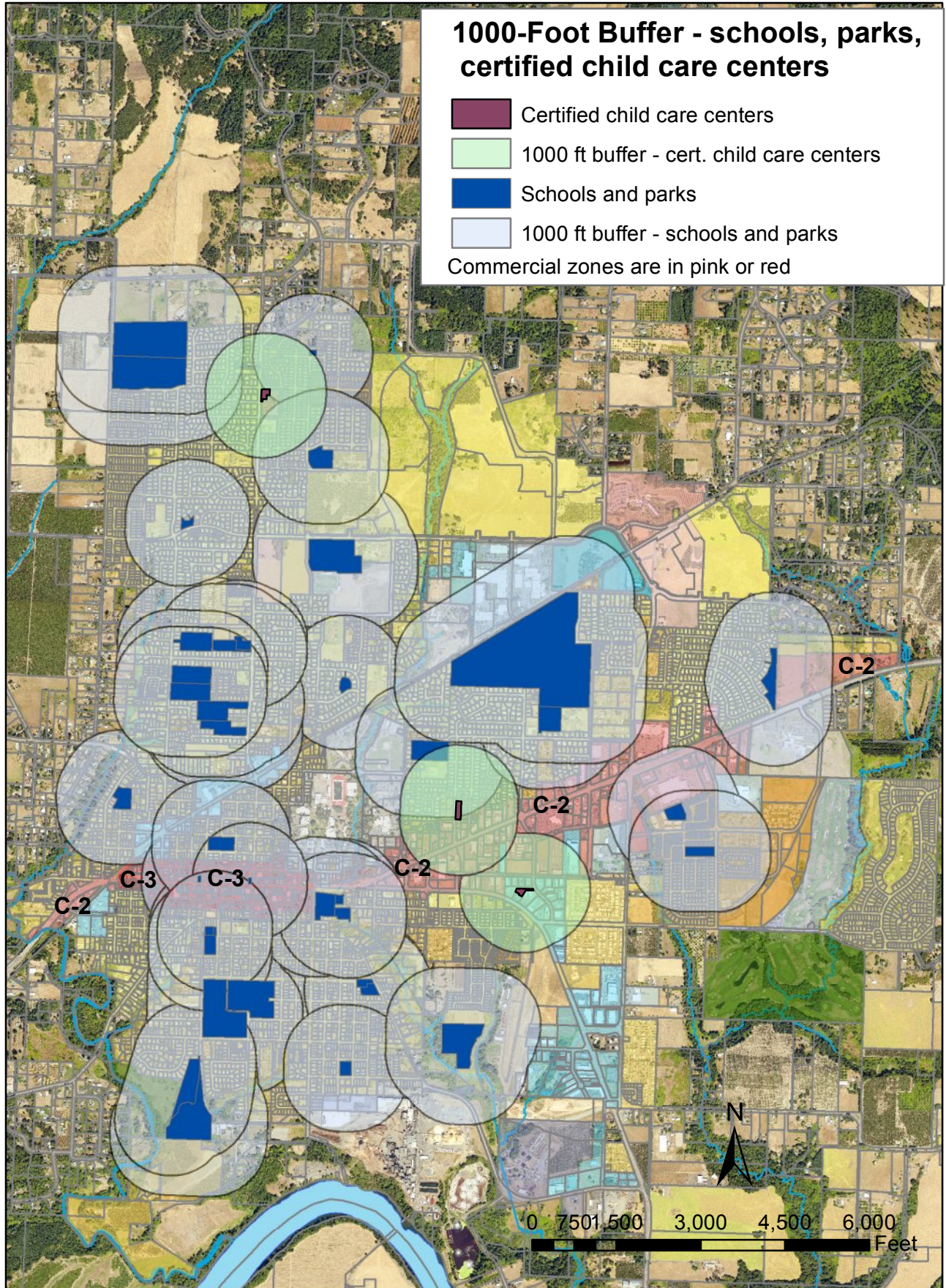
**III. Conclusion:** The proposed development code amendment meet the applicable requirements of the Statewide Planning Goals, and the Newberg Comprehensive Plan, and should be approved.













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## About Us/Mission

*Sharing is caring!*

### Mission Statement

Chehalem Valley Dance Academy is committed to providing superior, positive instruction in a safe, properly equipped dance facility. We are dedicated to providing a recreational program for the less serious dancer as well as an intense training ground for the pre-professional dancer. We are determined to provide a haven of positive support for all our dancers. While our hourly rates remain competitive, we are determined to continue to offer a dramatically lower family rate than the average studio so that serious dancers and large families can afford more classes. We are focused on providing the supportive and respectful classroom environment necessary for the artistic growth of every dancer and the further development of every child's self-confidence. We are committed to bringing the best and most qualified instructors to our studio and then keeping them here by maintaining a supportive and appreciative atmosphere. We are resolved that every dancer will feel special. Dance is a gift for everyone to share and we are committed to making everyone feel welcome and encouraged. We welcome diversity in our studio, believing that different genders, ages, nationalities, races, religious beliefs, and special needs enrich and enhance our program. We are deeply invested in providing a place for adults to enjoy and pursue dance. The benefits of dance are endless and extraordinary and we are honored to offer a program so special.



### About Us

We offer classes in Ballet, Tap, Jazz and Hip Hop for ages 3 and up. Our programs focus on developing life skills as well as dance skills for the recreational or pre-professional dancer. We employ the most qualified instructors that share the same pillars of leadership and expertise in their field. At Chehalem Valley Dance Academy, we believe that through dance training, every person can realize their true potential. Our session runs from September 15<sup>th</sup> through May 20<sup>th</sup> and culminates in our Annual Showcase. Dancers will have one costume per class to purchase that will be theirs to keep following the showcase. As a family of CVDA, you are invited to participate in Parent-Watch Weeks, Bring-A-Friend Weeks, The Nutcracker, First Friday Art Walk activities, and many more events at the studio and out in the community. Our staff believes that dance skills are life skills. Joining CVDA will grow every person's self-confidence, discipline, respect, perseverance, leadership, active listening skills, and ability to set goals and achieve them.

### Studios

Our facility features 3 studios with raised, professional dance floors. The studio is cleaned daily and sanitized weekly.

### Instagram



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- ▶ Put a spring in your step with CVDAerial
- ▶ Spotlight 2015 Results
- ▶ Welcome back to CVDA Michelle Berg!
- ▶ Summer 2015

Submitted by Doug Heuer on 2/16/15

**Steve Olson**

---

**From:** lathenpdxhomes@gmail.com on behalf of Lathen Gorbett  
<broker@LathenPDXhomes.com>  
**Sent:** Tuesday, February 03, 2015 9:29 AM  
**Subject:** Oregon Resource Group - Medical Marijuana  
**Attachments:** Crime and Dispensaries.pdf; MMJ Good Neighbor articles.pdf; rules and regulations summary (1).pdf; Retail Look of Dispensaries.pdf; Teenagers Smoke Less Pot.pdf

Newberg Leadership,

I would like to thank you all for being responsive and open to last night's brief discussion about the medical marijuana regulation in the city of Newberg. As I mentioned, I have attached a packet on Rules and Regulations for opening a medical marijuana dispensary in Oregon. I hope this is a helpful and informative tool for the planning process.

I have also attached some statistics that we have gathered around the impact of dispensaries coming in to different neighborhoods, a copy of a typical Letter of Intent for leasing property, an article on the impacts of teenagers use and pdf with images of some local dispensaries.

I will follow up with more information that I find relevant as this discussion moves forward.

Please feel free to utilize the Oregon Resource Group as a resource for information around the issue of the cannabis industry.

Thank you,

Lathen Gorbett  
Licensed Oregon Broker / Oregon Resource Group  
503.891.9311



Marijuana Policy Project  
P.O. Box 77492  
Washington, DC 20013  
p: (202) 462-5747 • f: (202) 232-0442  
info@mpp.org • www.mpp.org

*“We change laws.”*

## Medical Marijuana Dispensaries and Their Effect on Crime

Opponents of medical marijuana sometimes speculate that medical marijuana dispensaries will lead to increased crime rates in surrounding areas.<sup>1</sup> These dispensaries, they claim, will attract thieves and robbers to the facilities and breed secondary crimes in surrounding areas. Such claims have prompted empirical and statistical analyses by researchers and law enforcement agencies. In what should not come as a surprise, given the robust security at most medical marijuana facilities, these studies have routinely shown that, contrary to these concerns, dispensaries are not magnets for crime. Instead, these studies suggest that dispensaries are no more likely to attract crime than any other business, and in many cases, by bringing new business and economic activity to previously abandoned or run-down retail spaces, dispensaries actually contribute to a reduction in crime.

While the data is reassuring, one public safety challenge for dispensaries and adult use marijuana stores has been that many have been forced to operate as cash-only businesses because of banks' concern about federal legal issues. However, with new guidance that was issued by the federal government in February 2014, it is expected that more small banks and credit unions will open accounts for marijuana businesses.

What follows is a brief summary of anecdotal and scientific evidence, including law enforcement data analyses and academic research on medical marijuana dispensaries and their effect on crime. For more information on dispensaries, medical use of marijuana, state laws, and other issues related to medical marijuana, please visit [mpp.org/medical](http://mpp.org/medical).

**2009 Los Angeles Police Department survey** — In response to debate over medical marijuana regulations by the Los Angeles City Council, and claims from medical marijuana opponents that dispensaries were magnets for crime, Los Angeles Police Chief Charlie Beck asked his department to produce a report comparing the robbery rates of L.A. banks and medical marijuana dispensaries. The report indicated that there were 71 robbery reports filed with the LAPD at the city's 350 banks. Despite there being far more medical marijuana dispensaries — more than 800 at the time according to Beck — there were fewer robbery reports filed at dispensaries: just 47.

When asked about the report, and claims that dispensaries are crime magnets, Beck said, “I have tried to verify that because, of course, that is the mantra. It really doesn't bear out. ... Banks are more likely to get robbed than medical marijuana dispensaries.”<sup>2</sup>

**2009 Denver Police Department survey** — An analysis of robbery and burglary rates at medical marijuana dispensaries conducted by the Denver Police Department at the request of the Denver City Council found that the robbery and burglary rates at dispensaries were lower than

<sup>1</sup> “Across the state, we're seeing an increase in crime related to dispensaries,” said Ernie Martinez, a Denver police detective who is president of the Colorado Drug Investigators Association. “Medical marijuana dispensaries' effect on crime unclear,” *The Denver Post*, January 24, 2011.

[http://www.denverpost.com/news/marijuana/ci\\_17178820#ixzz1ngbvMOII](http://www.denverpost.com/news/marijuana/ci_17178820#ixzz1ngbvMOII).

<sup>2</sup> “LAPD Chief: Pot clinics not plagued by crime,” *Los Angeles Daily News*, January 17, 2010.  
[http://www.dailynews.com/news/ci\\_14206441](http://www.dailynews.com/news/ci_14206441).

area banks and liquor stores and on par with those of pharmacies. Specifically, the report found a 16.8 percent burglary and robbery rate for dispensaries, equal to that of pharmacies. That's lower than the 19.7 percent rate for liquor stores and the 33.7 percent rate for banks, the analysis found.<sup>3</sup>

**2010 Denver Police Department analysis** — In late 2010, the Denver Police Department looked at crime rates in areas in and around dispensaries. The analysis showed that through the first nine months of 2010, crime was down 8.2% relative to the same period in 2009. The decrease was comparable to the city's overall drop in crime of 8.8%.<sup>4</sup> *The Denver Post* completed a similar analysis and found that crime rates in some areas with the highest concentration of dispensaries saw bigger decreases in crime than neighborhoods with no dispensaries.<sup>5</sup>

**2010 Colorado Springs Police Department analysis** — An analysis by the Colorado Springs Police Department found that robbery and burglary rates at area dispensaries were on par with those of other businesses. Specifically, the department's data indicated that there were 41 criminal incidents reported at the city's 175 medical marijuana businesses in the 18-month period ending August 31, 2010. Meanwhile, over that same period, there were 797 robberies and 4,825 burglaries at other city businesses. These findings led the department's spokesman, Sgt. Darrin Abbink, to comment, "I don't think the data really supports [dispensaries] are more likely to be targeted at this point."<sup>6</sup>

**October 2011 UCLA study, "Exploring the Ecological Link Between Crime and Medical Marijuana Dispensaries,"** — Researchers from UCLA, funded by the National Institute on Drug Abuse, used data from 95 census tracts in Sacramento to analyze two types of crime (violent and property) in areas with varying concentrations of dispensaries. What they found was that while factors traditionally understood to lead to increased crime — for example, large percentages of land zoned for commercial rather than residential use, a high percentage of one-person households, the presence of highway ramps, and a higher percentage of the population being ages 15-24 — were positively associated with crime in those areas, "the density of medical marijuana dispensaries was not associated with violent or property crime rates." In their conclusion, the researchers said, "[t]hese results suggest that the density of [medical marijuana dispensaries] may not be associated with increased crime rates or that measures dispensaries take to reduce crime (i.e., doormen, video cameras) may increase guardianship, such that it deters possible motivated offenders."<sup>7</sup>

Specifically, the study applied the "routine activity theory" of crime, which suggests that crime is more likely when three criteria are met: (1) a motivated offender, (2) a suitable target, as defined by factors like value, visibility, and access, and (3) a lack of guardianship such as low residency or poor security. The authors hypothesized that the lack of a relationship between dispensaries and crime could be attributable to either of two possible conclusions: either medical marijuana dispensaries were no more valuable a target than other businesses in the area — a possibility supported by the law enforcement surveys in L.A. and Denver discussed above — or heightened security at dispensaries was sufficient to deter criminal activity in the area.

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<sup>3</sup> "Analysis: Denver pot shops' robbery rate lower than banks," *The Denver Post*, January 27, 2010. [http://www.denverpost.com/ci\\_14275637](http://www.denverpost.com/ci_14275637).

<sup>4</sup> See note 1, *supra*.

<sup>5</sup> *Id.*

<sup>6</sup> "Marijuana shops not magnets for crime, police say," *Fort Collins Gazette*, September 14, 2010. <http://www.gazette.com/articles/wall-104598-marijuana-brassfield.html>.

<sup>7</sup> <http://www.uclamedicalmarijuanaresearch.com/node/10>.

**June 2011 Regent University study** — Researcher Maura Scherrer of Regent University looked at the perception of crime, and medical marijuana dispensaries' impact on crime, among residents of Denver neighborhoods with varying socio-economic profiles. In so doing, she found that most crimes, including robbery, vandalism, and disorderly conduct increased in Denver from 2008 to 2009. However, in areas within 1,000 feet of a dispensary, rates were down for most types of crime, including burglary, larceny, and a 37.5% reduction in disorderly conduct citations. In her conclusion the author notes, "it appears that crime around the medical marijuana centers is considerably lower than citywide crime rates; a much different depiction than originally perceived."<sup>8</sup>

**February 2014 Urban Geography** — Researchers from the University of South Florida, the University of Colorado, and the New York City Criminal Justice Agency set out to determine whether medical marijuana dispensaries in Denver could be considered locally undesirable land uses (LULUs), land uses that people do not want to live close to, but which provide services to the community.<sup>9</sup> The researchers studied 275 medical marijuana centers in 75 Denver neighborhoods and concluded that:

"[w]hile public officials, and especially law enforcement, clearly warn residents about the negative effects of these centers on the communities in which they are situated, there is little evidence that residents are listening, as these centers do not appear to have any impact on the urban landscape — and therefore on the health of the communities in which they are located."<sup>10</sup>

The study did find that medical marijuana centers are more likely to be opened in areas that have higher crime rates, but that is not unusual because crime follows retail concentrations. "In short, medical marijuana facilities appear to ... be more similar to drugstores and coffee houses than they are to LULUs."<sup>11</sup>

**Los Angeles crime trends** — Los Angeles has frequently been cited as the city with the most dispensaries and the least regulation of those dispensaries. It is also the most populous city in the state that has the oldest and the broadest medical marijuana law, where any medical condition qualifies. While L.A. voters do prefer some regulation and control — and they approved a ballot measure to create a regulatory system in May 2013 — the city that has been cited as having more dispensaries than Starbucks certainly has not suffered a crime epidemic as a result of its permissive policies. On the contrary, overall crime in Los Angeles has dropped dramatically since dispensing collectives became legal in 2004. Crime rates have plummeted in the past 11 years, with decreases each of those 11 years. They are now the lowest they have been since 1949.<sup>12</sup>

**The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006**<sup>13</sup> — Researchers Robert Morris, Michael TenEyck, J.C. Barnes, and Tomislav Kovandzic

<sup>8</sup> Study available at <http://adr.coalliance.org/codr/fez/view/codr:983>.

<sup>9</sup> Lyndsay N. Boggess, Deanna M. Pérez, Kathryn Cope, Carl Root & Paul B. Stretesky, *Urban Geography* (2014): Do medical marijuana centers behave like locally undesirable land uses? Implications for the geography of health and environmental justice, *Urban Geography*.

<sup>10</sup> *Id.* at p. 15

<sup>11</sup> *Id.* at p.16

<sup>12</sup> Kathy Mather, "L.A. crime falls for 11th year; officials note historic drops," *L.A. Times*, Jan. 13, 2014.

<http://www.latimes.com/local/lanow/la-me-ln-crime-falls-20140113,0,3357277.story#axzz2vJ6f1xlX>

<sup>13</sup> Morris RG, TenEyck M, Barnes JC, Kovandzic TV (2014). "The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006." *PLoS ONE* 9(3): e92816. doi: 10.1371/journal.pone.0092816



analyzed the association between the enactment of a medical marijuana law and state crime rates for all Part 1 offenses — homicide, rape, robbery, assault, burglary, larceny, and auto theft — as collected by the FBI. The purpose was to help inform the debate on whether passage of medical marijuana laws leads to increased crime rates. The researchers used fixed-effects panel design to identify what, if any, effect passage of a medical marijuana law has on crime rates. This design analyzes changes individual states see in their respective crime rates over time and compares the changes to the crime rate trends among states that enacted medical marijuana laws and those that did not.

While all states experienced a reduction in Part 1 offenses during the period studied, those that had passed a medical marijuana law experienced greater reductions in those offenses than those states that had not. The researchers conclude that enactment of a medical marijuana law “is not predictive of higher crime rates and *may* be related to reductions in rates of homicide and assault.”<sup>14</sup> They note that the most “important finding . . . is the lack of evidence of any increase in robbery or burglary, which are the type of crimes one might expect to gradually increase over time if the [medical marijuana laws lead to increased crime] theory was correct.”<sup>15</sup>

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<sup>14</sup> *Id.* at 5.

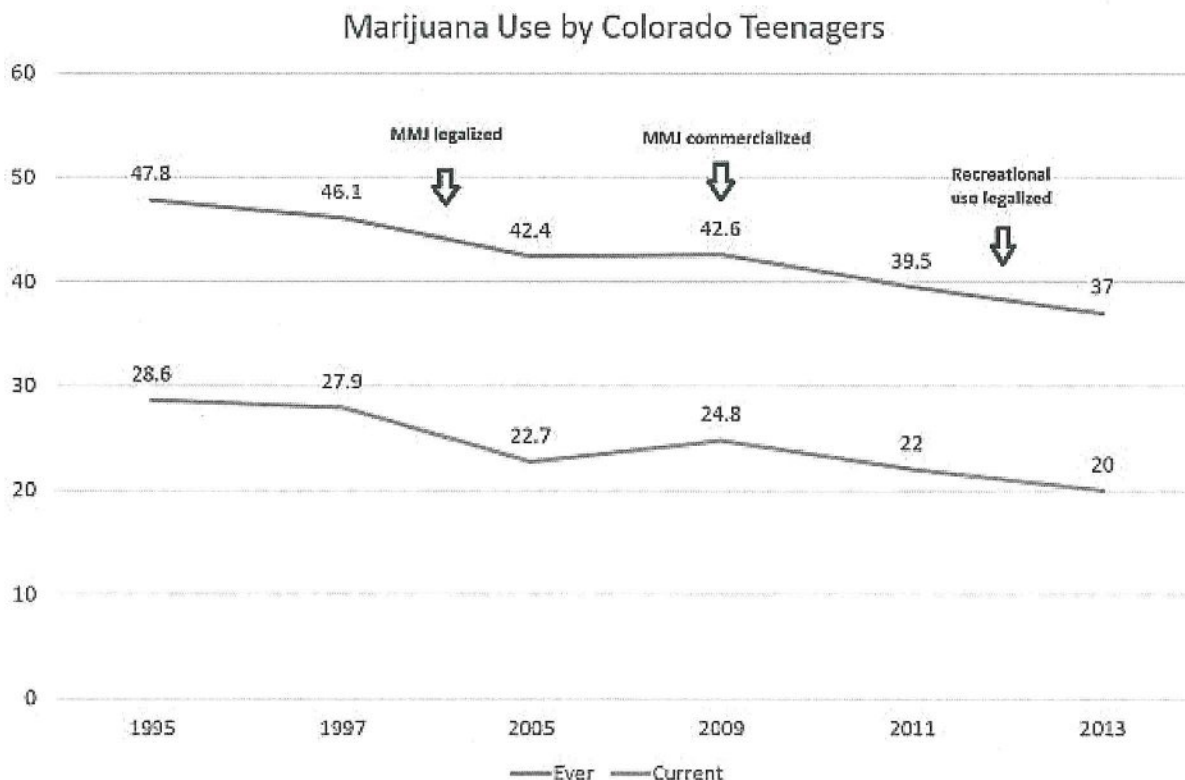
<sup>15</sup> *Id.*

# Despite Legalization, Colorado Teenagers Stubbornly Refuse to Smoke More Pot

Jacob Sullum | Aug. 8, 2014 1:41 pm

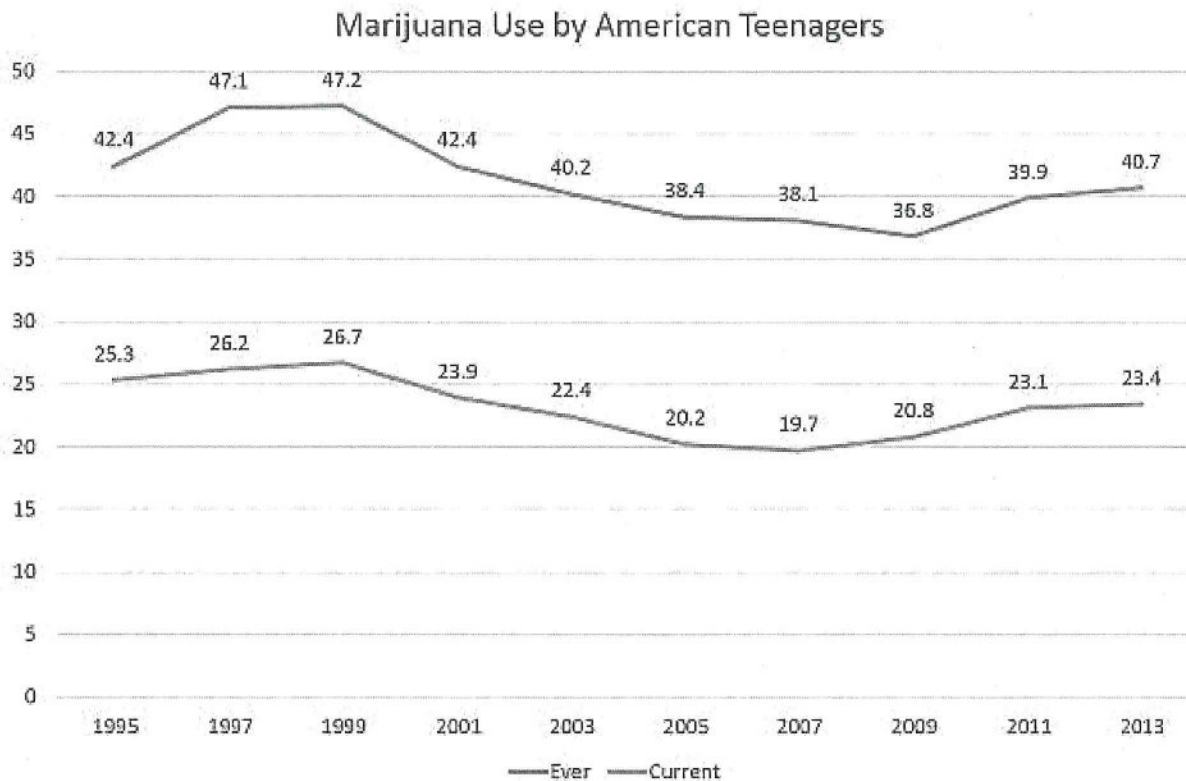
New survey data from Colorado indicate that marijuana legalization so far has not led to an increase in pot smoking by teenagers, as prohibitionists warned it would. In the 2013 Healthy Kids Colorado survey, 37 percent of high school students reported that they had ever tried marijuana, down from 39 percent in 2011. The percentage who reported using marijuana in the previous month (a.k.a. "current" use) also declined, from 22 percent in 2011 to 20 percent in 2013. The state Department of Public Health and Environment, which oversees the survey, says those decreases are not statistically significant. But they are part of a general downward trend in Colorado that has continued despite the legalization of medical marijuana in 2001, the commercialization of medical marijuana in 2009 (when the industry took off after its legal status became more secure), and the legalization of recreational use (along with home cultivation and sharing among adults) at the end of 2012:

The



## Youth Risk Behavior Survey

earlier numbers come from the CDC's Youth Risk Behavior Survey, to which Colorado contributes data from its own survey. (You can find the state-specific numbers in the reports listed here.) The CDC survey is conducted every other year, but Colorado has not always participated, which is why data for 1999, 2001, 2003, and 2007 are missing. Still, this does not look like what you would expect to see if relaxing restrictions on marijuana led to more underage consumption. In fact, the downward trend during this period is clearer in Colorado than in the country as a whole:



## Youth Risk Behavior Survey

Nationwide, past-month marijuana use by high school students rose between 1995 and 1999, then declined steadily until 2007, when it began a gradual rise that continued through 2013. In Colorado, by contrast, that number rose between 2005 and 2009 but has declined since then. Again, not what you would expect if making marijuana legally available to adults boosted consumption by minors. More detailed and sophisticated analyses, including data from various states with medical marijuana laws, likewise have found no evidence of such an effect.

1/26/2015

Despite Legalization, Colorado Teenagers Stubbornly Refuse to Smoke More Pot - Hit & Run : Reason.com

"Once again, claims that regulating marijuana would leave Colorado in ruins have proven to be unfounded," says Mason Tvert of the Marijuana Policy Project, who was a leader of Colorado's legalization campaign. "How many times do marijuana prohibition supporters need to be proven wrong before they stop declaring our marijuana laws are increasing teen use? They were wrong when they said regulating medical marijuana would do it, and they were wrong when they doubled down and said making marijuana legal for adults would do it."

It is still possible, of course, that legal recreational sales, which began in Colorado only this year, will increase teenagers' access to marijuana (not through direct sales but through diversion from adult buyers), which might lead to an increase in consumption. Colorado officials express a somewhat different concern. According to a [press release](#) from the health department, "Health experts worry that the normalization of marijuana use in Colorado could lead more young people to try it." In other words, they worry that allowing adults to legally purchase marijuana for recreational use will encourage teenagers to take a more positive view of cannabis, which will make them more likely to use it. Call it the "permitted fruit" effect. Prohibitionists such as former drug czar Gil Kerlikowske raised the same [complaint](#) against medical marijuana laws, but their fears seem to have been misplaced. For what it's worth, the health department reports that "the percentage of students who perceived a moderate or great risk from marijuana use declined from 58 percent in 2011 to 54 percent in 2013," even as marijuana use fell.

February 13, 2014

### **Few Complaints About San Francisco Dispensaries**

San Francisco's 24 city-licensed dispensaries generated just 10 citizen complaints last year, most of them for relatively minor issues such as double-parking.

Other complaints centered around strong cannabis odors and an illuminated sign (which the dispensary owner simply turned off), according to SF Weekly. One even involved a suspect marijuana brownie that was sent to a crime lab but came back clean.

The figure doesn't include dispensary-related crimes, and there were two relatively high-profile ones in or outside MMJ centers in 2013 – including an armed robbery.

But the relatively low number of citizen complaints shows that dispensaries aren't a public nuisance as some MMJ opponents claim, especially in areas with cannabis business regulations.

California doesn't have statewide rules on dispensaries, but San Francisco requires cannabis centers to receive city permits and meet some basic requirements. Owners, for instance, must pass a background check, submit details on their security plans and obtain certification as a food handler if they're going to make edibles.

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February 7, 2014

### **Rec Shop Lifts Businesses in CO Mountain Town**

Business owners in Carbondale, Colorado, need to thank the town's recreational marijuana shop.

A story in the Aspen Times reports that the Main Street businesses in the small mountain town have seen a spike in customers since Jan. 15, which is when the Doctor's Garden marijuana store opened for recreational business. The shop is the first recreational store to open in Colorado's Western Slope region.

The small town of 6,400 people is located between the ski town of Aspen and Interstate 70, which funnels traffic across the state.

Restaurants, coffee shops and grocery stores there have all reported unusually high numbers of customers since the shop opened. Most of the customers, businesses owners reported, are tourists in the 50-plus age group.

"What was kind of surprising was how normal the people were that were coming to Carbondale to buy marijuana," said Carol Bruno, owner of Peppino's Pizza in downtown Carbondale. "It wasn't the stoner crowd I expected, but an older, normal clientele."

The report reinforces the opinion that opening early in a recreational marijuana economy can generate substantial business. But it also shows that recreational cannabis stores can be good neighbors for traditional business owners, many of whom might be skeptical of the industry.

January is traditionally a slow time for the town. But the executive director of the Chamber of Commerce said the month has been just as busy as summertime.

Whether the business continues is yet to be seen. Aspen is expected to open its first recreational retail store within the month, and another is expected to open in nearby Glenwood Springs as well.

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### **Medical marijuana stores impact neighborhoods in Denver no more than coffee shops, study says**

February 21, 2014 | By William Breathes

A medical marijuana dispensary in the Denver area doesn't have any more impact on its neighborhood than does a coffee shop or a drugstore, according to a recent study released by the University of Colorado Denver. Not only that, but residents don't perceive a dispensary as an undesirable use of a storefront.

These findings counter the constant negative messages coming from law enforcement and anti-cannabis crusaders. And apparently, even the researchers were shocked by the results.

The CU Denver study looked at ways race, ethnicity and economic status played into the location of the centers themselves, with researchers taking the position that the 275 dispensaries they studied were largely located in lower-income areas. And while the findings showed that dispensaries are more likely to be located in areas that have higher rates of criminal activity, that's simply a matter of logistics: Crime generally occurs more often near commercial retail areas, and dispensaries are zoned as retail centers.

Paul Stretsky, a research student at the CU Denver School of Public Affairs who helped lead the study, says his team had predicted from the outset that dispensaries would change the neighborhoods surrounding them for the worse and create more crime. But that just wasn't the case, he notes. The researchers even went back through their methods to find some error that could account for the findings and found nothing.

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### **Study: Pot Shop Security Could Reduce Crime**

Posted on Mon, 02/25/2013 - 4:48pm

Social Welfare professor **Bridget Freisthler** recently led a team of authors that published an article in the *Journal of Community Psychology* as part of a five-year study funded by a grant from the National Institute of Drug Abuse.

The article, co-authored by Social Welfare student Nancy Kepple, Urban Planning student Revel Sims and Scott E. Martin of the Pacific Institute for Research and Evaluation, was titled "Evaluating Medical Marijuana Dispensary Policies: Spatial Methods for the Study of Environmental-Based Interventions." The paper examined several current "policy and land use environmental interventions" that seek to mitigate detrimental effects associated with the influx of medical marijuana dispensaries across California.

Focusing specifically on Los Angeles and Sacramento, Freisthler and her co-authors investigated the impact of dispensary regulations on the prevalence of crime and marijuana use, how types of medical marijuana users cluster within communities, and whether clustering is increased in locations with numerous dispensaries.

Preliminary data from the research indicate that certain regulatory measures -- such as security cameras, the presence of a guard, and the posting of signs requiring a prescription card -- may indeed be effective in reducing crime within the immediate vicinity of a marijuana dispensary.

Dr. Freisthler's expertise lies in the application of population-based geospatial research methods to the exploration of relationships between drug distribution systems, alcohol and drug abuse, and child abuse and neglect. She employs geographic information systems, spatial statistics and spatial econometrics to understand how social problems vary across geographic areas, identify areas in a community prone to developing social problems with an understanding of neighborhood ecologies, and examine how the location of social services may further affect such developments.

Freisthler received her Ph.D. in Social Welfare from UC Berkeley, and she is currently the principal investigator of the UCLA Medical Marijuana Research Team.

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### **Report: Medical Marijuana Dispensaries Not Linked to Neighborhood Crime Study of California dispensaries finds no increased crime levels**

By Jason Koebler Jun. 6, 2012

It's long been the argument of law enforcement and anti-medical marijuana advocates that the government-sanctioned pot dispensaries cause an uptick in crime, especially burglary and muggings. The only problem is that argument isn't necessarily true, according to a new study funded by the National Institutes of Health.

On its face, the argument makes sense—medical marijuana dispensaries feature large caches of high quality drugs, and its customers overwhelmingly walk in with a huge wad of cash and walk out with a desirable product. But the study, published in the *Journal of Studies on Alcohol and Drugs*, found that neighborhoods with medical marijuana dispensaries in Sacramento were no more likely to have crime than other neighborhoods.

The study's authors say their research may debunk a 2009 report by the California Police Chiefs Association that said marijuana dispensaries "have been tied to organized criminal gangs, foster large [marijuana growth] operations, and are often multi-million-dollar profit centers."

"Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized," the report continues. "Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary by-products of their operations."

Arguments such as those are common by opponents of medical marijuana legalization, which will soon be available in as many as 17 states and the District of Columbia.

"There's law enforcement and city officials debating whether these dispensaries were attracting undesirables, and there's the other side, the dispensary owners, saying maybe these concerns were unfounded," says co-author Nancy Kepple, a doctoral student at the UCLA Luskin School of Public Affairs. "But neither side had any evidence that supported either claim."

The UCLA study looked at crime rates in 95 areas of Sacramento in 2009, before the city enacted regulations on where dispensaries could be located and had fewer restrictions on what security measures dispensary operators had to meet.

"Whatever security measures were done, the owners chose to do it for themselves [in 2009]. We specifically selected this time because it was based on a free-market situation," says Kepple.

Although the researchers aren't sure why there was no uptick in crime around dispensaries, they suspect that security guards and cameras have an impact on keeping criminals out. Or, as Kepple wrote in the report, it could be that marijuana dispensaries just don't increase crime any "more than any other facility in a commercially-zoned area."

Several high-profile murders in San Francisco and Hollywood dispensaries and burglaries in San Francisco, Santa Cruz, and Colorado Springs have made dispensary-based crime national news, but those cases aren't representative of a larger trend, Kepple and her co-author, Bridget Freisthler, say.

"Because of the type of business dispensaries are, any crime there has been well-publicized, bringing more attention to the issue," Freisthler says. "Neighborhood residents get up in arms and it takes a life of its own." She says pot dispensaries appear to be no more likely to be victimized by burglars than liquor stores or other commercial spots.

Still, the authors realize there are potential holes in their study. They say they need to study crime rates in other cities and need to study crime trends over time to determine whether dispensaries have long-term impacts on neighborhood crime.

"This is really just the start, and [our findings] seem contrary to what the public debate has been saying," Kepple says. "We wanted to start thinking about the debate from a scientific standpoint."

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## March 31, 2014

### San Francisco Votes to Shrink 'Buffer Zone' Around Schools

The city's Planning Commission recently voted to shrink the buffer zone between marijuana businesses and schools from 1,000 to 600 feet. The move could allow more businesses to open outside of the quadrant of southern and eastern San Francisco called "SoMa," where 28 businesses currently operate.

When fully implemented, the new zoning laws could allow dispensaries to open into more residential areas of the city, such as Sunset and Richmond. Advocates believe that medical marijuana patients in these areas do not have adequate access to dispensaries, and are forced to travel to SoMa for their medicine.

The rule also eliminates the ban on marijuana clubs within 1,000 feet of playgrounds and youth facilities. Whether San Francisco's adjustments spread to other major cities could impact the industry. The 1,000-foot "buffer zone" has become a regulatory standard, but some advocates believe the buffer is too restrictive in densely populated areas.

Advocates in Chicago, for example, believe the 1,000-foot buffer zone between shops and residential areas could push dispensaries out of town entirely.

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July 1, 2014

**MEDICAL MARIJUANA DISPENSARY  
RULES AND REGULATIONS SUMMARY**

**I. Application Requirement**

1. Facility must be at location that is properly zoned
2. Facility cannot be the same address as a registered grow site
3. Facility cannot be within 1,000 feet of the property of a public or private school
4. Facility cannot be within 1,000 feet of another facility
5. 1,000 feet is measured from property line to property line
6. Person Responsible for Facility ("PRF") must be a resident of Oregon
7. PRF must have legal authority to act on behalf of facility
8. PRF is responsible for ensuring facility complies with applicable laws and rules
9. PRF must pass criminal background check for initial application
10. PRF is accountable for ANY intentional or unintentional actions of owners, officers, managers, employees or agents of the facility
11. The Authority can notify PRF and the facility owner if the PRF no longer meets qualifications or the facility owner can notify the Authority that PRF no longer qualifies
12. Separate security procedures are required during and after business hours
  - A. Security procedures require proper storage, restricted access areas, signage, alarm system, video surveillance system, electronic documentation system
13. Testing of marijuana and immature plants is required and must be complete before transfer to a patient or caregiver
  - A. Batch testing methods must be utilized for useable marijuana and finished product
  - B. Flowers must be tested for pesticides, mold and mildew, THC and CBD
    - (1) Pesticide testing must:
      - (a) Look for chlorinated hydrocarbons, organophosphates, carbamates, and pyrethroids
      - (b) Be analyzed using valid testing methodologies
      - (c) Not be visually inspected for pesticides



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- (2) Mold and mildew testing must:
  - (a) Be analyzed using valid testing methodologies
  - (b) Not be visually inspected for mold and mildew
- (3) THC and CBD testing must:
  - (a) Use valid testing methodologies
- (4) Interpreting test results
  - (a) Useable marijuana shall be deemed positive for mold and mildew if the sample has levels that exceed the maximum acceptable counts in the Pharmacopeia, Section 1111, which is 200 colony forming units
  - (b) Useable marijuana shall be deemed positive for any pesticides with a detection of more than 0.1 parts per million
  - (c) If useable marijuana is found to screen positive for pesticides, mold or mildew, the batch must be returned
- C. Edibles, Liquids and Solid Extracts must be tested for:
  - (1) THC and CBD if the flower used to make the edible, liquid and solid extract was tested for pesticides, mold and mildew and the results were negative
  - (2) Pesticides, mold and mildew, and THC and CBD if the flower used to make the edible, liquid or solid extract was not tested
  - (3) Interpreting test results is same as flower
- D. Immature Plants
  - (1) Must be tested for pesticides, mold or mildew using macroscopic or microscopic screening by qualified personnel
- E. A PRF must ensure that all testing, except for immature plants, is done by a laboratory
  - (1) The laboratory must:
    - (a) Use valid testing methodologies
    - (b) Have a Quality System for testing of pesticides, mold and mildew that is compliant with:
      - i. 2005 International Organization for Standardization 17025 Standards, or
      - ii. 2009 National Environment Laboratory Accreditation Conference Institute TNI Standards
    - (c) Provide test results signed by an official of the laboratory who can attest to the accuracy of the results

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## II. Operating Dispensary

1. Facility must display proof of registration in a prominent location inside the facility. This must be visible for those coming in to get medicine and those to transfer medicine to the facility
2. Facility MAY NOT use the Authority or the OMMP name or logo
3. Registration cannot be transferred to another location
4. PRF is responsible for the security of all marijuana, immature plants and records
5. Must have regular testing of all marijuana and immature plants before transfer to patients
6. Minors are NOT allowed in areas where there are immature plants and/or useable marijuana
7. An employee can use marijuana if:
  - A. He or she has a valid OMMP patient card
  - B. He or she must be in a closed room, alone, if he or she is smoking
8. Facility must use an Oregon Department of Agriculture approved scale
9. People allowed in facility where there are immature plants or marijuana: PRF, owner of facility, employee of facility, laboratory personnel, contractor authorized by PRF, patient, caregiver or grower, authorized employee or contractor of the Authority, and other government officials who have jurisdiction over some aspect of registered facility or otherwise have authority to be on premises
10. Must have written policy, procedures and training manual
11. Electronic record keeping is required, must be properly backed up, and must be kept for one year at a minimum
12. Labeling is required
  - A. Prior to transfer useable marijuana, a PRF must ensure a label is affixed to container in which useable marijuana is located, which includes:
    - (1) The amount of THC and CBD
    - (2) If prepackaged, the weight or volume of marijuana in metric units (i.e. grams)
    - (3) The amount of useable marijuana of a finished product in metric units
    - (4) Who performed the testing
  - B. If edible product, must have a warning label
13. Transfers to facility
  - A. Authorized Transfer Forms (ATF) are required
  - B. After immature plants or marijuana are transferred to facility it is no longer the property of the patient, unless it is returned to the patient

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- C. Prior to accepting the transfer, the PRF must ensure:
    - (1) That there is a valid ATF on file
    - (2) That the person bringing the medicine has proper documentation showing that he or she is the individual that is authorized to transfer
  - D. Untested marijuana that is transferred to the facility must be segregated until final test results are received
  - E. Tested marijuana or immature plants may be transferred once the facility has received a written testing report and the useable marijuana and immature plants have tested negative for pesticides, mold and mildew
  - F. A PRF is not required to accept a transfer
  - G. Once marijuana or immature plants have been transferred to the facility, it must be kept on site
14. Transfer of tested useable marijuana and/or immature plants is allowed
- A. Prior to a transfer to a patient or caregiver, a PRF must ensure:
    - (1) That marijuana or immature plant has not tested positive for mold, mildew or pesticides
    - (2) The identity of the patient or caregiver by reviewing his or her identification and OMMP card
    - (3) That each transfer is documented with information required by administrative rules.

### **III. Approval of Dispensary Application**

- 1. The Authority must notify the applicant in writing that the application has been approved and the facility is registered and provide proof of registration with unique registration number

### **IV. Provisional Registration**

- 1. How to receive a provisional registration:
  - A. Submit floor plan at time of application that has marked and labeled:
    - (1) All points of entry to a facility
    - (2) All secure areas required by these rules
    - (3) Proposed placement of all video cameras
- 2. A provisional registration does not allow a facility to transfer medicine or accept transfers of medicine
- 3. If a facility is in compliance with the statute and administrative rules, but security system is not in place, the Authority can issue a provisional registration that is valid for 60 days

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#### **V. Renewal**

1. Application expires one year following approval
2. To renew, must submit within 60 days of expiration:
  - A. Application renewal form
  - B. Renewal fee
  - C. Forms required for Authority to perform criminal background check
  - D. Pass criminal background check

#### **VI. Denial**

1. The Authority must deny if:
  - A. Applicant fails to provide sufficient documentation that proposed facility meets qualifications
  - B. If PRF has been convicted of MCS or DCS, Schedule I or II, within five years of date of application
  - C. If PRF has been convicted more than once of MCS or DCS, Schedule I or II
  - D. If PRF has been prohibited by court for participating in OMMP
2. If authority intends to deny, it must issue a Notice of Proposed Denial

#### **VII. Notification of Changes**

1. PRF must notify Authority within ten calendar days of a change in status of a PRF or facility
2. Failure to notify Authority may result of revocation of registration
3. A registered facility that changes location must submit a new application that complies with the rules

#### **VIII. Required Closures**

1. Facility may not receive transfers or transfer marijuana or plants if:
  - A. Conviction of PRF for MCS/DCS Schedule I or II
  - B. If PRF changes and Authority has not approved new PRF
  - C. School is found to be within 1,000 feet

#### **IX. Inspections, Violations and Enforcement**

1. Inspections are required within six months of approval and at least once every year

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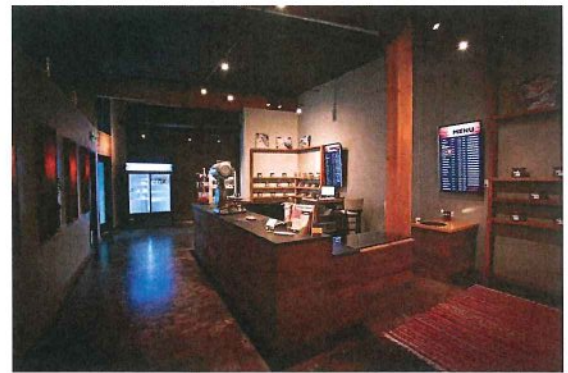
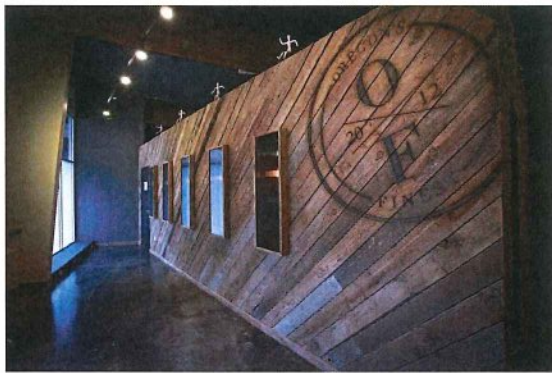
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2. Violations can include failing to cooperate, providing false or misleading information, transferring useable marijuana or plants to an individual who is not a patient or caregiver among others
3. Enforcement of these rules can be informal or formal and are dependent on the circumstances

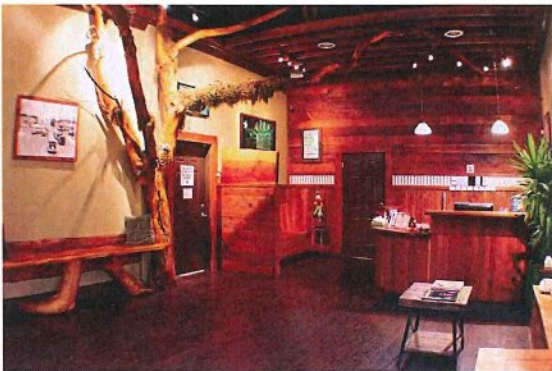
## GREENSKY COLLECTIVE



## OREGONS FINEST



## COLLECTIVE AWAKENINGS



## BRIDGE CITY COLLECTIVE



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MAR 09 2015

# DRUG-FREE ZONE LAWS: AN OVERVIEW OF STATE POLICIES

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Drug-free zone laws are among the most longstanding sentencing policies in America's War on Drugs. In 1970 – 12 years before President Ronald Reagan officially used the term "War on Drugs" – Congress passed an early version of a law increasing penalties for certain drug offenses committed near schools. In the 1980s, many state governments began to do the same. Today, all 50 states and the District of Columbia have adopted some form of drug-free school zone law.

The premise behind drug-free zone laws was that drug trafficking near schools posed a danger to children. In order to protect children from drug activity, lawmakers established protected zones around the places where children were most likely to be present, including schools and public parks. Individuals caught using or selling drugs within the protected zone faced substantially higher penalties than others who engaged in the same conduct outside the zone.

The application of drug-free school zone laws has proved problematic for several reasons:

- First, in the sentencing schemes of several states defendants may face two distinct penalties for a single offense.
- Second, the laws are frequently drafted so broadly that they result in enhanced penalties for drug offenses that are a substantial distance from a school, that do not involve school children in the offense, or take place outside of school hours. In Alabama, for example, a drug sale that takes place as much as three miles from a school, college, or public housing project is subject to a mandatory five-year prison term.

- Third, because protected areas are clustered within urban, high-density population areas, the zones disproportionately affect people of color and economically disadvantaged citizens.<sup>1</sup>

In recent years, these problems have led at least seven states, including Connecticut, Delaware, Indiana, Kentucky, Massachusetts, New Jersey, and South Carolina, to reform their drug-free zone laws. This briefing paper provides an overview of these statutes nationally and an assessment of reform activity in recent years.

## DRUG-FREE ZONES: DIVERSITY AMONG THE STATES

Drug-free school zone laws vary by jurisdiction, with the key distinctions being in these areas: zone size, locations covered, offenses covered, and penalties imposed (see Appendix for full description of each state's policies). Some states have also adopted restrictions on when and under what circumstances the enhanced penalties apply.

All 50 states and Washington, D.C. (see Appendix) apply some form of enhanced penalties to offenses involving

manufacture, sale, distribution, or possession with intent to distribute drugs. In nine states—Alaska, Arkansas, Arizona, Connecticut, Indiana, Minnesota, New Mexico, Michigan and Oklahoma—defendants in drug-free zones can also face enhanced penalties even for simple drug possession that does not involve sale to school children. In Arkansas, for example, simple possession of two grams of methamphetamine is sufficient to trigger a ten-year sentence with no parole in addition to the sentence imposed for the underlying offense.

their policies to areas beyond elementary and secondary schools and onboard school buses. For example, several states have enacted zones around public housing facilities, public parks, churches, and daycare centers. Others, including Missouri and West Virginia, include colleges and universities in their definition of “school.” Utah adds shopping malls, amusement parks, and the parking lots of such areas to the list of covered areas.

**Table 1 Drug-Free Zone Sizes by State**

< 1,000 ft.		1,000 ft.		> 1,000 ft.
Alaska	Alabama	Maine	Ohio	Alabama
Arizona <sup>a</sup>	Arkansas	Maryland	Oklahoma	Connecticut
Delaware	California	Michigan	Oregon	Louisiana
Hawaii	Colorado	Mississippi	Pennsylvania	Mississippi
Indiana	Connecticut	Missouri	South Carolina	Missouri
Massachusetts	Florida	Nebraska	South Dakota	Oklahoma
Minnesota	Georgia	Nevada	Tennessee	South Carolina
Rhode Island	Idaho	New Hampshire	Texas	
Vermont	Illinois	New Jersey	Utah	
Wyoming	Iowa	New Mexico	Virginia	
	Kansas	New York	Washington	
	Kentucky	North Carolina	Washington D.C.	
	Louisiana	North Dakota	West Virginia	

<sup>a</sup>Arizona’s drug-free zones apply only 100 feet from school property on private property and 200 feet from school property on public property.

As seen in Table 1, 32 states and the District of Columbia establish a zone area that extends 1,000 feet in all directions from the property line of schools and other protected areas. Thus, in most states a drug sale that takes place at a distance of more than three football fields away from a school building can result in enhanced prison time. Ten states have drawn zones more tightly so as to avoid overreaching in their impact, while seven others have cast a much wider net of 1,500 feet or more.

Though the stated intent of drug-free zone laws was to protect schools, 31 states have extended the scope of

The most expansive law in terms of covered locations is that of Arkansas, which draws zones around schools, public parks, public housing facilities, day care centers, colleges and universities, recreation centers, skating rinks, Boys’ and Girls’ Clubs, substance abuse treatment facilities, and churches.

## PENALTIES

Drug-free zone laws apply enhanced penalties in two different ways among the states. In thirty states, the law designates drug offenses within the protected zone as distinct crimes with their own penalties or penalty ranges. In Colorado, for example, sale of a controlled substance within a drug-free zone is a distinct criminal offense that carries an eight-year mandatory minimum sentence. In other states, the law prescribes enhanced penalties for underlying crimes when they occur within the protected zone. In Arizona, for instance, committing

**31 states have extended the scope of their policies to areas beyond elementary and secondary schools.**



a covered offense within a drug-free zone increases the presumptive minimum and maximum penalties for the underlying offense by one year.

States also vary in the severity of the penalties drug offenders receive for violating drug-free school zone laws. In 13 states, violation of the law triggers a mandatory minimum sentence or sentence enhancement that ranges from one year in Virginia to eight years in Colorado. In Washington, DC, Rhode Island, and the state of Washington, the drug-free zone violation doubles the maximum penalty for the underlying offense.

Kansas, Nebraska, and Tennessee elevate the felony class of the underlying drug offense when it is committed within a drug-free zone, thereby exposing the defendant to harsher penalties. Similarly, Delaware and Nevada treat violation of the drug-free zone as an aggravating factor in the sentencing proceeding for the underlying drug offense. Finally, some states allow juvenile defendants to be prosecuted for a drug-free zone offense in adult court and to be sentenced to an adult institution for violations of drug-free zone laws.

## LIMITATIONS ON DRUG-FREE ZONES

A number of states have imposed various restrictions on their drug-free zone laws with the intention of narrowing their focus to more closely align with the original purpose of the law. Lawmakers have limited the application of the zone laws based on the nature of the transaction, the age of the defendant, the time of day, the presence of children, and whether the offense takes place on public or private property.

Seven states—Alaska, Georgia, Louisiana, Montana, New Jersey, Texas, and Washington—apply an exception to their drug-free zone laws if the offense occurs within a private residence so long as no children are present and the defendant did not profit from the offense. Virginia similarly applies its law only on public property. California, Nebraska, and West Virginia exempt juvenile defendants from enhanced penalties, as does New Mexico for possession offenses. Florida, Massachusetts, and Nevada impose some form of time restrictions on their laws so that they only apply when children are present.

New York and South Carolina require that defendants know they are in the zone when they commit the offense, while North Carolina and North Dakota exempt small quantities of marijuana from their zone laws. Indiana is unique in that it creates affirmative defenses to its zone law: defendants may avoid the enhanced penalties of the law if they were only briefly in the zone while no minors were present or if they were in the zone solely because law enforcement officers stopped them there.

## DRUG-FREE ZONE LAWS: REFORMS

While courts have been reluctant to grant Constitutional challenges to drug-free zone laws, concerns over the laws have led a number of state legislatures to reform their drug-free zone policies. By 2005, lawmakers in Massachusetts, New Jersey, and Connecticut had commissioned studies to survey the impact and effectiveness of drug-free zone laws in their respective states, and identified problems regarding the scope of their respective zones and resulting racial disparities.<sup>2</sup> Several states have since enacted policy reforms including Massachusetts, New Jersey, Connecticut, and Indiana. Delaware, Kentucky and South Carolina also reformed their drug-free zone laws as part of larger drug law reform bills. But other states, including Arkansas, Hawaii, and Texas, have adopted harsher penalties by expanding locations to include public housing and playgrounds where selling drugs can trigger enhanced penalties.<sup>3</sup>

### CONNECTICUT

Connecticut's harsh drug-free zone law was enacted in 1987. In 2001, Connecticut legislators changed state law to grant judges discretion in applying the school zone penalty in certain drug offenses based on "good cause."<sup>4</sup> Yet the Connecticut statute imposing a three-year mandatory minimum sentence for committing a drug offense within 1,500 feet of a school, public housing complex, or daycare center remains in effect.

However, further reforms may soon be enacted. In the 2013 legislative session, Connecticut's Black and Puerto Rican Caucus sponsored a bill that would have reduced the size of the state's drug-free zones from 1,500 feet to 300 feet. The bill was debated in the Connecticut House

of Representatives but Republican opponents succeeded in filibustering the bill and its time expired without a vote. As a result, the bill stalled and will not become law for 2013. Nevertheless proponents of the bill have vowed to introduce it again in the next legislative session.

## DELAWARE

Delaware's drug-free zone law was first adopted in 1989 and created 1,000-foot zones around schools and 300-foot zones around parks. Commission of a drug offense—including simple possession—within the zone constituted a distinct felony offense. In 2011, as part of a general effort to reduce excessive penalties for drug users and lower level sellers, the General Assembly passed and Governor Jack Markell signed a bill that substantially reformed the state's drug laws.

The 2011 law shrunk Delaware's drug-free zones from 1,000 feet to 300 feet. It also created three categories of drug offenses—simple possession, aggravated possession, and drug dealing—with the sentence for each offense depending on the type and quantity of drug involved and the presence or absence of aggravating circumstances. The law makes commission of the underlying offense within a drug-free zone an aggravating factor for the purposes of sentencing.

## INDIANA

Indiana's original drug-free zone law, passed in 1987, raised the felony class of the underlying drug offense from Class B to Class A if the offense occurred within 1,000 feet of school property, a public park, a public housing complex, or a youth program center. Under state law, the penalties imposed for committing a Class A felony are substantially harsher than those imposed for a Class B felony: a Class A felony exposes a defendant to a sentence of 20 to 50 years in prison with an advisory sentence of 30 years, while a Class B felony exposes a defendant to a sentence of 6 to 20 years in prison with an advisory sentence of 10 years. In 2007, two bills were introduced—one in each house of the legislature—that would have expanded drug-free zones to churches and marked bus stops, respectively.

In response to the 2007 bills, Kelsey Kauffman, formerly of DePauw University, and her students began studying the impact and effectiveness of the state law. Their findings were similar to those in Massachusetts and Connecticut: drug-free zones blanketed large portions of inner city areas in Indianapolis and more than 75% of defendants who had their felony class raised under the drug-free zone statute were black.<sup>5</sup> Professor Kauffman and her students presented their findings before the Indiana Senate Committee on Corrections, Criminal, and Civil Matters in 2007 and 2008 and again before the specially-convened Indiana Sentencing Policy Study Committee in October 2008. Their testimony contributed to the defeat of the bills in the legislature.

In a drug-free zone case in February 2012, the Indiana Supreme Court reduced the 20-year sentence of a Kokomo man convicted of possessing small amounts of marijuana and cocaine within a drug-free zone.<sup>6</sup> Because the man would have faced a maximum prison sentence of only 18 months if his offense had occurred outside the zone, the court found that the 20-year sentence was grossly disproportionate to the severity of the crime. Furthermore, the court signaled that it would continue to reduce harsh sentences imposed under the drug-free zone law when it reduced a similar sentence in June 2012.<sup>7</sup>

In response, to address the concerns of the Indiana Supreme Court as well as the issues documented in the DePauw University study, the legislature passed and Governor Mike Pence signed a bill that substantially reformed the state's law. The bill reduced Indiana's zones from 1,000 feet to 500 feet and eliminated the zones around public housing complexes and youth program centers. It also added the requirement that a minor must be reasonably expected to be present when the underlying drug offense occurs. Lastly, the measure made violation of the drug-free zone law an "enhancing circumstance" of the underlying drug offense, the severity of which is dependent upon the type and quantity of the drug involved. Because the law also restructures Indiana's felony classification structure and penalties, a defendant sentenced under the revised law now faces a mandatory minimum penalty of one year rather than twenty years.

## KENTUCKY

Lawmakers modified the state's drug free zone in 2011. The provision was included in a larger package of sentencing reforms that were adopted to address the state's growing prison population. State lawmakers shrunk the drug free zone from 1,000 yards to 1,000 feet. Anecdotal reports suggest that the original zone was a mistake given that most states impose a zone measured in feet rather than yards. The change in policy was adopted without opposition.

## MASSACHUSETTS

In 1989, the General Assembly of Massachusetts passed the state's first drug-free zone law, which imposed a 2-15-year mandatory minimum sentence for convictions of selling or distributing drugs within 1,000 feet of a school. A 1993 amendment drew a 100-foot zone around parks, and a 1998 amendment added a 1,000-foot zone around day care and Head Start facilities.<sup>8</sup> Efforts to reform the law began in 2000, when Dorchester District Court Judge Sydney Hanlon noticed that a majority of drug-free zone defendants in her courtroom were black or Hispanic and requested that Northeastern University researchers conduct an analysis on the racial impact of the law. The researchers documented that 80% of the defendants who received enhanced sentences under the drug-free zone law were black or Hispanic—even though 45% of those arrested for drug violations statewide were white.

The next layer of drug-free zone research was conducted by William Brownsberger at the Boston University School of Public Health. In his analysis of 443 drug sale cases in Fall River, New Bedford, and Springfield, Massachusetts, Brownsberger found that school zones covered 29% of the three studied cities and 56% of high-poverty areas.<sup>9</sup> These findings led Brownsberger to recommend that the Massachusetts zone be shrunk from 1,000 feet to 100-250 feet.

These findings were bolstered by a 2009 report issued by the Prison Policy Initiative (PPI). PPI's research, which focused on Hampden County in western Massachusetts, revealed that residents of urban areas were five times as likely to live within a drug-free zone as residents of rural areas.<sup>10</sup> The data further showed that more than

half of black and Hispanic residents lived in drug-free zones while less than a third of white residents did so. PPI also found that the addition of Head Start facilities to the law in 1998 disproportionately impacted poor neighborhoods since such facilities service poor neighborhoods and are therefore more likely to be located there.

As a result of the issues surrounding the state's drug-free school zone law, legislators serving on Massachusetts's joint Judiciary Committee approved a bill that would have shrunk the size of the zones and limited the hours of their effectiveness, but it died on the floor of the General Assembly. In the summer of 2012, however, with the endorsement of Governor Deval Patrick, the General Assembly passed a bill that reduced the size of Massachusetts's zones from 1,000 feet to 300 feet and limited the hours of the zones' operation from 5 a.m.-midnight.

## NEW JERSEY

New Jersey first enacted its drug-free zone law as part of sweeping drug legislation in 1987. The original law drew a 1,000-foot zone around schools; distributing, dispensing, or possessing with intent to distribute drugs within that zone was classified as a third-degree felony with a three-year mandatory minimum prison sentence. In 1998, New Jersey lawmakers added a 500-foot zone for drug sales around public housing complexes, parks, libraries, and museums. Violation of the 1998 law constituted a second-degree offense, for which a prison term is the presumptive sentence. Furthermore, New Jersey courts have interpreted the word "school" in the statute to be broad, including daycare centers, vocational training centers, and other educational facilities.

Advocacy organizations including the Drug Policy Alliance and Families Against Mandatory Minimums prioritized reform of the state's drug-free school zone laws. This was instrumental in the legislature's decision to convene the New Jersey Commission to Review Criminal Sentencing in 2004. The Commission found that that enforcement of the drug-free-zone laws had a devastating impact on minority defendants because New Jersey's densely populated urban areas were transformed into massive "drug-free" zones. Nearly every defendant (96%) convicted and incarcerated for a drug-free zone

offense in New Jersey was either black or Latino.<sup>11</sup> The Commission recommended that the legislature shrink the size of the zones from 1,000 to 200 feet and eliminate the mandatory minimum sentence for school zone violations.

The commission's bill passed in committee in 2005 but stalled in the legislature later that year. Five years later, Governor Jon Corzine signed into law a bill that did not alter the 1,000-foot zone size, but eliminated the mandatory minimum prison sentence for school zone offenses and enhanced judicial discretion in such cases.

## SOUTH CAROLINA

South Carolina maintains an expansive zone of more than 2,600 feet, or a half mile, around restricted areas. However, lawmakers modified the triggers for penalty enhancements in restricted areas when a comprehensive package of sentencing reforms that garnered bipartisan support was adopted in 2010. The modification

requires that anyone arrested for a drug offense in an enhancement zone must have knowledge that he or she was in a restricted area with the intent of selling.

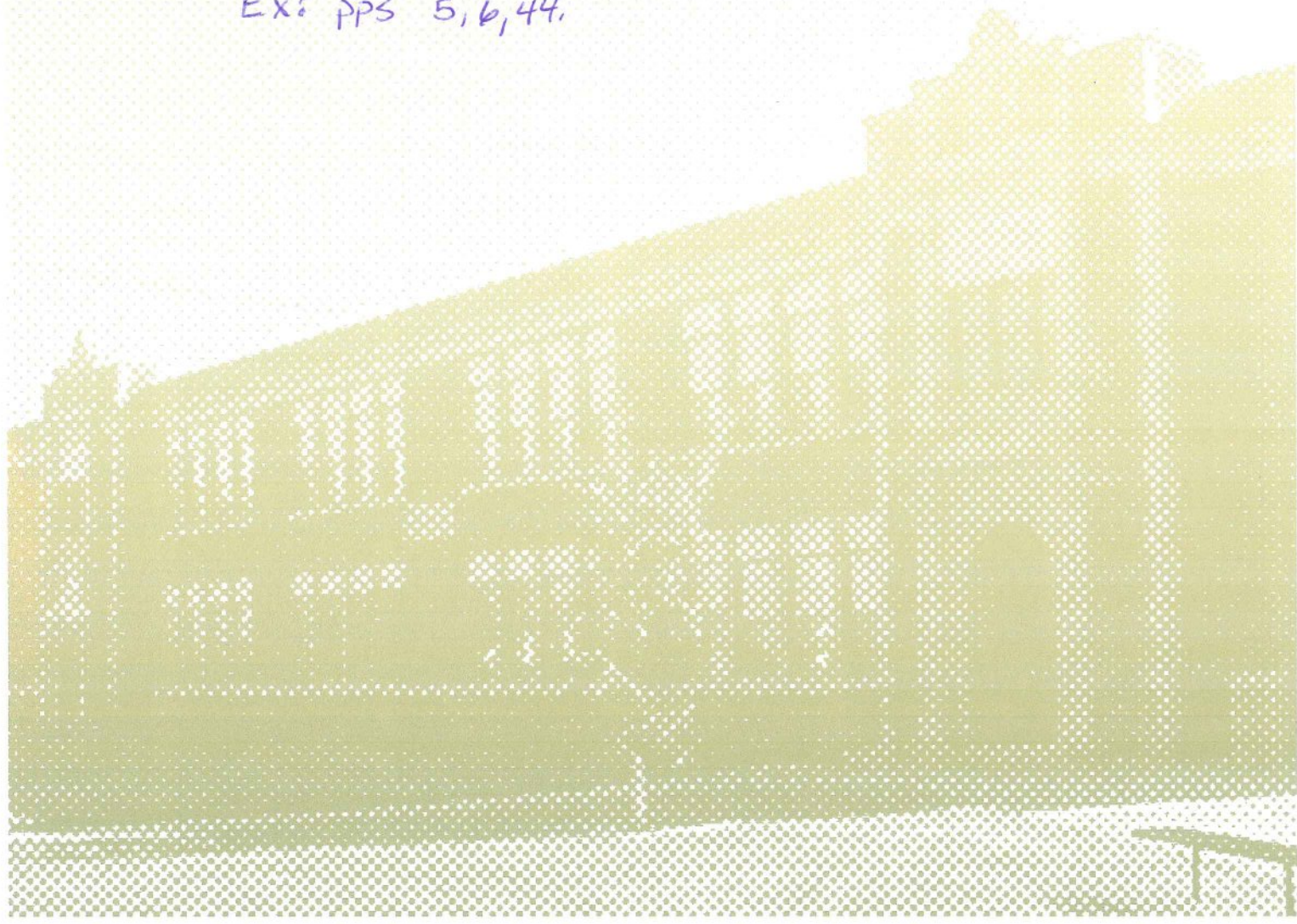
## CONCLUSION

Drug-free zone laws were initially promoted as an attempt to keep dangerous drug activity away from children. In practice, drug-free zone laws have created a number of serious issues within the criminal justice system, by frequently imposing excessive penalties and by subjecting urban poor and minority populations to harsher penalties than others for similar drug offenses. Spurred by more than a decade of research, a number of states are taking measures to reform their drug-free zone laws to alleviate the burdens they impose on poor people and people of color with no benefit to public safety. These states should serve as a model for other jurisdictions as the movement for fairer, more effective drug laws continues to build momentum in the United States.

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A Justice Policy Institute Report  
Commissioned by  
The Drug Policy Alliance  
Judith Greene, Kevin Pranis, Jason Ziedenberg  
March, 2006

# Disparity by Design:

How drug-free zone laws impact racial disparity – and fail to protect youth

## II. What are drug-free zones, and where have they been enacted?

"The purpose of drug-free school zones was to protect children and schools by insulating them from drug activity. We recognized that the "war on drugs" would be won or lost in the schoolhouse. Our intention was to create a safe harbor for children by pushing the pushers away. Unfortunately, the current 1,000-foot zones have failed to achieve that objective."

- New Jersey Assistant Attorney General Ron Susswein

Drug-free zone laws provide heightened penalties for drug offenses that occur within restricted areas surrounding schools, public housing projects, parks, playgrounds, and other proscribed locations. The typical statute establishes a 1,000-foot zone surrounding schools and equal or smaller zones for other structures or locations, but the size of the zone can vary from 300 feet to three miles depending the state. Most drug-free zones apply only to manufacture, distribution, or possession of a controlled substance with intent to distribute, but a few also cover simple drug possession.

A handful of states make drug activity in a prohibited zone a separate, stand-alone offense, but in most states the drug-free zone charge is an enhancement to the penalty imposed for the underlying possession or sale offense. The penalties and penalty enhancements assigned to drug-free zone violations vary widely, but in many states they include mandatory or presumptive sentences. Like other mandatory minimum drug sentencing laws, these statutes have contributed to prison population growth, and to racial and ethnic disparity in the use of incarceration.

### Offenses vs. enhancements

*Drug-free zone laws come in two forms. 1) The first designates distribution and/or possession of illegal drugs in a prohibited zone as a distinct crime that carries a specific penalty or penalty range. 2) The second, more common form of the law provides for heightened or additional penalties when specified drug crimes occur in a prohibited zone. Although the consequences for defendants are often similar, the legal distinction is important, and the report attempts to maintain it by referring either to drug-free zone "offenses" (separate crimes) or "enhancements" (heightened and additional penalties) when describing the laws and how they function.*

The first drug-free zone law was enacted in a rudimentary form as part of the Comprehensive Drug Abuse, Prevention and Control Act of 1970 and amended to its current form in 1984 when the "crack" epidemic hit urban areas of the U.S. The federal statute provides a penalty enhancement that applies to distribution, possession with intent to distribute, or manufacture of a controlled substance within 1,000 feet of a school, college, or playground; or within 100 feet of a youth center, swimming pool, or video arcade. Drug-free zone offenses are subject to twice the maximum punishment authorized for offenses committed outside the zones. The only exemption is for cases involving five grams or less of marijuana.

In the summer of 1986, Len Bias, an all-American college basketball star at the University of Maryland, collapsed from a cardiac arrest in his dorm room and died shortly thereafter.

*Alabama's three-mile zone around both schools (including colleges and universities) and public housing projects, covers an area of more than 27 square miles.*

The news that his death may have been related to a drug overdose fueled enactment of drug-free zone laws, modeled on the federal statute, in state after state. By 2000, a draft analysis prepared by the National Alliance for Model State Drug Laws (NAMSDL) found that all 50 states and the District of Columbia had enacted statutes increasing penalties for drug offenses committed in prohibited zones surrounding schools and other public and quasi-public locations.<sup>1</sup>

### **The parameters of state drug-free zone statutes – size, location, offenses, and penalties**

There is no central repository of information on state sentencing laws upon which to base a comparative analysis of drug-free zone statutes. The best available information comes from the NAMSDL survey, which is neither comprehensive nor current but which is helpful in drawing some general conclusions about how the laws have been structured.<sup>2</sup>

#### **Zone size: From 300 feet to 3 miles**

The typical drug-free zone extends 1,000 feet in every direction from the property line of the school or other covered structure or location – roughly the length of three football fields. A number of states have, however, established zones that are more narrowly focused on the area immediately surrounding schools and other locations that children frequent.

Minnesota, North Carolina, and Rhode Island lawmakers determined that a 300-foot zone provides the necessary protection for children.<sup>3</sup> Drug-free zones in Alaska and Wyoming extend 500 feet from schools, while lawmakers in Hawaii set the boundary at 750 feet. Vermont lawmakers opted not to establish a specific “zone” and instead reserved enhanced penalties for drug deliveries that take place within school grounds, on property adjoining school grounds, or on school buses.

On the other hand, a handful of states went in the opposite direction. In Connecticut and Mississippi, drug-free zones extend 1,500 feet from institutions;<sup>4</sup> Missouri and Oklahoma establish zones that reach 2,000 feet;<sup>5</sup> and South Carolina designates a half-mile (2,640 feet) as the radius of drug-free school zones. While Mississippi, Missouri, Oklahoma, and South Carolina are somewhat less densely populated, diluting the effect of the expanded zones, Connecticut has the fourth-highest population density in the nation which magnifies the impact of the larger zone.

No other state, however, approaches the scale chosen by lawmakers in Alabama who established a *three-mile* (15,840-foot) zone around both schools (including colleges and universities) and public housing projects. Each zone covers an area of more than 27 square miles – nearly half the size of the state’s fifth-most populous city (Tuscaloosa) and more than half the size of Boston. In Birmingham, the “school-zone” surrounding the University of Alabama campus alone encompasses bulk of the central city and comes within blocks of the international airport.

#### **Locations: From schools to shopping malls**

A few states have narrowly tailored their drug-free zone statutes to focus on schools, the original target of the laws. Most, however, have attached the zones to locations such as parks and public housing developments, and more than a few have tacked on a laundry list of other public and private structures and locations.

## Conclusion

A substantial body of evidence from research and policy studies indicates that drug-free zone laws, as they are typically configured, are not effective in reducing the sale or use of drugs, or in protecting school children – and the role these laws play to increase unwarranted racial disparity is well documented. The case studies detailed in this report demonstrate that policymakers in jurisdictions from coast to coast are moving to reform or replace drug-free zone laws with more effective measures. These include:

### 1) Shrinking the size of the zones to 200 feet

- **New Jersey:** The sentencing commission recommended that lawmakers narrow the zones to 200 feet: “[R]educe the surface area of the zones to establish smaller, more discrete and therefore more recognizable areas around those facilities entitled to greater protection.” Bill S 278 incorporates the commission’s reform recommendation.
- **Connecticut:** HB 5780, “An act concerning safe schools,” is under consideration in the Judiciary Committee. The bill would narrow the scope of the zones from 1,500 to 200 feet from the perimeter of the prohibited structures and locations, and would require the posting of signs to mark the boundaries of prohibited zones.
- **Washington:** Senator Adam Kline (D – Seattle) introduced a bill to reform Washington’s drug-free zone statute (SB 5258). Kline proposed that decreasing the space restriction around school grounds and school bus route stops from 1,000 feet to 200 feet, and specifying that the restrictions apply, respectively, during regular school hours and during the time that students are waiting for a bus or being discharged.

*Seattle King County prosecutor: “We recognized that the enhancements could be more surgically applied to carry forward legislative intent.”*

### 2) Replacing drug-free zone laws with laws that target the problem

- **Utah:** The parole board recommends that legislators replace the drug-free zone enhancement with a narrowly tailored enhancement for those convicted of selling or manufacturing drugs in the presence of children.
- **Illinois:** Illinois law had provided automatic transfer of 15- and 16-year-olds charged with drug crimes within 1,000 feet of a school to adult criminal court without judicial review. In 2005, Governor Rod Blagojevich signed SB 283 – giving judges discretion to determine whether a youth will be prosecuted as an adult or a juvenile for drug offenses.



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**Trends in Caffeine Intake Among US Children and Adolescents**  
Amy M. Branum, Lauren M. Rossen and Kenneth C. Schoendorf  
*Pediatrics* 2014;133;386; originally published online February 10, 2014;  
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# Trends in Caffeine Intake Among US Children and Adolescents



**WHAT'S KNOWN ON THIS SUBJECT:** The majority of caffeine intake among children and adolescents is due to soda and tea consumption. Energy drinks, which provide a potent source of caffeine, have increased in availability in the United States in recent years.



**WHAT THIS STUDY ADDS:** This analysis presents trends in caffeine intake between 1999 and 2010, which have previously not been described in the United States, and reveals the impact of increasing energy drink use, also previously not described, on these trends among children and adolescents.

## abstract



**BACKGROUND AND OBJECTIVE:** Physicians and policy makers are increasingly interested in caffeine intake among children and adolescents in the advent of increasing energy drink sales. However, there have been no recent descriptions of caffeine or energy drink intake in the United States. We aimed to describe trends in caffeine intake over the past decade among US children and adolescents.

**METHODS:** We assessed trends and demographic differences in mean caffeine intake among children and adolescents by using the 24-hour dietary recall data from the 1999–2010 NHANES. In addition, we described the proportion of caffeine consumption attributable to different beverages, including soda, energy drinks, and tea.

**RESULTS:** Approximately 73% of children consumed caffeine on a given day. From 1999 to 2010, there were no significant trends in mean caffeine intake overall; however, caffeine intake decreased among 2- to 11-year-olds ( $P = .01$ ) and Mexican-American children ( $P = .003$ ). Soda accounted for the majority of caffeine intake, but this contribution declined from 62% to 38% ( $P = .001$ ). Coffee accounted for 10% of caffeine intake in 1999–2000 but increased to nearly 24% of intake in 2009–2010 ( $P = .001$ ). Energy drinks did not exist in 1999–2000 but increased to nearly 6% of caffeine intake in 2009–2010.

**CONCLUSIONS:** Mean caffeine intake has not increased among children and adolescents in recent years. However, coffee and energy drinks represent a greater proportion of caffeine intake as soda intake has declined. These findings provide a baseline for caffeine intake among US children and young adults during a period of increasing energy drink use. *Pediatrics* 2014;133:386–393

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### KEY WORDS

diet, survey, children, adolescents, trends

### ABBREVIATIONS

FDA—US Food and Drug Administration

MEC—mobile examination center

PIR—poverty-income ratio

Dr Branum codesigned the study, performed the literature review, and drafted the initial manuscript; Dr Rossen codesigned the study, performed the statistical analyses, and formatted the tables and figures; Dr Schoendorf conceptualized the study and critically reviewed the manuscript; and all authors approved the final manuscript as submitted.

The findings and conclusions in this article are those of the authors and do not necessarily represent the views of the National Center for Health Statistics, Centers for Disease Control and Prevention.

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The assessment of caffeine intake among children and adolescents is important to health professionals and policy makers. Historically, soda and tea have been the main sources of caffeine in the diets of children and adolescents<sup>1</sup>; however, the availability and sales of energy drinks, specialty coffee drinks, and food products containing caffeine, including candy bars, potato chips, and gum, have dramatically increased over the past decade and are often marketed toward children and adolescents.<sup>2,3</sup> Although caffeine is considered a “safe” substance by the US Food and Drug Administration (FDA), its potential adverse effects on children and adolescents are largely unknown because most research has been in adult populations.<sup>3</sup> In addition, the caffeine content of energy drinks, unlike that of cola, is not currently regulated by the FDA because the former are marketed as and considered dietary supplements.<sup>2</sup> Excess consumption of caffeine can result in tachycardia, arrhythmia, hypertension, hyperactivity, anxiety, and increased blood sugar concentrations because many energy drinks, specialty coffee drinks, and other drinks that contain large amounts of caffeine (eg, some brands of soda) often also contain high amounts of sugar.<sup>4,5</sup> Case reports of caffeine toxicity and deaths among adolescents and adults reflect the potential dangers of excess caffeine or energy drink consumption.<sup>5,6</sup> The American Academy of Pediatrics currently takes the position that “stimulant-containing energy drinks have no place in the diets of children and adolescents.”<sup>7</sup> In addition, neither the *Dietary Guidelines for Americans* nor the Institute of Medicine provides guidance for caffeine as a nutrient. With the exception of an analysis of Continuing Survey of Food Intakes by Individuals data from the mid-to-late 1990s,<sup>1</sup> which predate energy drink

production in the United States, there have been no descriptions of caffeine or energy drink intake among adolescents in the United States using a nationally representative population. This analysis fills these important gaps by examining trends in caffeine intake over the past decade among US children, adolescents, and young adults and assessing caffeine intake from energy drinks and other beverages.

## METHODS

### Study Population

We analyzed data from the 1999–2000, 2001–2002, 2003–2004, 2005–2006, 2007–2008, and 2009–2010 NHANES, a nationally representative survey of the civilian noninstitutionalized population in the United States.<sup>8</sup> The NHANES comprises both a household interview and mobile examination center (MEC) component. Participants are administered a series of questionnaires during the household interview; those that consent to an MEC examination undergo selected medical and physiologic measurements and laboratory tests.<sup>8</sup> The overall response rates for NHANES MEC participants were 75% to 80% for the survey periods used in this analysis.<sup>9</sup>

### Study Variables

Our main outcome was caffeine intake from all foods and beverages reported on the first 24-hour dietary recall among NHANES participants ages 2 through 22 years. This 24-hour dietary recall is conducted in person in the MEC by a trained interviewer by using the Automated Multi-Pass Method, which involves leading the respondent through a series of questions regarding all food and beverage intake in the previous 24 hours.<sup>10</sup> Since 2003, a second dietary recall has been conducted via telephone 3 to 10 days after the first; however, because we were making population-level mean estimates and only have 1 recall

for 1999–2002, this analysis was limited to the first-day dietary recall. For children younger than 6 years, recalls were answered by a proxy respondent, typically a caregiver. Children between 6 and 11 years of age completed the dietary recalls with assistance from a proxy respondent, and children 12 and older reported intake unassisted. More information regarding the dietary recall methodology can be found elsewhere.<sup>11</sup> Data on caffeine were taken from the Total Nutrient file, which contains summed nutrients for an individual from all food and beverages reported on the dietary recall.<sup>12</sup> The nutrient information is derived from the US Department of Agriculture’s Food and Nutrient Database for Dietary Studies, which contains food and beverage nutrient composition data and is used in conjunction with the NHANES dietary recall data to assign nutrient values to reported foods and beverages.<sup>13</sup>

We also examined caffeine intake from specific food and beverages by using the Individual Foods files. Foods reported in the NHANES dietary recalls are assigned an 8-digit code beginning with the numbers 1 through 9, which distinguishes certain food groups from each other.<sup>13</sup> To examine food and beverage contributors to caffeine intake, we used these codes to create categories for specific beverages as follows: flavored dairy (eg, chocolate milk), coffee, soda, tea, and energy drinks. We also included 3 specific food categories, sweetened grains (eg, chocolate cake), sugars/sweets, and “other,” due to the presence of caffeine in select items within these categories.

We examined trends in caffeine intake by demographic characteristics including age (2–5, 6–11, 12–16, 17–18, and 19–22 years), race/ethnicity (non-Hispanic white, non-Hispanic black, and Mexican American), and poverty status. These age groups align with the differences in the way the dietary recall

information was reported and also allowed a more detailed examination of caffeine intake among older adolescents and young adults. Although 19- to 22-year-olds are not typically included in analyses of children and adolescents, this age group was included due to concern about caffeine intake (and energy drink consumption, in particular) among college-aged youth. Race/ethnicity analysis was restricted to non-Hispanic white, non-Hispanic black, and Mexican American only because the relatively small sample sizes for children of "other Hispanic" and "other race/ethnicity" did not permit separate analyses. Poverty status was measured by using the poverty-income ratio (PIR), which accounts for household income according to household or family size, household age composition, and year.<sup>14</sup> We created ordinal categories of PIR expressed as a percentage of the federal poverty threshold (0%–99%, 100%–199%, 200%–299%, 300%–399%, and \$ 400%).

### Statistical Analysis

We estimated the mean caffeine intake (mg/day) by survey year and by demographic characteristics. Guidance from the online NHANES Dietary tutorial states that 1 day of dietary recall is subject to random error, mainly in the form of intraindividual daily variability in food intake, and bias (eg, underreporting of food intake based on weight or demographic characteristics).<sup>15</sup> Although it is assumed that the random errors will negate each other when intake is examined over an entire population, bias may still be present.<sup>15</sup> Therefore, the use of the first-day dietary recall to make population estimates of mean caffeine intake for a given day is sufficient for this analysis, although it may be limited by potential bias if certain demographic groups were more likely to misreport caffeine intake. Mean caffeine intake

was not normally distributed because ~30% of respondents reported no caffeine intake on their first-day recall. Due to the large number of zero values, the distribution was also not easily transformable. Therefore, we estimated mean intake only among those reporting caffeine intake ("consumers") and examined the proportion reporting no caffeine intake ("nonconsumers") over time. We did this to determine whether the proportion of nonconsumers was different over time and therefore could bias the results of the mean analysis. The proportion of caffeine intake attributable to various food and beverage categories was assessed by multiplying caffeine intake in the Individual Foods file by the first-day dietary recall weight, as delineated in the NHANES analytic guidelines.<sup>16</sup> Using this value as the sample weight and tabulating the food and beverage categories subsequently produces the population-weighted proportion of caffeine intake attributable to each food and beverage category.

Trends over time were assessed overall and by demographic subgroups. Log-binomial models were used to model the proportion of youth reporting positive caffeine intake on a given day. Due to skewed distribution of caffeine intake among consumers, intake was log-transformed and linear regressions were used to examine associations between demographic characteristics, as well as to model trends over time. Statistical significance of trends was assessed by using orthogonal polynomial contrasts, which test a hypothesis of no linear or quadratic trend. Because of the large number of children with no caffeine intake, sensitivity analyses used zero-inflated negative binomial models to examine intake including nonconsumers. Analyses were performed by using Stata/SE (version 12.1; StataCorp, College Station, TX). Day 1 dietary recall weights and survey procedures were used in all analyses to

account for the complex, stratified, multistage probability sample design of NHANES.

### RESULTS

Approximately 73% of children consumed caffeine on a given day; this proportion did not change over time. However, there were some significant differences by age, race/ethnicity, and PIR (see Table 1). There was a significant quadratic trend for age; the percentage of consumers increased from 63% among 2- to 5-year-old children to ~75% among the older age groups. There was a linear trend for PIR where higher-income children were more likely to consume caffeine than children below the poverty threshold. Non-Hispanic white children were more likely to consume caffeine than non-Hispanic black or Mexican-American children. There were no differences over time in the proportion of youth consuming caffeine for any socio-demographic subgroup, except that youth in the lowest-income category (0%–99% of the federal poverty threshold) demonstrated a significant linear decrease in the likelihood of consuming caffeine across the study period ( $P = .03$ ; data not shown).

Among caffeine consumers, there was an increase in caffeine intake with age ( $P, .001$ ; Table 1). In addition, non-Hispanic white children consumed a greater amount of caffeine on a given day than non-Hispanic black or Mexican-American children ( $P, .001$ ), and boys consumed a greater amount than girls ( $P, .001$ ). There were no significant differences in mean caffeine intake by PIR.

There was no significant trend in mean caffeine intake (mg/day) among children with reported caffeine intake (Fig 1;  $P = .104$ ). Similar results were found by using a zero-inflated negative binomial model to examine trends among all children, not just caffeine

**TABLE 1** Percentage of US Children and Adolescents (2–22 Years Old) Consuming Caffeine and Intake Among Consumers: NHANES 1999–2010

	Percentage Consuming Caffeine	Mean Intake Among Consumers, mg
<b>Year</b>		
1999–2000	73.7 $\pm$ 1.3	77.4 $\pm$ 8.3
2001–2002	73.4 $\pm$ 1.1	63.3 $\pm$ 3.1
2003–2004	75.5 $\pm$ 1.4	67.3 $\pm$ 4.9
2005–2006	72.4 $\pm$ 1.3	60.0 $\pm$ 3.8
2007–2008	72.1 $\pm$ 1.1	69.1 $\pm$ 3.5
2009–2010	72.1 $\pm$ 0.9	58.1 $\pm$ 4.8
<b>Gender</b>		
Male	73.3 $\pm$ 0.7	73.1 $\pm$ 3.3
Female	73.1 $\pm$ 0.7	57.7 $\pm$ 1.7 <sup>a</sup>
<b>Age<sup>a,b</sup></b>		
2–5 years	62.7 $\pm$ 1.1	15.9 $\pm$ 1.2
6–11 years	74.8 $\pm$ 0.9	31.8 $\pm$ 1.6
12–16 years	75.3 $\pm$ 0.9	67.5 $\pm$ 2.4
17–18 years	75.8 $\pm$ 1.2	109.9 $\pm$ 7.1
19–22 years	76.8 $\pm$ 1.6	125.5 $\pm$ 6.0
<b>Race/ethnicity</b>		
Non-Hispanic white	77.5 $\pm$ 0.7	74.2 $\pm$ 2.6
Non-Hispanic black	58.7 $\pm$ 0.9 <sup>c</sup>	39.4 $\pm$ 1.7 <sup>c</sup>
Mexican American	73.3 $\pm$ 0.9 <sup>d</sup>	46.0 $\pm$ 1.6 <sup>c</sup>
<b>PIR<sup>e,f</sup></b>		
0%–99% of FPT	71.9 $\pm$ 0.9	66.8 $\pm$ 4.0
100%–199% of FPT	72.4 $\pm$ 1.2	70.9 $\pm$ 5.3
200%–299% of FPT	73.9 $\pm$ 1.7	58.1 $\pm$ 3.1
300%–399% of FPT	74.6 $\pm$ 1.1	68.6 $\pm$ 5.7
≥ 400% of FPT	75.1 $\pm$ 1.2	61.6 $\pm$ 3.1

Data are presented as percentages or means  $\pm$  SEs. FPT, federal poverty threshold.

<sup>a</sup> Indicates different from reference group of males,  $P$ , .05.

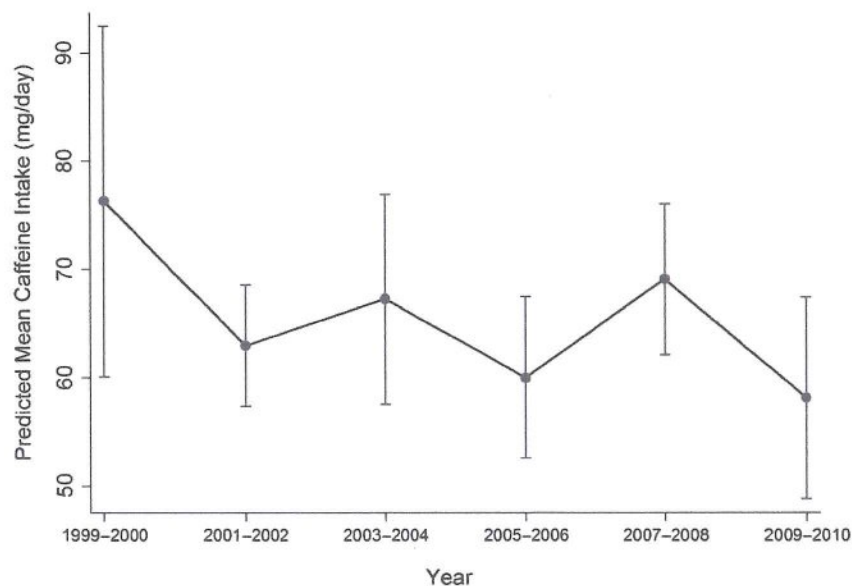
<sup>b</sup> Indicates significant linear trend,  $P$ , .001.

<sup>c</sup> Indicates different from reference group of non-Hispanic whites,  $P$ , .001.

<sup>d</sup> Indicates different from reference group of non-Hispanic whites,  $P$ , .05.

<sup>e</sup> Indicates significant linear trend,  $P$ , .01.

<sup>f</sup> Indicates significant quadratic trend,  $P$ , .01.



**FIGURE 1** Mean caffeine intake (mg/day) and 95% confidence intervals among consumers of caffeine aged 2 to 22 years: NHANES 1999–2010.

consumers (data not shown). Table 2 describes mean caffeine intake over the study period among consumers by sociodemographic characteristics. Sensitivity analyses using zero-inflated negative binomial models and including nonconsumers were consistent with results presented (Supplemental Table 4). There were significant linear decreases over the study period in the mean amount of caffeine consumed on a given day among 2- to 5-year-olds ( $P$ , .001), 6- to 11-year-olds ( $P$  = .008), and Mexican-American children ( $P$  = .003). There were no statistically significant linear or quadratic time trends in caffeine intake among other sociodemographic subgroups.

### Proportion of Caffeine Intake Attributable to Food/Beverage Categories

Soda accounted for the majority of caffeine intake in 1999–2000 (62%) and remained the largest contributor to caffeine intake throughout the study period (Fig 2). However, the proportion of intake attributable to soda declined from 62% in 1999–2000 to 38% in 2009–2010 ( $P$ , .001). Tea was the second largest contributor to overall caffeine intake, and remained relatively stable from 1999–2000 to 2009–2010. Coffee accounted for only 10% of caffeine intake in 1999–2000, but increased significantly to nearly 24% of intake in 2009–2010 ( $P$ , .001). Energy drinks did not exist as a category in 1999–2000, but represented nearly 6% of caffeine intake in 2009–2010. This increase represented a significant linear trend ( $P$ , .001), even though the sample size of children reporting use of energy drinks was small (unweighted  $n$  = 111, survey-weighted proportion of children reporting = 0.7%).

Table 3 shows the proportions of caffeine intake attributable to various sources by age group. Across all age groups, soda represented the largest contributor to caffeine intake in 1999–

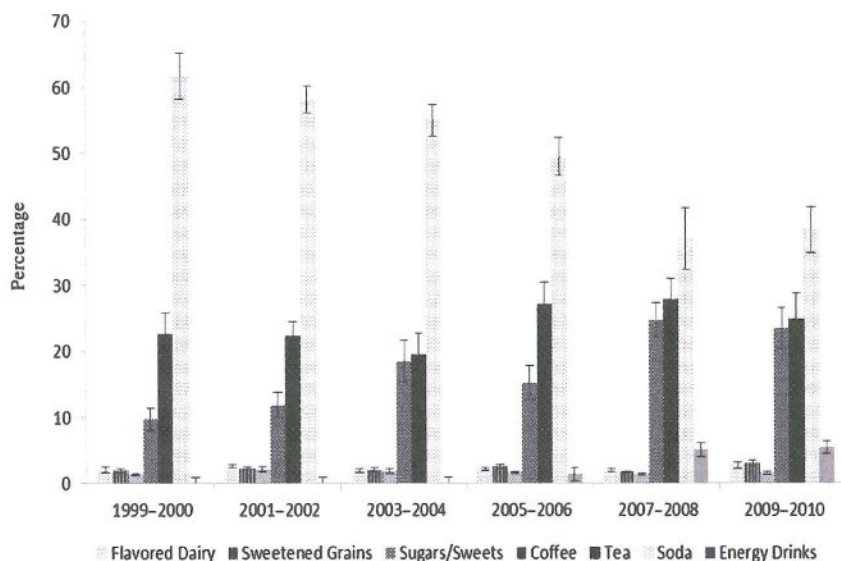
**TABLE 2** Mean Caffeine Intake Among Consumers Only Aged 2 to 22 Years Old: NHANES 1999–2010

	1999–2000	2001–2002	2003–2004	2005–2006	2007–2008	2009–2010
<b>Gender, mg/d</b>						
Male	86.3 $\pm$ 14.5	72.7 $\pm$ 4.4	73.9 $\pm$ 6.5	71.2 $\pm$ 6.8	71.3 $\pm$ 5.2	65.2 $\pm$ 7.2
Female	68.7 $\pm$ 3.7	53.8 $\pm$ 4.1	60.0 $\pm$ 4.2	48.3 $\pm$ 3.1	66.9 $\pm$ 4.6	50.9 $\pm$ 4.5
<b>Age, mg/d</b>						
2–5 years <sup>a</sup>	17.4 $\pm$ 1.9	20.6 $\pm$ 3.6	21.9 $\pm$ 5.6	12.2 $\pm$ 0.7	13.0 $\pm$ 1.6	10.0 $\pm$ 1.0
6–11 years <sup>a</sup>	39.4 $\pm$ 8.0	31.4 $\pm$ 2.1	38.3 $\pm$ 3.8	24.6 $\pm$ 2.1	33.7 $\pm$ 3.4	23.0 $\pm$ 1.4
12–16 years	80.6 $\pm$ 4.6	61.2 $\pm$ 4.9	68.7 $\pm$ 4.4	59.6 $\pm$ 3.9	72.0 $\pm$ 5.2	64.3 $\pm$ 9.8
17–18 years	124.4 $\pm$ 16.1	105 $\pm$ 6.8	92.8 $\pm$ 12.0	117.3 $\pm$ 19.2	130.9 $\pm$ 30.9	96.1 $\pm$ 7.2
19–22 years	142.9 $\pm$ 15.7	123.7 $\pm$ 13.2	126.3 $\pm$ 13.5	118.2 $\pm$ 14.8	127.5 $\pm$ 19	116.4 $\pm$ 8.4
<b>Race/ethnicity, mg/d</b>						
Non-Hispanic white	81.5 $\pm$ 8.8	68.8 $\pm$ 4.7	75.9 $\pm$ 6.1	69.4 $\pm$ 6.0	84.2 $\pm$ 5.1	67.4 $\pm$ 7.2
Non-Hispanic black	38.9 $\pm$ 2.6	37.1 $\pm$ 2.9	38.4 $\pm$ 3.5	42.1 $\pm$ 4.1	37.7 $\pm$ 5.3	42.2 $\pm$ 5.2
Mexican American <sup>b</sup>	52.9 $\pm$ 2.3	47.4 $\pm$ 3.4	50.7 $\pm$ 5.1	39.5 $\pm$ 3.7	41.8 $\pm$ 4.0	42.4 $\pm$ 3.3
<b>PIR, mg/d</b>						
0%–99% of FPT	86.1 $\pm$ 11.2	52.9 $\pm$ 4.5	61.2 $\pm$ 6.5	68.1 $\pm$ 15.9	75.7 $\pm$ 12.8	60.6 $\pm$ 5.0
100%–199% of FPT	98.1 $\pm$ 22.3	65.8 $\pm$ 6.9	62.3 $\pm$ 8.6	61.8 $\pm$ 9.3	79.5 $\pm$ 12.5	60.5 $\pm$ 7.0
200%–299% of FPT	63.3 $\pm$ 7.1	60.5 $\pm$ 7.8	59.3 $\pm$ 9.3	54.5 $\pm$ 6.8	62.2 $\pm$ 6.2	51.2 $\pm$ 7.3
300%–399% of FPT	62.9 $\pm$ 8.4	83.9 $\pm$ 18.4	81.8 $\pm$ 12.7	54.1 $\pm$ 5.9	62.3 $\pm$ 14.2	68.8 $\pm$ 21.3
≥ 400% of FPT	69.4 $\pm$ 7.0	59.7 $\pm$ 5.7	74.1 $\pm$ 9.7	58.6 $\pm$ 8.9	60.8 $\pm$ 6.2	49.8 $\pm$ 6.7

Data are presented as means  $\pm$  SEs. FPT, federal poverty threshold.

<sup>a</sup> Indicates significant linear trend,  $P$ , .001.

<sup>b</sup> Indicates significant linear trend,  $P$ , .01.



**FIGURE 2** Percentages and SEs of total caffeine intake from different sources among 2- to 22-year-olds: NHANES 1999–2010. Linear trends for soda, coffee, and energy drinks were significant at  $P$ , .001.

2000. By 2009–2010, different patterns had emerged by age, although soda became a less predominant contributor to caffeine intakes across all groups. Among 2- to 5-year-olds, tea overtook soda as the largest contributor to caffeine intake. Among 19- to 22-year-olds, coffee emerged as the largest contributor to caffeine intake

by 2009–2010. Energy drinks also increased from 0% of caffeine intake in 1999–2000 to just over 10% of caffeine intake among 19- to 22-year-olds in 2009–2010. Trends in the amount of caffeine attributable to different sources are presented in Supplemental Table 5 and are largely consistent with the trends in proportions described

above. In addition, trends in caffeine intake attributable to sources by race/ethnicity are available in Supplemental Table 6.

## DISCUSSION

Mean caffeine intake among the ~75% of children, adolescents, and young adults who consume caffeine in the United States has remained stable among adolescents and young adults but decreased among young children over the past 10 years. Although the trend in mean caffeine intake among consumers has not significantly changed for adolescents and young adults, the proportion of caffeine intake from soda, which historically has accounted for the majority of caffeine intake, decreased whereas the proportion of intake from coffee and energy drinks increased.

There is concern that caffeine intake may be increasing among children and adolescents as a result of the growing popularity and use of energy drinks.<sup>5,17</sup> In addition, consumption of sweetened coffee drinks has also

**TABLE 3** Proportion of Total Caffeine Intake From Different Sources, by Age Group: NHANES 1999–2010

Age Group	1999–2000	2001–2002	2003–2004	2005–2006	2007–2008	2009–2010
<b>2–5 years</b>						
Flavored dairy <sup>a</sup>	10.5 6 1.9	10.0 6 2.3	9.2 6 2.6	12.6 6 1.2	15.2 6 2.6	17.0 6 2.3
Sweetened grains <sup>b</sup>	7.9 6 1.9	6.2 6 1.5	6.6 6 2.1	9.7 6 1.7	7.9 6 1.2	14.8 6 2.8
Sugars/sweets <sup>a,c</sup>	5.0 6 1.3	2.4 6 0.8	2.4 6 0.6	6.1 6 1.3	5.3 6 1.0	7.0 6 1.3
Coffee <sup>b</sup>	2.1 6 1.5	0.9 6 0.6	3.8 6 3.1	5.5 6 2.5	6.1 6 3.5	4.6 6 1.8
Tea	27.1 6 8	36.2 6 6.6	46.1 6 8.9	23.4 6 3.7	32.0 6 5.1	29.4 6 5.0
Soda <sup>a</sup>	47.2 6 5.8	44.1 6 5.1	31.3 6 3.3	42.6 6 4.2	33.4 6 3.9	26.8 6 3.7
Energy drinks	0.0 6 0.0	0.0 6 0.0	0.5 6 0.6	0.0 6 0.0	0.0 6 0.0	0.0 6 0.0
<b>6–11 years</b>						
Flavored dairy	4.9 6 1.3	7.4 6 1.1	5.5 6 1.0	8.9 6 0.7	5.9 6 0.7	9.6 6 0.9
Sweetened grains <sup>a</sup>	4.3 6 1.1	4.7 6 0.5	4.4 6 0.7	9.2 6 1.3	4.1 6 0.5	8.8 6 0.7
Sugars/sweets	3.0 6 0.5	4.3 6 0.6	2.2 6 0.4	3.9 6 0.6	2.7 6 0.5	4.3 6 0.6
Coffee <sup>b</sup>	2.2 6 1.1	5.4 6 3.4	1.5 6 0.6	4.5 6 2.1	8.0 6 2.3	8.5 6 2.6
Tea	25.1 6 8.0	21.1 6 3.2	19.9 6 4.5	21.9 6 3.5	29.7 6 5.6	29.7 6 5.9
Soda <sup>d</sup>	60.4 6 5.2	57.1 6 3.7	65.2 6 4.7	50.5 6 3.8	44.3 6 7.4	39.1 6 3.8
Energy drinks	0.0 6 0.0	0.0 6 0.0	1.5 6 1.3	0.1 6 0.1	5.3 6 2.8	0.0 6 0.0
<b>12–16 years</b>						
Flavored dairy <sup>b</sup>	2.3 6 0.3	2.8 6 0.4	1.4 6 0.3	1.7 6 0.4	1.5 6 0.3	2.5 6 0.5
Sweetened grains	2.2 6 0.5	2.8 6 0.3	2.1 6 0.3	2.9 6 0.4	2.0 6 0.2	3.4 6 0.9
Sugars/sweets	1.5 6 0.1	1.7 6 0.3	1.9 6 0.3	2.0 6 0.3	1.5 6 0.3	1.3 6 0.3
Coffee <sup>d</sup>	5.1 6 1.9	4.0 6 0.8	10.3 6 2.7	11.4 6 1.8	21.3 6 3.3	12.2 6 3.8
Tea	24.2 6 3.4	22.8 6 2.4	22.5 6 4.5	21.4 6 2.1	24.4 6 3.7	31.8 6 9.1
Soda <sup>d</sup>	64.6 6 4.1	65.3 6 2.3	61.5 6 3.5	58.9 6 2.1	44.1 6 6	45.8 6 7.7
Energy drinks <sup>a</sup>	0.0 6 0.0	0.6 6 0.5	0.3 6 0.3	1.7 6 1.0	5.2 6 2.3	3.0 6 1.2
<b>17–18 years</b>						
Flavored dairy	0.8 6 0.2	0.8 6 0.1	1.0 6 0.2	0.8 6 0.2	0.9 6 0.4	1.3 6 0.3
Sweetened grains	1.1 6 0.4	1.6 6 0.4	1.2 6 0.3	1.0 6 0.2	0.8 6 0.2	1.1 6 0.2
Sugars/sweets	0.9 6 0.2	1.1 6 0.2	1.4 6 0.4	0.8 6 0.1	1.0 6 0.4	1.5 6 0.4
Coffee <sup>b</sup>	15.0 6 4.7	12.7 6 4.0	24.9 6 7.6	17.3 6 6.9	27.1 6 4.5	28.6 6 4.8
Tea	19.9 6 4.4	20.2 6 3.6	16.9 6 6.3	24.2 6 6.8	32.2 6 4.8	25.4 6 5.8
Soda <sup>d</sup>	62.3 6 3.8	63.5 6 4.2	53.9 6 6.2	52.2 6 7.8	29.4 6 7.9	39.9 6 4.9
Energy drinks <sup>c,d</sup>	0.0 6 0.0	0.1 6 0.1	0.3 6 0.3	4.0 6 2.3	8.4 6 3.1	2.2 6 1.2
<b>19–22 years</b>						
Flavored dairy	0.8 6 0.3	0.5 6 0.1	0.4 6 0.1	0.5 6 0.1	0.5 6 0.2	0.8 6 0.1
Sweetened grains	0.8 6 0.2	1 6 0.5	0.8 6 0.3	0.8 6 0.2	0.9 6 0.1	1.1 6 0.3
Sugars/sweets <sup>b</sup>	0.7 6 0.2	2.2 6 0.7	1.9 6 0.7	0.9 6 0.2	0.8 6 0.3	0.8 6 0.2
Coffee <sup>d</sup>	14.1 6 3.3	20.9 6 4.1	30.1 6 6.4	20.5 6 4.1	33.2 6 5.2	34.2 6 4.2
Tea	21.3 6 4.1	21.5 6 5.7	15.5 6 5.3	33.7 6 7.2	26.9 6 3.2	18.7 6 2.9
Soda <sup>d</sup>	61.5 6 5.9	53.3 6 4.9	50.1 6 3.9	42.7 6 4.8	34 6 4.7	33.5 6 4.4
Energy drinks <sup>d</sup>	0.0 6 0.0	0.2 6 0.1	0.5 6 0.5	0.6 6 0.3	3.6 6 1.1	10.3 6 3

Data are presented as proportions +/- SEs.

<sup>a</sup> Indicates significant linear trend, *P*, .01.

<sup>b</sup> Indicates significant linear trend, *P*, .05.

<sup>c</sup> Indicates significant quadratic trend, *P*, .05.

<sup>d</sup> Indicates significant linear trend, *P*, .001.

increased.<sup>18</sup> The increase in caffeine intake from energy drinks and coffee since 1999–2000 has been offset by decreases in soda consumption over the same period, resulting in no significant change over time for most groups; however, if current trends in energy drink and coffee consumption continue, especially among population groups who consume more caffeine, such as older adolescents, that may no longer hold true.

There have been 2 previous reports of caffeine intake using nationally representative data from the United States. Using the Continuing Survey of Food Intakes by Individuals data from 1994 to 1996 and from 1998, which also used a 24-hour dietary recall, Frary et al<sup>1</sup> reported a greater proportion of children and adolescents consuming caffeine (590% for most age and gender categories) compared with our results. Although our estimates of mean intake

among children aged 2 to 5 years in 1999–2000 were similar to those reported by Frary et al, our estimates for older children were somewhat greater, although the use of different age groups and specific age and gender categories in their analysis make direct comparisons difficult. Similar proportions of caffeine intake from soda, tea, and coffee in 1999–2000 were observed in this study, compared with previous estimates.<sup>1</sup> A 2010 report from the FDA using NHANES data from same period as our study, which described caffeine intake among US children and adults, was also largely consistent with our results, although that report described per capita intake instead of intake among consumers only.<sup>17</sup> In addition, the FDA report used a consumer panel database to examine caffeine intake by food or beverage category, rather than NHANES; consequently, differences in methodology and age groups make findings not directly comparable.<sup>19</sup>

Our findings do compare with recently documented trends in beverage consumption. By using the NHANES data over the same time period, Kit et al,<sup>18</sup> found that soda consumption has declined in recent years whereas sweetened coffee and energy drink intake (combined with sports drinks) has increased among children and adolescents. The increasing trend in caffeine from energy drinks is temporally associated with sales data that show a sixfold increase in sales of energy drinks,<sup>19,20</sup> and with a doubling of visits to emergency departments related to energy drink consumption, mostly among 18- to 25-year-olds.<sup>21</sup>

Although there are currently no guidelines for daily maximum caffeine intake in individuals, the FDA sets tolerance limits on the amount of caffeine in cola-type beverages at # 0.02% of the substance.<sup>22</sup> However, the FDA does set limits on caffeine-containing



supplements at 200 mg per dose, a threshold at which acute caffeine toxicity is thought to occur.<sup>22</sup> Previous reports indicate that many caffeine-toxicity episodes occur among older teenagers and young adults, largely as a result of ingesting large amounts of caffeine coupled with alcohol and other legal and illegal drugs.<sup>21</sup>

To our knowledge, this is the first detailed description of caffeine intake from energy drink consumption among children, adolescents, and young adults in the United States. Although energy drinks accounted for a relatively small proportion of caffeine intake in 2009–2010, intake increased rapidly in a short period of time. With the recent emphasis on reducing intake of soda and juice as an obesity-reduction strategy, more research is needed to determine if children and adolescents are substituting energy drinks or coffee for soda. On average, a 12-oz serving of energy drink contains 36 g of sugar and ~160 calories, nearly the same as a 12-oz can of soda.<sup>23</sup> However, the amount of caffeine in energy drinks varies between brands but can be as high as 130 mg in a 12-oz serving, equivalent to four 12-oz servings of

caffeinated soda.<sup>23</sup> Although many energy drinks are sold in 8-oz sizes, sales of larger containers are increasing.<sup>2</sup> Similarly, sweetened coffee drinks can contain large amounts of sugar, nearly double the amount of calories of soda depending on size and flavoring and caffeine amounts similar to that of energy drinks.<sup>23</sup> Future research should continue to monitor trends in energy drink and coffee consumption among youth, as well as determine the potential impact of these beverages on health outcomes.

This study is subject to some limitations. First, we used only the first day of dietary recall in documenting trends in intake, which does not account for intraindividual variation. Therefore, results do not necessarily represent usual intake of caffeine. Second, although increasing, energy drink intake remains relatively low, precluding reliable estimates for some groups (eg, children, 12 years). Finally data on caffeine intake may be subject to recall and social desirability biases as well as misreporting, because caregivers/proxies complete the recall or assist younger children in the sample. This study is the first detailed analysis of

trends in, and sources of, caffeine intake among children and adolescents in the United States using 10 years of nationally representative data. This analysis of caffeine intake among youth provides valuable data in the context of the recent and rapid increase in the development and marketing of highly caffeinated food and beverage products. Moreover, this study is among the first to examine sociodemographic patterns in caffeine intake.

## CONCLUSIONS

Mean caffeine intake has not increased among children and adolescents in recent years. However, coffee and energy drinks represent a greater proportion of caffeine intake as soda intake has declined, and generally have higher concentrations and amounts of caffeine than soda.<sup>23</sup> These findings provide a baseline for caffeine intake among US children and young adults in the advent of increasing energy drink sales and availability. Additional research will be needed to continue to monitor these trends and to determine the role of increasing energy drink and coffee consumption on child and adolescent health.

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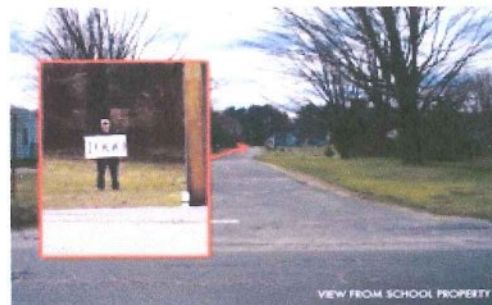
## “Sentencing enhancement zones” fail to protect children and worsen racial disparity in incarceration

Tweet 77

Like 217

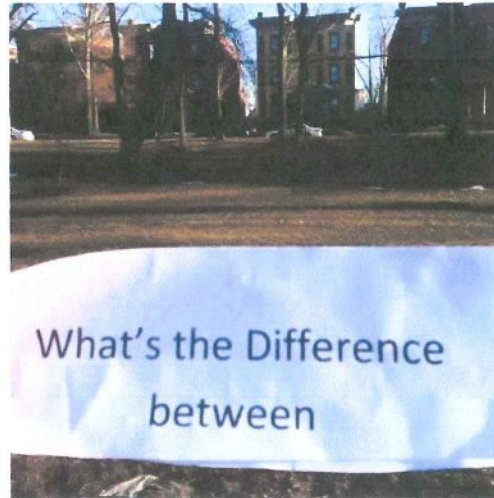
Most states have laws that are intended to protect children by creating enhanced penalties for various crimes committed within a certain distance of schools. These laws sound like a common-sense approach, but our research has shown that these laws do not work, will not work and have serious negative effects.

In Connecticut, for example, certain drug offenses committed within 1,500 feet of schools are punished with a longer sentence. The original intent behind the law was noble: protect children from harmful activity by creating an incentive for bad activity to move elsewhere. The flaw is that the designated distance is too large. To create a safety zone around schools, the area to be protected needs to be small enough to incentivize moving illegal activity elsewhere. Imposing a higher penalty over an entire city or state by blanketing it in overlapping enhancement zones nullifies the legislatures' effort to give schools special protection. Simply put, *when a legislature says that every place is special, no place is special.*



These laws were a noble, if naive, experiment when they began sweeping the nation in the late 1980s and 1990s. But now the evidence is in. They have not

worked to move areas around schools safer, and the extreme reach of these laws ensure that they will never serve the intended deterrent effect. But what these laws have done is consume criminal justice resources that could otherwise go to enforcing existing laws that directly and effectively protect children from being involved in criminal activity.



Sentencing enhancement laws also create a two-tiered system of justice: a harsher one for dense urban areas with numerous schools and overlapping zones and a milder one for rural and suburban areas, where schools are relatively few and far between.

Our first of a kind research mapped every sentencing enhancement zone in urban, rural and suburban Hampden County, Mass., and quantified the race and ethnicity of the people who live inside and outside of the zones. We found that residents of urban areas are five times more likely to live in a sentencing enhancement zone than those in rural areas, and Latinos are more than twice as likely as Whites to live in a sentencing enhancement zone. We demonstrated that the Massachusetts legislature erred in assuming that 1,000 feet was a reasonable or effective distance for the zones. Our research into Connecticut's 1,500 foot zones revealed similar patterns. Based on our research, we concluded that a 100-foot distance would be more effective for a geography-based sentencing enhancement.

#### Huge Sentencing Enhancement Zones Harm Con

This large scrolling map of Hampden County shows how sentencing er represented with red dots, and the White population with blue dots. T zones. You can quickly navigate to each city or town with the links at I Enhancement Zones Harm Communities, Fail to Protect Children by Al



### Progress: Massachusetts rolls back law (August 2012)

Massachusetts has rolled back the sentencing enhancement zone law to 300 feet and the law no longer applies between the hours of midnight and 5am. As part of a 2011 package to save the budget and reduce the prison population, Governor Patrick endorsed our proposal to shrink the sentencing enhancement zones to 100 feet. The final bill, passed in 2012, reduces the zones to 300 feet. Based on our research, this distance is too large to allow the law to function as intended to protect children from drug activity; but it will at least greatly reduce the number of

people who receive the enhanced penalty.

## We continue to push for further reforms....

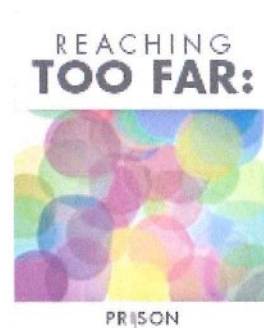
### Connecticut

Senate Bill 259 was introduced by the Judiciary Committee in 2014. The bill would reduce the size of Connecticut's sentencing enhancement zones to 200 feet, would make the law more effective in protecting children while reducing the urban penalty in sentencing. A map of these proposed 200-foot zones is attached to our testimony submitted to the Judiciary Committee.

### Massachusetts

Bill H.1645 was filed by Representative Swan for the 188th General Court. The bill would further reduce the size of school zones from 300 feet to 100 feet. The enhanced penalties would also be removed in cases where drug offenses occur within a private home or where a student under 18 sells drugs to another student. It would also allow all school zone offenders to be eligible for parole, work release and earned good time after serving half of the mandatory minimum. Finally, a school zone sentence could be served at the same time as another drug-related sentence. More information on the bill is available from FAMM.

### Reports



Reaching too far: How Connecticut's large sentencing enhancement zones miss the mark

by Aleks Kajstura, March 2014.

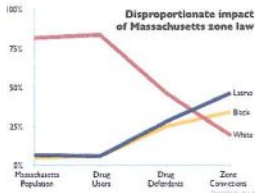
This report analyzes Connecticut's 1,500-foot sentencing enhancement zones, mapping the zones in the state's cities and towns and demonstrating both that the law is ineffective, and that it creates an "urban penalty".



The Geography of Punishment: How Huge Sentencing Enhancement Zones Harm Communities, Fail to Protect Children

by Aleks Kajstura, Peter Wagner and William Goldberg, July 2008.

This first-of-a-kind report mapped every sentencing enhancement zone in urban, rural and suburban Hampden County, and quantified the race and ethnicity of the people who live inside and outside of the zones.



Reaching too far, coming up short: How large sentencing enhancement zones miss the mark

by Aleks Kajstura, Peter Wagner and Leah Sakala  
January, 2009.

This followup report, again focusing on Hampden County, Massachusetts, found that Blacks are 26 times as likely, and Latinos 30 times as likely as White residents to be convicted and receive a mandatory sentencing enhancement zone sentence.

## Articles and op-eds

- Smart on crime, letter to the editor, from Peter Wagner, *Boston Herald*, Feb 4, 2011
- School Zone Laws Don't Work, by Peter Wagner (letter), *Valley Advocate*, March 12, 2009.
- PRRAC Researcher Report: Sentencing Enhancement Zones Fail to Protect Children, by Aleks Kajstura & Peter Wagner *Poverty & Race* November/December 2008.

## Related advocacy and resources

- Testimony before Connecticut's Joint Committee on Judiciary in support of S.B. 259, "An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding the Enhanced Penalty for the Sale or Possession of Drugs Near Schools, Day Care Centers and Public Housing Projects." The bill, which would reduce the size of Connecticut's sentencing enhancement zones to 200 feet, would make the law more effective in protecting children while reducing the urban penalty in sentencing. Two fact sheets are attached to the testimony.
- Testimony before the Joint Committee on the Judiciary of the Massachusetts General Court in support of H2267/S908, "An Act to Reform the 'School Zone' Law for Drug Offenses." The bill, which would reduce the size of Massachusetts' school zones to 100 feet, would make the law more effective in protecting children while reducing racial disparities in sentencing.
- Testimony to the Rhode Island Senate in opposition to S2644 which would have imposed longer sentences for felonies committed within 1,000 feet of educational institutions.
- 1,000 feet is further than you think is a graphical introduction to distance, and a version as a powerpoint presentation.

## Coverage of our work:

The Hidden Price Of Drug-Free Zones, Christie Thompson, *ThinkProgress*, April 14, 2014





## PLANNING COMMISSION RESOLUTION 2015-306

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**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL AMEND THE  
NEWBERG DEVELOPMENT CODE REGARDING MEDICAL MARIJUANA  
DISPENSARIES**

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### RECITALS

1. On March 19, 2014, Senate Bill 1531 was signed into law. SB 1531 gives local governments the ability to impose certain regulations and restrictions on the operation of medical marijuana dispensaries, including the ability to impose a moratorium for a period of time up until May 1, 2015. Newberg enacted such a moratorium on April 7, 2014
2. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding medical marijuana dispensaries on February 2, 2015.
3. After proper notice, the Newberg Planning Commission held a hearing on March 12, 2015 to consider the amendment. The Commission considered testimony and deliberated.

### The Newberg Planning Commission resolves as follows:

1. The Commission finds that adding regulations for medical marijuana dispensaries would be in the best interests of the city and recommends that the City Council adopt the amendments to the Newberg Development Code as shown in Exhibit "A". Exhibit "A" is hereby adopted and by this reference incorporated.
2. The findings shown in Exhibit "B" are hereby adopted. Exhibit "B" is by this reference incorporated.

Adopted by the Newberg Planning Commission this 12<sup>th</sup> day of March, 2015.

  
\_\_\_\_\_  
Planning Commission Chair

ATTEST:

  
\_\_\_\_\_  
Planning Commission Secretary

### List of Exhibits:

- Exhibit "A": Development Code Text Amendments
- Exhibit "B": Findings



**Exhibit "A" to Planning Commission Resolution 2015-306  
Development Code Amendments –File DCA-15-001  
Medical Marijuana Dispensaries**

**Section 1. The Newberg Development Code 15.05.030 shall be amended as follows:**

**Note: Existing text is shown in regular font.  
Added text is shown in double-underline  
Deleted text is shown in ~~strikethrough~~.**

**15.05.030 Definitions**

For the purpose of this title, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"Medical marijuana dispensary" means a medical marijuana facility registered by the Oregon Health Authority and in compliance with all other provisions of Oregon law.

"Park category" means a category of uses under Chapter 15.303 NMC that provide areas for outdoor recreation, whether passive or active. Parks may be privately or publicly operated, but no admission fee is charged.

"School, primary or secondary category" means a category of uses under Chapter 15.303 NMC that includes public and private schools, secular or parochial, at the primary, elementary, middle, junior high, or high school level that provide state mandated basic education primarily to minors.

"School, career", for the purposes of medical marijuana dispensaries, means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.

**15.303.342 Park category.**

- A. Characteristics. Park uses provide areas for outdoor recreation, whether passive or active. Parks may be privately or publicly operated, but no admission fee is charged.
- B. Accessory Uses. Accessory uses may include pavilions, club houses, maintenance facilities, concessions, caretaker's quarters, and parking.
- C. Examples. Playgrounds, community sports fields, public squares, picnic pavilions.
- D. Exclusions. Commercial recreational uses are a separate category. Open spaces without access or with only trails or observation areas are classified as open space. Recreational facilities accessory to a school, church, or public community center use, regardless of whether admission is charged, are part of the primary use. Golf courses are a separate use.

**Section 2. Newberg Development Code Section 15.305.020 shall be amended as follows:**

**15.305.020 Zoning use table**

**15.305.010 Classification of uses.**

The zoning use table under NMC 15.305.020 identifies the land uses that are allowed in the various zoning districts. The specific land use categories are described in Chapter 15.303 NMC. The table identifies each use as one of the following:

- P Permitted Use. The use is a permitted use within the zone. Note that the use still may require design review, building permits, or other approval in order to operate.
- C Conditional Use. A conditional use permit is required for the use. See Chapter 15.225 NMC.
- S Special Use. The use is subject to specific standards as identified within this code. The applicable section is included in the last column of the table.
- (#) A note indicates specific limits on the use. These notes are listed at the bottom of the table.
- X Prohibited Use. The use is specifically prohibited.

If none of the codes above are indicated, then the use is not permitted within the zone. [Ord. 2763 § 1 (Exh. A § 6), 9-16-13.]

**15.305.020 Zoning use table.**

Newberg Development Code – Zoning Use Table

#	Use	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards	
420	<b>COMMERCIAL SALES AND RENTALS</b>																				
421	Retail sales – General						P (20)	P (21)	P (15) (21)	P		P (23)									
422	Retail sales – Bulk outdoor							P	C			P									
423	Retail sales – Convenience						P (20)	P	P (21)	P		P (24)			P(25)						
Def.	Temporary merchant							S	S (21)												NMC 5.15.050 et seq.
	<u>Medical marijuana dispensary</u>							P (35)	P (35)												

Notes.

(35) Shall not be located at the same address as a state-registered marijuana grow site, or within 1,000 feet of the real property comprising a public park, a public or private primary, elementary, secondary or career school. Shall not be located within 1,000 feet of another medical marijuana dispensary. Distance is measured from property line to property line. Operating hours are limited to the hours between 9:00 AM and 8 PM.

**Exhibit "B" to Planning Commission Resolution 2015-306  
Findings –File DCA-15-001  
Medical Marijuana Dispensaries**

**I. Statewide Planning Goals - relevant goals**

**Goal 1, Citizen Involvement**, requires the provision of opportunities for citizens to be involved in all phases of the planning process.

**Finding:** The City Council initiated the potential development code amendment at a public meeting on February 2, 2015. The Planning Commission, after proper notice, held a public hearing on March 12, 2015. The City Council will consider the recommendation of the Planning Commission at a future public hearing date, and decide whether or not to adopt the development code amendment. The development code amendment process provides opportunity for public comments throughout the planning process.

**Goal 2, Land Use Planning**, requires the development of a process and policy framework that acts as a basis for all land use decisions.

**Finding:** The Medical Marijuana Dispensary proposal is supportive of this goal because it was developed following city procedures for legislative action.

**II. Newberg Comprehensive Plan - relevant policies**

**A. CITIZEN INVOLVEMENT GOAL:** To maintain a Citizen Involvement Program that offers citizens the opportunity for involvement in all phases of the planning process.

**Finding:** The City Council initiated the potential development code amendment at a public meeting on February 2, 2015. The Planning Commission, after proper notice, held a public hearing on March 12, 2015. The City Council will consider the recommendation of the Planning Commission at a future public hearing date, and decide whether or not to adopt the development code amendment. The development code amendment process provides opportunity for public comments throughout the planning process.

**B. LAND USE PLANNING GOAL:** To maintain an on-going land use planning program to implement statewide and local goals. The program shall be consistent with natural and cultural resources and needs.

**Finding:** The Medical Marijuana Dispensary proposal is supportive of this goal because it was developed following city procedures for legislative action.

**H. THE ECONOMY GOAL:** To develop a diverse and stable economic base.

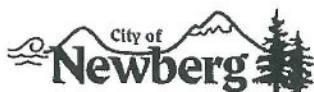
1. General Policies

c. The City will encourage the creation of a diversified employment base, the strengthening of trade centers and the attraction of both capital and labor intensive enterprises.

g. The City shall encourage business and industry to locate within the Newberg City limits.

**Finding:** The city encourages new businesses to develop within the city. A medical marijuana dispensary is a legal business under State law, and there is probably local demand for medical marijuana dispensaries. Allowing medical marijuana dispensaries in C-2 and C-3 commercial areas, with appropriate buffer zones from schools and parks, is consistent with this Comprehensive Plan goal.

**III. Conclusion:** The proposed development code amendments meet the applicable requirements of the Statewide Planning Goals, and the Newberg Comprehensive Plan, and should be approved.



## RESOLUTION No. 2015-3177

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**A RESOLUTION INITIATING AN AMENDMENT TO THE NEWBERG DEVELOPMENT CODE ADDING MEDICAL MARIJUANA DISPENSARIES AS AN ALLOWED USE IN SOME COMMERCIAL ZONING DISTRICTS, NOT ALLOWING THEM IN OTHER ZONING DISTRICTS, AND ESTABLISHING 1000-FOOT BUFFERS AROUND SCHOOLS AND PARKS WHERE DISPENSARIES WOULD NOT BE ALLOWED**

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### RECITALS:

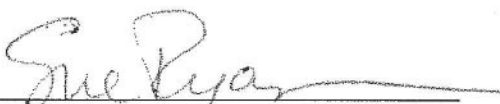
1. On March 19, 2014, Senate Bill 1531 was signed into law. SB 1531 gives local governments the ability to impose certain regulations and restrictions on the operation of medical marijuana dispensaries, including the ability to impose a moratorium for a period of time up until May 1, 2015. Newberg enacted such a moratorium on April 7, 2014.
2. The City Council would like to consider a development code amendment that would allow medical marijuana dispensaries in some commercial zoning districts, not allow them in other zoning districts, and establish a 1000-foot buffer around schools and parks where dispensaries would not be allowed.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

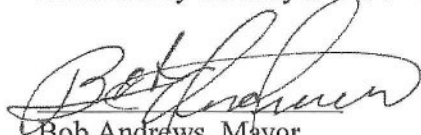
1. The City Council initiates an amendment, as shown in Exhibit "A", to the Newberg Development Code that could potentially allow medical marijuana dispensaries in some commercial zoning districts, not allow them in other zoning districts, and require 1000-foot buffers around schools and parks where dispensaries would not be allowed. Exhibit "A" is by this reference incorporated.
2. By initiating this amendment, the Council does not commit to take any particular action on the amendment, but will consider potential amendments through a public hearing process. The proposed code amendment would be sent to the Planning Commission for a public hearing and recommendation, and then return to the City Council for a public hearing and decision.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 3, 2015.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 2nd day of February, 2015.

  
Sue Ryan, City Recorder

**ATTEST** by the Mayor this 5<sup>th</sup> day of February, 2015.

  
Bob Andrews, Mayor

## Exhibit A to Resolution 2015-3177 Potential Development Code Amendment Draft

**Note: Existing text is shown in regular font.  
Added text is shown in double-underline  
Deleted text is shown in ~~strikethrough~~.**

**Section 1. Newberg Development Code Section 15.05.030 shall be amended as follows:**

### **15.05.030 Definitions**

For the purpose of this title, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Medical marijuana dispensary” means a medical marijuana facility registered by the Oregon Health Authority and in compliance with all other provisions of Oregon law.

“School, primary or secondary category” means a category of uses under Chapter 15.303 NMC that includes public and private schools, secular or parochial, at the primary, elementary, middle, junior high, or high school level that provide state mandated basic education primarily to minors.

“School, career” means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.

**Section 2. Newberg Development Code Section 15.305.020 shall be amended as follows:**

**15.305.020 Zoning use table**

**15.305.010 Classification of uses.**

The zoning use table under NMC 15.305.020 identifies the land uses that are allowed in the various zoning districts. The specific land use categories are described in Chapter 15.303 NMC. The table identifies each use as one of the following:

- P Permitted Use. The use is a permitted use within the zone. Note that the use still may require design review, building permits, or other approval in order to operate.
- C Conditional Use. A conditional use permit is required for the use. See Chapter 15.225 NMC.
- S Special Use. The use is subject to specific standards as identified within this code. The applicable section is included in the last column of the table.
- (#) A note indicates specific limits on the use. These notes are listed at the bottom of the table.
- X Prohibited Use. The use is specifically prohibited.

If none of the codes above are indicated, then the use is not permitted within the zone. [Ord. 2763 § 1 (Exh. A § 6), 9-16-13.]

**15.305.020 Zoning use table.**

**Newberg Development Code – Zoning Use Table**

#	Use	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards	
420	<b>COMMERCIAL SALES AND RENTALS</b>																				
421	Retail sales – General						P (20)	P	P (15) (21)	P		P (23)									
422	Retail sales – Bulk outdoor							P	C			P									
423	Retail sales – Convenience						P (20)	P	P (21)	P		P (24)			P(25)						
Def.	Temporary merchant							S	S (21)												NMC 5.15.050 et seq.
	<u>Medical marijuana dispensary</u>							<u>P (35)</u>	<u>P (35)</u>												

**Notes.**

(35) Shall not be located at the same address as a state-registered marijuana grow site, or within 1,000 feet of the real property comprising a public park, a public or private primary, elementary, secondary or career school, or within 1,000 feet of another medical marijuana dispensary.

77th OREGON LEGISLATIVE ASSEMBLY--2014 Regular Session

# Enrolled Senate Bill 1531

Sponsored by Senators HANSELL, MONROE, STARR; Senators BAERTSCHIGER JR, BOQUIST, CLOSE, FERRIOLI, GIROD, JOHNSON, KNOPP, KRUSE, MONNES ANDERSON, OLSEN, THOMSEN, WHITSETT, WINTERS, Representatives ESQUIVEL, JENSON, THATCHER, THOMPSON, WHISNANT, WITT (at the request of Association of Oregon Counties and League of Oregon Cities) (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to marijuana facilities; creating new provisions; amending ORS 475.314; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** Section 2 of this 2014 Act is added to and made a part of ORS 475.300 to 475.346.

**SECTION 2.** Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, “reasonable regulations” includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

**SECTION 3.** (1) Notwithstanding ORS 475.314 and section 2 of this 2014 Act, the governing body of a city or county may adopt an ordinance enacting a moratorium on the operation of registered medical marijuana facilities until May 1, 2015, in the area subject to the jurisdiction of the city or county if the moratorium is enacted no later than May 1, 2014.

(2) Notwithstanding ORS 475.309 (1)(b), a person who is responsible for or employed by a registered medical marijuana facility located in an area subject to the jurisdiction of a city or county that enacts a moratorium under this section is not excepted from the criminal laws of this state for possession or delivery of marijuana, aiding and abetting another in the possession or delivery of marijuana or any other criminal offense in which possession or delivery of marijuana is an element.

(3) The governing body of a city or county that enacts a moratorium under this section must notify the Oregon Health Authority, in a manner prescribed by the authority, of the moratorium.

(4) A registered medical marijuana facility that is located in an area subject to the jurisdiction of a city or county that enacts a moratorium under this section may choose to surrender the medical marijuana facility’s registration. To surrender registration under this subsection, the medical marijuana facility must notify the authority, in a manner prescribed



by the authority, of the surrender. If a medical marijuana facility surrenders registration under this subsection, the authority may refund any fee imposed by the authority pursuant to ORS 475.314 (12).

**SECTION 4. Section 3 of this 2014 Act is repealed on January 2, 2016.**

**SECTION 5.** ORS 475.314 is amended to read:

475.314. (1) The Oregon Health Authority shall establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants from:

(a) A registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or

(b) A medical marijuana facility to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

(2) The registration system established under subsection (1) of this section must require a medical marijuana facility to submit an application to the authority that includes:

(a) The name of the person responsible for the medical marijuana facility;

(b) The address of the medical marijuana facility;

(c) Proof that the person responsible for the medical marijuana facility is a resident of Oregon;

(d) Documentation, as required by the authority by rule, that demonstrates the medical marijuana facility meets the qualifications for a medical marijuana facility as described in subsection (3) of this section; and

(e) Any other information that the authority considers necessary.

(3) To qualify for registration under this section, a medical marijuana facility:

(a) Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land; *[and may not be located at the same address as a marijuana grow site;]*

**(b) May not be located at the same address as a marijuana grow site;**

*[(b)]* (c) Must be registered as a business or have filed a pending application to register as a business with the Office of the Secretary of State;

*[(c)]* (d) Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors;

*[(d)]* (e) Must not be located within 1,000 feet of another medical marijuana facility; and

*[(e)]* (f) Must comport with rules adopted by the authority related to:

(A) Installing a minimum security system, including a video surveillance system, alarm system and safe; and

(B) Testing for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.

(4)(a) The authority shall conduct a criminal records check under ORS 181.534 of a person whose name is submitted as the person responsible for a medical marijuana facility under subsection (2) of this section.

(b) A person convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility for five years from the date the person is convicted.

(c) A person convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility.

(5) If a person submits the application required under subsection (2) of this section, the medical marijuana facility identified in the application meets the qualifications for a medical marijuana facility described in subsection (3) of this section and the person responsible for the medical marijuana facility passes the criminal records check required under subsection (4) of this section, the authority shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration. The person responsible for the medical marijuana facility

shall display the proof of registration on the premises of the medical marijuana facility at all times when usable marijuana or immature marijuana plants are being transferred as described in subsection (1) of this section.

(6)(a) A registered medical marijuana facility may receive usable marijuana or immature marijuana plants only from a registry identification cardholder, designated primary caregiver or person responsible for a marijuana grow site if the registered medical marijuana facility obtains authorization, on a form prescribed by the authority by rule and signed by a registry identification cardholder, to receive the usable marijuana or immature marijuana plants.

(b) A registered medical marijuana facility shall maintain:

(A) A copy of each authorization form described in paragraph (a) of this subsection; and

(B) Documentation of each transfer of usable marijuana or immature marijuana plants.

(7) A medical marijuana facility registered under this section may possess usable marijuana and immature marijuana plants in excess of the limits imposed on registry identification cardholders and designated primary caregivers under ORS 475.320.

**(8)(a) A registered medical marijuana facility may not transfer any tetrahydrocannabinol-infused product that is meant to be swallowed or inhaled, unless the product is packaged in child-resistant safety packaging that meets standards established by the authority by rule.**

**(b) A registered medical marijuana facility may not transfer any tetrahydrocannabinol-infused product that is manufactured or packaged in a manner that is attractive to minors, as determined by the authority by rule.**

[(8)] (9) The authority may inspect:

(a) The premises of an applicant for a medical marijuana facility or a registered medical marijuana facility to ensure compliance with the qualifications for a medical marijuana facility described in subsection (3) of this section; and

(b) The records of a registered medical marijuana facility to ensure compliance with subsection (6)(b) of this section.

[(9)(a)] (10)(a) A registry identification cardholder or the designated primary caregiver of a registry identification cardholder may reimburse a medical marijuana facility registered under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

(b) A medical marijuana facility may reimburse a person responsible for a marijuana grow site under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

[(10)] (11) The authority may revoke the registration of a medical marijuana facility registered under this section for failure to comply with ORS 475.300 to 475.346, [or] rules adopted under ORS 475.300 to 475.346 **or ordinances adopted pursuant to section 2 of this 2014 Act**. The authority may release to the public a final order revoking a medical marijuana facility registration.

[(11)] (12) The authority shall adopt rules to implement this section, including rules that:

(a) Require a medical marijuana facility registered under this section to annually renew that registration; and

(b) Establish fees for registering and renewing registration for a medical marijuana facility under this section.

**SECTION 6. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect March 1, 2014.**

**Passed by Senate February 18, 2014**

**Received by Governor:**

**Repassed by Senate March 7, 2014**

.....M,....., 2014

.....  
Robert Taylor, Secretary of Senate

**Approved:**

.....M,....., 2014

.....  
Peter Courtney, President of Senate

.....  
John Kitzhaber, Governor

**Passed by House March 5, 2014**

**Filed in Office of Secretary of State:**

.....  
Tina Kotek, Speaker of House

.....M,....., 2014

.....  
Kate Brown, Secretary of State

# Final Rules for the Medical Marijuana Dispensary Program

January 28<sup>th</sup>, 2015

These are the final rules governing medical marijuana dispensaries in Oregon. Individuals intending to file an application to register a dispensary should use these rules as a guide. Visit [mmj.oregon.gov](http://mmj.oregon.gov) for more information.

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OREGON ADMINISTRATIVE RULES  
OREGON HEALTH AUTHORITY, PUBLIC HEALTH DIVISION  
CHAPTER 333

**DIVISION 8**

**MEDICAL MARIJUANA**

**Medical Marijuana Facilities**

**333-008-1000**

**Applicability**

- (1) A person may not establish, conduct, maintain, manage or operate a facility on or after March 1, 2014, unless the facility has been registered by the Authority under these rules.
- (2) Nothing in these rules exempts a PRF, an employee of a registered facility, or a registered facility from complying with any other applicable state or local laws.
- (3) Registration of a facility does not protect a PRF or employees from possible criminal prosecution under federal law.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

**333-008-1010**

**Definitions**

For the purposes of OAR 333-008-1000 through 333-008-1400 the following definitions apply:

- (1) "Agricultural land" means land that is located within an exclusive farm use zone as that term is described in ORS 215.203.
- (2) "Attended primarily by minors" means that a majority of the students are minors.
- (3) "Authority" means the Oregon Health Authority.
- (4) "Batch" means a quantity of usable marijuana of a single strain or a number of immature plants transferred at one time to a facility by a person authorized by a patient to transfer usable marijuana to a registered facility.
- (5) "Business day" means Monday through Friday excluding legal holidays.
- (6) "Career school" means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.
- (7) "Conviction" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.
- (8)(a) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority.
- (b) "Designated primary caregiver" does not include the person's attending physician.
- (9) "Domicile" means the place of abode of an individual where the person intends to remain and to which, if absent, the individual intends to return.
- (10) "Edible" means a product made with marijuana that is intended for ingestion.

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- (11) “Elementary school” means a learning institution containing any combination of grades Kindergarten through 8 or age level equivalent.
- (12)(a) “Employee” means any person, including aliens, employed for remuneration or under any contract of hire, written or oral, express or implied, by an employer.
- (b) “Employee” does not include a person who volunteers or donates services performed for no remuneration or without expectation or contemplation of remuneration as the adequate consideration for the services performed for a religious or charitable institution or a governmental entity.
- (13) “Facility” means a medical marijuana facility.
- (14) “Farm use” has the meaning given that term in ORS 215.203.
- (15) “Finished product” means a useable marijuana product, including but not limited to edible products, ointments, concentrates and tinctures. A finished product does not mean dried marijuana flowers.
- (16) “Grower” has the same meaning as “person responsible for a marijuana grow site.”
- (17) “Grow site” means a specific location registered by the Authority and used by the grower to produce marijuana for medical use by a specific patient.
- (18)(a) “Immature marijuana plant or immature plant” means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter.
- (b) A seedling or start that does not meet all three criteria in subsection (18)(a) is a mature plant.
- (19) “Macroscopic screening” means visual observation without the aid of magnifying lens(es).
- (20) “Microscopic screening” means visual observation with a minimum magnification of 40x.
- (21) “Minor” means an individual under the age of 18.
- (22) “Oregon Medical Marijuana Program” or “OMMP” means the program operated and administered by the Authority that registers patients, designated primary caregivers, and growers.
- (23) “Patient” has the same meaning as “registry identification cardholder.”
- (24) “Person” means an individual.
- (25) “Person responsible for a marijuana grow site” means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose and has the same meaning as “grower”.
- (26) “Person responsible for a medical marijuana facility” or “PRF” means an individual who owns, operates, or otherwise has legal responsibility for a facility and who meets the qualifications established in these rules and has been approved by the Authority.
- (27) “Pesticide” means any substance or mixture of substances, intended to prevent, destroy, repel, or mitigate any pest.
- (28) “Premises” means a location registered by the Authority under these rules and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where individuals are permitted to be present.
- (29) “Random sample” means an amount of usable marijuana taken from a batch in which different fractions of the usable marijuana have an equal probability of being represented.
- (30) “Registry identification cardholder” means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.



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(31) “Remuneration” means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips.

(32) “Resident” means an individual who has a domicile within this state.

(33) “Restricted area” means a secure area where usable marijuana and immature plants are present.

(34) “Safe” means:

(a) A metal receptacle with a locking mechanism capable of storing all usable marijuana at a registered facility that:

(A) Is rendered immobile by being securely anchored to a permanent structure of the building; or

(B) Weighs more than 750 pounds.

(b) A vault; or

(c) A refrigerator or freezer capable of being locked for storing edibles or other finished products that require cold storage that:

(A) Is rendered immobile by being securely anchored to a permanent structure of the building; or

(B) Weighs more than 750 pounds.

(35) “Secondary school” means a learning institution containing any combination of grades 9 through 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

(36) “Secure area” means a room:

(a) With doors that are kept locked and closed at all times except when the doors are in use; and

(b) Where access is only permitted as authorized in these rules.

(37) “Single strain” means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(38) “These rules” means OAR 333-008-1000 through 333-008-1400.

(39) “Usable marijuana” has the meaning given that term is ORS 475.302 and includes “finished product”.

(40) “Valid testing methodology” means a scientifically valid testing methodology described in a published national or international reference and validated by the testing laboratory.

(41) “Vault” means an enclosed area that is constructed of steel-reinforced or block concrete and has a door that contains a multiple-position combination lock or the equivalent, a relocking device or equivalent, and a steel plate with a thickness of at least one-half inch.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

### **333-008-1020**

#### **Application for Medical Marijuana Facility Registration**

(1) A PRF wishing to apply to register a facility must provide to the Authority:

(a) An application on a form prescribed by the Authority;

(b) The applicable fee as specified in OAR 333-008-1030;

(c) Documentation that demonstrates the facility is registered as a business or has filed an application to register as a business with the Office of the Secretary of State;

(d) Documentation that shows the current zoning of the location of the proposed facility;

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- (e) Documentation, on a form prescribed by the Authority, with the applicant's affirmation that the proposed facility is not within 1,000 feet of the real property comprising a public or private elementary, secondary or career school;
  - (f) Information and fingerprints required for a criminal background check in accordance with OAR 333-008-1130; and
  - (g) Proof that the PRF resides in Oregon in accordance with OAR 333-008-1120(1)(a).
- (2) An application for the registration of a facility must be submitted by a PRF electronically via the Authority's website, <http://mmj.oregon.gov>. The documentation required in subsections (1)(c) through (g) of this rule may be submitted electronically to the Authority or may be mailed. If documentation is mailed, it must be postmarked within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered to be incomplete. If documentation is submitted electronically it must be received by the Authority by 5 p.m. Pacific Standard Time (PST) within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered incomplete. Applicable fees must be paid online at the time of application.
- (3) Applications will be reviewed in the order they are received by the Authority. An application is considered received as of the date and time that payment of fees is authorized by the entity that issued the credit or debit card used by the PRF to pay the fees.
- (4) The Authority shall return an incomplete application to the person that submitted the application. A person may re-submit an application that was returned as incomplete at any time. An application that is returned as incomplete must be treated by the Authority as if it was never received. An application is considered incomplete if:
- (a) An application does not contain all the requested information in the form;
  - (b) The applicant does not submit the required documentation described in subsections (1)(c) through (g) of this rule; or
  - (c) The application and registration fees are not paid.
- (5) A PRF who wishes to register more than one location must submit a separate application, registration fees, and all documentation described in section (1) of this rule for each location.
- (6) At the time of application the PRF will be asked, by the Authority, to sign an authorization waiving the confidentiality of the location of the facility and permitting the Authority to make the location and name of the facility public if the facility is registered.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

### **333-008-1030**

#### **Fees**

- (1) The initial fees for the registration of a facility are:
  - (a) A non-refundable application fee of \$500; and
  - (b) A \$3,500 registration fee.
- (2) The annual renewal fees for the registration of a facility are:
  - (a) A \$500 non-refundable renewal fee; and
  - (b) A \$3,500 registration fee.
- (3) The Authority must return the registration fee if:
  - (a) An application is returned to the applicant as incomplete;
  - (b) The Authority denies an application; or
  - (c) An applicant withdraws an application.

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Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### **333-008-1040**

#### **Application Review**

- (1) Once the Authority has determined that an application is complete it will review an application to the extent necessary to determine compliance with ORS 475.314 and these rules.
- (2) The Authority may, in its discretion, prior to acting on an application:
  - (a) Contact the applicant and request additional documentation or information;
  - (b) Inspect the premises of the proposed facility; and
  - (c) Verify any information submitted by the applicant.
- (3) Prior to making a decision whether to approve or deny an application the Authority must:
  - (a) Ensure that the criminal background check process has been completed and review the results;
  - (b) Contact the OMMP and obtain documentation of whether the location of the facility is the same location as a registered grow site under OAR 333-008-0025;
  - (c) Review documentation submitted by the applicant to determine, based on the information provided by the applicant, whether the proposed facility is located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school;
  - (d) Review the list of registered facilities to determine whether any registered facilities are within 1,000 feet of the proposed facility; and
  - (e) Verify that the business that operates the facility is registered with the Office of the Secretary of State.
- (4) If during the review process the Authority determines that the application or supporting documentation contains intentionally false or misleading information the Authority must return the application to the applicant as incomplete.
- (5) If the proposed facility is in compliance with ORS 475.314(3)(a) through (d) and the PRF has passed the criminal background check and resides in Oregon, the Authority must notify the applicant in writing that the dispensary and PRF have met the initial criteria for registration. Within 60 days of the Authority's notification the applicant must submit a form, prescribed by the Authority, that the proposed facility and PRF are in compliance with these rules, including but not limited to:
  - (a) Installation of a security system, including a video surveillance system, and alarm system that are all operational, and installation of a safe in accordance with OAR 333-008-1140 through 333-008-1180;
  - (b) Having policies and procedures as required by OAR 333-008-1200 and training for employees on the policies and procedures;
  - (c) Identification of at least one laboratory that will perform the testing required in OAR 333-008-1190;
  - (d) Having a fully operational electronic data management system in accordance with OAR 333-008-1210; and
  - (e) Having packaging and labeling that complies with OAR 333-008-1220 and 333-008-1225.
- (6) If the Authority does not receive the form described in section (5) of this rule within 60 days of the applicant being notified that the dispensary and PRF met initial criteria for registration, the applicant's application will be returned as incomplete.

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Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### **333-008-1050**

#### **Approval of Application**

(1) If the Authority receives the form required to be submitted under OAR 333-008-1040(5) the Authority must perform a site visit within 30 days of receiving the form to determine whether the PRF and facility are in compliance with these rules.

(2) If, after the site visit the Authority determines that the facility is in compliance with these rules the Authority must provide the applicant with proof of registration that includes a unique registration number, and notify the PRF in writing that the facility may operate.

(3) If, after the site visit the Authority determines that the facility is not in compliance with these rules the Authority may:

(a) Give the PRF 10 business days to come into compliance;

(b) Propose to deny the facility's registration in accordance with OAR 333-008-1275(2); or

(c) Consider the application to be incomplete.

(4) A facility that has been registered must display proof of registration in a prominent place inside the facility so that proof of registration is easily visible to individuals authorized to transfer usable marijuana and immature plants to the facility and individuals who are authorized to receive a transfer of usable marijuana and immature plants from the facility at all times when usable marijuana or immature plants are being transferred.

(5) A registered facility may not use the Authority or the OMMP name or logo except to the extent that information is contained on the proof of registration on any signs at the facility, on its website, or in any advertising or social media.

(6) A facility's registration is only valid for the location indicated on the proof of registration and is only issued to the PRF that is listed on the application or subsequently approved by the Authority.

(7) A facility's registration may not be transferred to another location.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### **333-008-1060**

#### **Denial of Application**

(1) The Authority must deny an application if:

(a) An application, supporting documentation provided by the PRF, or other information obtained by the Authority shows that the qualifications for a facility in ORS 475.314 or these rules have not been met; or

(b) The PRF has been:

(A) Convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date the application was received by the Authority; or

(B) Convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II; or

(C) Prohibited by a court from participating in the OMMP.

(2) If the PRF that is identified in the application is not qualified to be a PRF, the Authority will permit a change of PRF form to be submitted in accordance with OAR 333-008-1120, along with

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the applicable criminal background check fee. If the proposed PRF is not qualified to be a PRF, the Authority must deny the application in accordance with section (1) of this rule.

(3) If the Authority intends to deny an application for registration it must issue a Notice of Proposed Denial in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### **333-008-1070**

#### **Expiration and Renewal of Registration**

(1) A facility's registration expires one year following the date of application approval.

(2) If a PRF wishes to renew the facility's registration, the person must submit to the Authority within 60 calendar days of the registration's expiration:

(a) An application renewal form prescribed by the Authority;

(b) The required renewal fees;

(c) Forms required for the Authority to do a criminal background check on the PRF.

(3) A PRF that does not submit timely renewal documentation in accordance with section (2) of this rule may not operate the facility if the previous registration expires prior to the Authority issuing a renewed registration. The facility will remain registered until a renewal is either issued or denied, but the facility may not operate with an expired registration.

(4) If a PRF does not submit a renewal form and the required renewal fees prior to the registration's expiration, the registration is expired and is no longer valid, and the PRF may reapply for registration.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### **333-008-1080**

#### **Notification of Changes or Events**

(1) A PRF must notify the Authority within 10 calendar days of any of the following:

(a) The PRF's conviction for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;

(b) The issuance of a court order that prohibits the PRF from participating in the OMMP;

(c) A decision to change the PRF;

(d) A decision to permanently close the facility at that location;

(e) A decision to move to a new location;

(f) A change in ownership;

(g) A change in the person's residency;

(h) The location of a public or private elementary, secondary or career school attended primarily by minors within 1,000 feet of the facility;

(i) Any structural changes within the facility that will result in a change to the secure or restricted areas, or entrances or exits to the facility; and

(j) The theft of usable marijuana or immature plants.

(2) The notification required in section (1) of this rule must include a description of what has changed or the event and any documentation necessary for the Authority to determine whether the facility is still in compliance with ORS 474.314 and these rules including but not limited to, as applicable:

(a) A copy of the criminal judgment or order;

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- (b) A copy of the court order prohibiting the PRF from participating in the OMMP;
  - (c) The location of the school that has been identified as being within 1,000 feet of the facility;
  - (d) The information required in OAR 333-008-1120 and 333-008-1130 to determine the residency of the new PRF and to perform the criminal background check; or
  - (e) A copy of the police report documenting that the theft of usable marijuana or immature plants was reported to law enforcement.
- (3) Failure of the PRF to notify the Authority in accordance with this rule may result in revocation of a facility's registration.  
Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### **333-008-1090**

#### **Required Closures**

A facility may not receive transfers of usable marijuana or immature plants or transfer usable marijuana or immature plants if:

- (1) The PRF is convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;
- (2) The PRF changes and the Authority has not:
  - (a) Performed a criminal background check on the proposed PRF in accordance with OAR 333-008-1130;
  - (b) Determined whether the individual is a resident of Oregon; and
  - (c) Provided written approval that the new PRF meets the requirements of ORS 475.314.
- (3) The PRF has been ordered by the court not to participate in the OMMP; or
- (4) A public or private elementary, secondary or career school attended primarily by minors is found to be within 1,000 of the registered facility.

Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### **333-008-1100**

#### **Business Qualifications for Medical Marijuana Facility Registration**

A facility must maintain a current registration as a business with the Office of the Secretary of State in order to receive or maintain registration.

Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### **333-008-1110**

#### **Locations of Medical Marijuana Facilities**

- (1) In order to be registered a facility must be located in an area that is zoned by the local governing agency for commercial, industrial or mixed use or as agricultural land.
- (2) Registration by the Authority is not a guarantee that a facility is permitted to operate under applicable land use or other local government laws where the facility is located.
- (3) A facility may not be located:
  - (a) At the same address as a registered marijuana grow site;
  - (b) Within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; or
  - (c) Within 1,000 feet of another medical marijuana facility.

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(4) For purposes of implementing ORS 475.314(3)(c), the Authority will consider a location to be a school if it has at least the following characteristics:

(a) Is a public or private elementary, secondary or career school as those terms are defined OAR 333-008-1010;

(b) There is a building or physical space where students gather together for education purposes on a regular basis;

(c) A curriculum is provided;

(d) Attendance at the location meets Oregon's mandatory attendance law, ORS 339.010 or an exemption under ORS 339.030(1)(a); and

(e) Faculty is present to teach or guide student education.

(5) For purposes of determining the distance between a facility and a school referenced in subsection (3)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public or private elementary, secondary or career school to the closest point of the premises of a facility. If any portion of the premises of a proposed or registered facility is within 1,000 feet of a public or private elementary, secondary or career school it may not be registered.

(6) For purposes of determining the distance between a facility and another registered facility "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point anywhere on the premises of a registered facility to the closest point anywhere on the premises of a proposed facility. If any portion of the premises of a proposed facility is within 1,000 feet of a registered facility it may not be registered.

(7) In order to be registered a facility must operate at a particular location as specified in the application and may not be mobile.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### **333-008-1120**

#### **Person Responsible for a Medical Marijuana Facility (PRF)**

(1) A PRF must:

(a) Be a resident of Oregon. Residency may be proved by submitting to the Authority:

(A) A valid Oregon driver's license, a valid Oregon identification card that includes a photograph of the person, a valid passport, or a valid military identification card that includes a photograph of the person; and

(B) Copies of utility bills, rental receipts, mortgage statements or similar documents that contain the name and address of the domicile of the PRF.

(b) Have legal authority to act on behalf of the facility; and

(c) Be responsible for ensuring the facility complies with applicable laws, if registered.

(2) A PRF may not:

(a) Have been convicted in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date of application; or

(b) Have been convicted more than once in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II.

(3) A PRF is accountable for any intentional or unintentional action of its owners, officers, managers, employees or agents, with or without the knowledge of the PRF, who violate ORS 475.314 or these rules.

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- (4) If a PRF no longer meets the criteria of a PRF the Authority shall inform the PRF and the owner of the facility if different that:
- (a) The PRF may no longer serve in that capacity;
  - (b) In order to remain registered, a change of PRF form must be submitted along with a criminal background check fee of \$35; and
  - (c) The facility may not operate until the Authority has approved a PRF.
- (5) If the Authority is notified that a change of PRF is needed, the current PRF is no longer able to serve as the PRF, or the PRF has been or will be removed by the owner of a facility, the owner of the facility must submit a change of PRF form to the Authority within 10 business days of the notification or the Authority will begin proceedings to revoke the registration of the facility.
- (6) If the PRF of record for the facility is no longer serving in that capacity the facility may not operate until a new PRF has been approved by the Authority.
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### **333-008-1130**

#### **Criminal Background Checks**

- (1) A PRF must, at the time of application, provide to the Authority:
- (a) A criminal background check request form, prescribed by the Authority that includes but is not limited to:
    - (A) First, middle and last name;
    - (B) Any aliases;
    - (C) Date of birth;
    - (D) Driver's license information; and
    - (E) Address and recent residency information.
  - (b) Fingerprints in accordance with the instructions on the Authority's webpage: <http://mmj.oregon.gov>.
- (2) The Authority may request that the PRF disclose his or her Social Security Number if notice is provided that:
- (a) Indicates the disclosure of the Social Security Number is voluntary; and
  - (b) That the Authority requests the Social Security Number solely for the purpose of positively identifying the PRF during the criminal records check process.
- (3) The Authority shall conduct a criminal records check in order to determine whether the PRF has been convicted of the manufacture or delivery of a controlled substance in Schedule I or Schedule II in any state.
- (4) The Authority must conduct a criminal background check in accordance with this rule on a PRF every year at the time of application renewal.
- (5) If a PRF wishes to challenge the accuracy or completeness of information provided by the Department of State Police, the Federal Bureau of Investigation and agencies reporting information to the Department of State Police or Federal Bureau of Investigation, those challenges must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process specified in OAR 333-008-1060(2).
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314



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**333-008-1140****Security for Registered Facilities**

- (1) The PRF must ensure that a registered facility complies with OAR 333-008-1140 through 333-008-1180.
  - (2) The PRF is responsible for the security of all usable marijuana and immature plants in the registered facility, including providing adequate safeguards against theft or diversion of usable marijuana and immature plants and records that are required to be kept.
  - (3) The PRF must ensure that commercial grade, non-residential door locks are installed on every external door at a registered facility prior to opening for business and used while a facility is registered.
  - (4) During all hours when the registered facility is open for business, the PRF must ensure that:
    - (a) All usable marijuana and immature plants received and all usable marijuana and immature plants available for transfer to a patient or a designated primary caregiver are kept in a locked, secure area that can only be accessed by authorized personnel.
    - (b) All areas where usable marijuana or immature plants are received for transfer by a registered facility are identified as a restricted access area by posting a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads, “Restricted Access Area – Authorized Personnel Only”.
    - (c) All areas where usable marijuana or immature plants are available for transfer to a patient or designated primary caregiver are:
      - (A) Identified as a restricted access area and clearly identified by the posting of a sign not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height that reads “Restricted Access Area – No Minors Allowed”;
      - (B) Supervised by the PRF or an employee of the registered facility at all times when a patient or designated primary caregiver is present; and
      - (C) Separate from any area where usable marijuana or immature plants are being transferred to a registered facility.
  - (5) During all hours when the registered facility is not open for business the PRF must ensure that:
    - (a) All entrances to and exits from the facility are securely locked and any keys or key codes to the facility remain in the possession of the PRF or authorized employees;
    - (b) All usable marijuana is kept in a safe; and
    - (c) All immature plants are in a locked room.
  - (6) The PRF must ensure that:
    - (a) Electronic records are encrypted, and securely stored to prevent unauthorized access and to ensure confidentiality;
    - (b) There is an electronic back-up system for all electronic records; and
    - (c) All video recordings and archived required records not stored electronically are kept in a locked storage area. Current records may be kept in a locked cupboard or desk outside the locked storage area during hours when the registered facility is open.
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

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**333-008-1150****Alarm System for Registered Facilities**

- (1) Prior to being registered a PRF must ensure that the facility has a fully operational security alarm system, installed by an alarm installation company, on all facility entry or exit points and perimeter windows.
- (2) The security alarm system for the registered facility must:
  - (a) Be able to detect movement inside the registered facility;
  - (b) Be programmed to notify a security company that will notify the PRF or his or her designee in the event of a breach; and
  - (c) Have at least two operational “panic buttons” located inside the registered facility that are linked with the alarm system that notifies a security company.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

**333-008-1160****Video Surveillance Equipment for Registered Facilities**

- (1) Prior to being registered a PRF must ensure that a fully operational video surveillance recording system is installed in the facility.
- (2) Video surveillance equipment must, at a minimum:
  - (a) Consist of:
    - (A) Digital or network video recorders;
    - (B) Cameras capable of meeting the requirements of OAR 333-008-1170 and this rule;
    - (C) Video monitors;
    - (D) Digital archiving devices; and
    - (E) A color printer capable of producing still photos.
  - (b) Be equipped with a failure notification system that provides prompt notification to the PRF or employees of any prolonged surveillance interruption or failure; and
  - (c) Have sufficient battery backup to support a minimum of one hour of recording time in the event of a power outage.
- (3) All video surveillance equipment and recordings must be stored in a locked secure area that is accessible only to the PRF, authorized employees of the registered facility and the Authority.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

**333-008-1170****Required Camera Coverage and Camera Placement for Registered Facilities**

- (1) Prior to being registered a PRF must ensure that the facility has camera coverage for:
  - (a) All secure and restricted access areas described in OAR 333-008-1140;
  - (b) All point of sale areas;
  - (c) All points of entry to or exit from secure and restricted access areas; and
  - (d) All points of entry to or exit from the registered facility.
- (2) A PRF must ensure that cameras are placed so that they capture clear and certain images of any individual and activity occurring:
  - (a) Within 15 feet both inside and outside of all points of entry to and exit from the registered facility; and
  - (b) Anywhere within secure or restricted areas on the facility premises.

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Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### **333-008-1180**

#### **Video Recording Requirements for Registered Facilities**

- (1) A PRF must ensure that all cameras are continuously monitored by motion sensor video equipment or similar technology 24 hours a day when usable marijuana or immature plants are on the premises of the facility.
- (2) A PRF must ensure that:
  - (a) All surveillance recordings are kept for a minimum of 30 calendar days and are in a format that can be easily accessed for viewing;
  - (b) The surveillance system has the capability to produce a color still photograph from any camera image;
  - (c) The date and time is embedded on all surveillance recordings without significantly obscuring the picture;
  - (d) Video recordings are archived in a format that ensures authentication of the recording as a legitimately-captured video and guarantees that no alterations of the recorded image has taken place; and
  - (e) Video surveillance records and recordings are available upon request to the Authority for the purpose of ensuring compliance with ORS 475.314 and these rules.

Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

### **333-008-1190**

#### **Testing**

- (1) Prior to being registered a PRF must have documentation that identifies at least one laboratory that will do the testing in accordance with these rules and identify who will do the testing for immature plants.
- (2) A PRF must ensure that usable marijuana and immature plants are tested for pesticides, mold and mildew in accordance with this rule prior to the usable marijuana or immature plants being transferred to a patient or a designated primary caregiver. A PRF may accept test results from a grower or other individual for flowers or other usable plant material if:
  - (a) The grower or other individual provides a copy of the test results;
  - (b) The PRF can demonstrate that the grower or other individual took random samples from the batch to be tested; and
  - (c) The PRF can demonstrate that the batch from where samples were taken were sealed and not tampered with from the time samples for testing were taken and when they were delivered to the facility.
- (3) Upon usable marijuana being transferred to a registered facility in accordance with OAR 333-008-1230, the PRF must ensure the usable marijuana is segregated into batches, that each batch is placed in an individual container or bag, and that a label is attached to the container or bag that includes at least the following information:
  - (a) A unique identifier;
  - (b) The name of the person who transferred it; and
  - (c) The date the usable marijuana was received by the registered facility.

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- (4) Sampling. A PRF must ensure that random samples from each batch are taken in an amount necessary to conduct the applicable test, that the samples are labeled with the batch's unique identifier, and submitted for testing.
- (5) Testing. A PRF must ensure that each sample is tested for pesticides, mold, and mildew and for an analysis of the levels of tetrahydrocannabinol (THC) and cannabidiol (CBD).
- (a) Immature Plants. An immature plant may be tested for pesticides, mold or mildew by conducting a macroscopic or microscopic screening to determine if the plant has visible pesticide residue, mold or mildew. Testing for mold and mildew on immature plants must be done at least every 30 calendar days.
- (b) Flowers or other usable marijuana plant material. Usable marijuana in the form of flowers or other plant material must be:
- (A) Tested for pesticides, mold and mildew using valid testing methodologies and macroscopic or microscopic screening may not be used;
- (B) Tested for pesticides by testing for the following analytes:
- (i) Chlorinated Hydrocarbons;
- (ii) Organophosphates;
- (iii) Carbamates; and
- (iv) Pyrethroids; and
- (C) Analyzed, using valid testing methodologies, to determine the levels of THC and CBD.
- (c) Finished Products. If a facility receives a transfer of a pre-packaged finished product the facility may, in lieu of testing the finished product, obtain from the individual who transferred the finished product, lab results that show the usable marijuana in the finished product was tested in accordance with this rule, and that the finished product was tested for levels of THC and CBD.
- (6) Laboratory Requirements. A PRF must ensure that all testing, except for testing of immature plants, is done by a third party or in-house laboratory that:
- (a) Uses valid testing methodologies; and
- (b) Has a Quality System for testing of pesticides, mold and mildew that is compliant with the:
- (A) 2005 International Organization for Standardization 17025 Standard; or
- (B) 2009 National Environmental Laboratory Accreditation Conference Institute TNI Standards.
- (7) Macroscopic or microscopic screening of immature plants must be conducted by a person who has a minimum of a bachelor's degree in horticulture, botany, plant pathology, or microbiology but is not required to be done by a laboratory.
- (8) Testing Results. A laboratory must provide testing results to the PRF signed by an official of the laboratory who can attest to the accuracy of the results, and that includes the levels of pesticides, mold or mildew detected and the levels of THC and CBD.
- (a) If an immature plant has visible pesticide residue, mold or mildew it must be deemed to test positive and must be returned to the person who transferred the immature plant to the registered facility.
- (b) A sample of usable marijuana shall be deemed to test positive for mold and mildew if the sample has levels that exceed the maximum acceptable counts in Appendix A.
- (c) A sample of usable marijuana shall be deemed to test positive for pesticides with a detection of more than 0.1 parts per million of any pesticide.
- (9) If an immature plant or sample of usable marijuana tests positive for pesticides, mold or mildew based on the standards in this rule the PRF must ensure the entire batch from which the sample was taken is returned to the person who transferred the immature plant or usable

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marijuana to the registered facility and must document how many or how much was returned, to whom, and the date it was returned.

(10) A registered facility may perform its own testing as long as the testing complies with this rule.

(11) The PRF may permit laboratory personnel or other persons authorized to do testing access to secure or restricted access areas of the registered facility where usable marijuana or immature plants are stored. The PRF must log the date and time in and out of all such persons.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### **333-008-1200**

#### **Operation of Registered Facilities**

(1) A PRF must ensure that a registered facility does not permit:

(a) A minor to be present in any area of a registered facility where usable marijuana or immature plants are present, even if the minor is a patient or an employee; and

(b) Consumption, ingestion, inhalation or topical application of usable marijuana anywhere on the premises of the registered facility, except that an employee of a registered facility who is a patient may consume usable marijuana during his or her work shift on the premises of the registered facility as necessary for his or her medical condition, if the employee is:

(A) Alone and in a closed room if the usable marijuana is being smoked;

(B) Not visible to patients or caregivers on the premises of the registered facility to receive a transfer of usable marijuana or an immature plant; and

(C) Not visible to the public outside the facility.

(2) A PRF must ensure that a registered facility uses an Oregon Department of Agriculture licensed and certified scale to weigh all usable marijuana.

(3) The following persons are the only persons permitted in any area of a registered facility where usable marijuana or immature plants are present, and only in accordance with these rules, as applicable:

(a) A PRF;

(b) An owner of a registered facility;

(c) An employee of the registered facility;

(d) Laboratory personnel in accordance with OAR 333-008-1190;

(e) A contractor authorized by the PRF to be on the premises of a registered facility;

(f) A patient, designated primary caregiver, or growers;

(g) An authorized employee or authorized contractor of the Authority;

(h) Other government officials that have jurisdiction over some aspect of the registered facility or that otherwise have authority to be on the premises of the registered facility; and

(i) A governmental official authorized by the Authority to be on the premises if accompanied by an Authority representative and the facility has been provided notice and has agreed to permit the governmental official access.

(4) A PRF must have written detailed policies and procedures and training for employees on the policies and procedures that at a minimum, cover the following:

(a) Security;

(b) Testing;

(c) Transfers of usable marijuana and plants to and from the facility;

(d) Operation of a registered facility;

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- (e) Required record keeping;
  - (f) Labeling; and
  - (g) Violations and enforcement.
- Stat. Auth.: ORS 475.314, 475.338  
Stats. Implemented: 475.314

**333-008-1210**  
**Record Keeping**

- (1) A PRF must ensure that the following information is documented and maintained electronically in a manner that can easily be shared with the Authority or accessed by the Authority:
- (a) All Authorization to Transfer forms, including the date on which a form was received;
  - (b) Any written notifications from a patient with regard to any change in status as required by ORS 475.309(7)(a)(B) or (10)(a);
  - (c) Any revocation of an Authorization to Transfer form;
  - (d) All transfer information required in OAR 333-008-1230 and 333-008-1245;
  - (e) Documentation of the costs of doing normal and customary business used to establish the reimbursement amounts for transfers of usable marijuana or immature plants, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.
  - (f) The amount of money paid by a registered facility to a grower for each transfer of usable marijuana or immature plants;
  - (g) The amount of money paid by each patient or designated primary caregiver for a transfer of usable marijuana or an immature plant;
  - (h) The laboratory reports of all testing and other information required to be documented in OAR 333-008-1190; and
  - (i) All other information required to be documented and retained by these rules.
- (2) The PRF must ensure that information required to be documented pursuant to section (1) of this rule is maintained in a safe and secure manner that protects the information from unauthorized access, theft, fire, or other destructive forces, and is easily retrievable for inspection by the Authority upon request, either at the registered facility or online.
- (3) A PRF must ensure that a registered facility uses an electronic data management system for the recording of transfers of usable marijuana and immature plants. The system must meet the following minimum requirements:
- (a) Record the information required to be documented in this rule and OAR 333-008-1230 and 333-008-1245;
  - (b) Provide for off-site or secondary backup system;
  - (c) Assign a unique transaction number for each transfer to or from the registered facility;
  - (d) Monitor date of testing and testing results;
  - (e) Track products by unique transaction number through the transfer in, testing and transfer out processes;
  - (f) Generate transaction and other reports requested by the Authority viewable in PDF format;
  - (g) Produce reports, including but not limited to inventory reports; and
  - (h) Provide security measures to ensure patient and grower records are kept confidential.
- (4) Documents and information required to be maintained in these rules must be retained by the PRF for at least one year.

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(5) A PRF must provide the Authority with any documentation required to be maintained in these rules upon request, in the format requested by the Authority, or permit the Authority access to such documentation on-site.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### **333-008-1220**

#### **Labeling**

(1) Prior to transferring usable marijuana a PRF must ensure that a label is affixed to the usable marijuana that includes but is not limited to:

(a) Flowers or other usable plant material:

(A) Percentage of THC and CBD;

(B) Weight in grams;

(C) Testing batch number and date tested;

(D) Who performed the testing ; and

(E) Description of the product (strain).

(b) Finished product:

(A) THC and CBD potency;

(B) The weight or volume of useable marijuana in the packaged finished product in grams, milligrams, or milliliters, as applicable;

(C) Testing batch number and date tested;

(D) Who performed the testing; and

(E) Warning label in accordance with section (2) of this rule.

(2) If the registered facility transfers a finished product, the PRF must ensure that the finished product has a warning label on the outside of the packaging that includes the following:

“WARNING: MEDICINAL PRODUCT – KEEP OUT OF REACH OF CHILDREN” in bold capital letters, in a font size that is larger than the type-size of the other printing on the label such that it is easy to read and prominently displayed on the product.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: 475.314

### **333-008-1225**

#### **Packaging**

(1) For purposes of this rule:

(a) “Child-resistant safety packaging” means:

(A) Containers designed and constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly;

(B) Opaque so that the product cannot be seen from outside the packaging;

(C) Closable for any product intended for more than a single use or containing multiple servings; and

(D) Labeled in accordance with OAR 333-008-1220.

(b) “Container” means a sealed, hard or soft-bodied receptacle in which a tetrahydrocannabinol-infused product is placed prior to being transferred to a patient or caregiver.

(c) “Packaged in a manner not attractive to minors” means the tetrahydrocannabinol-infused product is not in a container that is brightly colored, depicts cartoons or images other than the

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logo of the facility, unless the logo of the facility depicts cartoons, in which case only the name of the facility is permitted.

(2) A registered facility may not transfer any tetrahydrocannabinol-infused product that is meant to be swallowed or inhaled, unless the product is:

- (a) In child-resistant safety packaging; and
- (b) Packaged in a manner that is not attractive to minors.

Stat. Auth.: ORS 475.314

Stats. Implemented: ORS 475.314

### **333-008-1230**

#### **Transfers to a Registered Facility**

(1) A patient may authorize usable marijuana or immature marijuana plants to be transferred to a registered facility by signing an Authorization to Transfer form prescribed by the Authority. A patient may authorize transfers to more than one registered facility. A separate form must be provided for each registered facility. The Authorization must include, but is not limited to, the following information:

- (a) The patient's name, OMMP card number and expiration date and contact information;
- (b) The name and contact information of the individual who is authorized to transfer the usable marijuana or immature marijuana plants to the registered facility and that individual's OMMP card number and expiration date;
- (c) The name and address of the registered facility that is authorized to receive the usable marijuana or immature marijuana plants; and
- (d) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.

(2) Only a patient, the patient's designated primary caregiver, or the patient's grower may be authorized to transfer usable marijuana or immature plants to a registered facility.

(3) The original Authorization to Transfer form must be provided to the registered facility to which a transfer may be made by the patient or person authorized to transfer the usable marijuana or immature plants. The patient should retain a copy of the Authorization to Transfer form for his or her records and provide a copy to the person authorized to transfer the usable marijuana or immature plants.

(4) An Authorization to Transfer form automatically expires on the date the patient's OMMP card expires, unless the patient has specified an earlier expiration date. If the patient renews his or her OMMP card the patient may execute a new Authorization to Transfer form in accordance with this rule.

(5) Once usable marijuana or an immature plant is transferred to a registered facility pursuant to a valid Authorization to Transfer form, the usable marijuana or immature plant is no longer the property of the patient unless the usable marijuana or immature plants are returned by the registered facility.

(6) Prior to a registered facility accepting a transfer of usable marijuana or immature plants the PRF must ensure that:

- (a) It has a valid Authorization to Transfer form on file that authorizes the individual that is transferring the usable marijuana or immature plants to make the transfer; and
- (b) The individual transferring the usable marijuana or immature plants is the individual authorized to make the transfer.



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(7) A PRF must ensure that when a registered facility accepts a transfer of usable marijuana or an immature plant the batch of usable marijuana and each immature plant are segregated in accordance with the testing rule, OAR 333-008-1190 and that the following information is documented, as applicable:

- (a) The unique identifier;
- (b) The weight in metric units of all usable marijuana received by the registered facility;
- (c) The number of immature plants received by the registered facility;
- (d) The amount of a finished product received by the registered facility, including, as applicable, the weight in metric units, or the number of units of a finished product;
- (e) A description of the form the usable marijuana was in when it was received, for example, oil or an edible product;
- (f) Who transferred the usable marijuana or the immature plant, the individual's OMMP card number and expiration date of the card, a copy of the individual's picture identification, the date the usable marijuana or an immature plant was received, and the name of the patient who authorized the transfer; and
- (g) The amount of reimbursement paid by the registered facility.

(8) Nothing in these rules requires a PRF or a registered facility to accept a transfer of usable marijuana or immature plants.

(9) A PRF must ensure that:

- (a) From the time that a batch or plant has been received by the registered facility until it is tested in accordance with these rules, the usable marijuana and immature plants are segregated, withheld from use, and kept in a secure location so as to prevent the marijuana or plants from becoming contaminated or losing efficacy, or from being tampered with or transferred except that samples may be removed for testing; and
- (b) No usable marijuana or immature plants are transferred to a patient or designated primary caregiver until testing has been completed, the registered facility has received a written testing report, and the usable marijuana and immature plants have tested negative for pesticides, mold and mildew.

(10) Usable marijuana and immature plants must be kept on-site at the facility. The Authority may cite a PRF for a violation of these rules if during an inspection it cannot account for its inventory or if the amount of flowers or other usable marijuana plant material at the registered facility is not within five percent of the documented inventory.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

### **333-008-1245**

#### **Transfers to a Patient or Designated Primary Caregiver**

(1) A registered facility may not transfer a tetrahydrocannabinol-infused product that is manufactured in a manner that is attractive to minors. For purposes of this section a product is considered to be manufactured in a manner that is attractive to minors if it is:

- (a) Brightly colored; or
- (b) In the shape of an animal or any other commercially recognizable toy or candy.

(2) Prior to a registered facility transferring usable marijuana or an immature plant to a patient or a designated primary caregiver the PRF must ensure that:

- (a) The usable marijuana or an immature plant has not tested positive for mold, mildew or pesticides as specified in OAR 333-008-1190; and

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(b) The identity and cardholder status of the person requesting usable marijuana or an immature plant is verified by viewing the person's OMMP card and picture identification and making sure the two match.

(3) The PRF must ensure that for each transfer of usable marijuana or an immature plant to a patient or a designated primary caregiver the following information is documented:

(a) The name, OMMP card number and expiration date of the card of each person to whom the registered facility transfers usable marijuana or an immature plant;

(b) A copy of the person's picture identification;

(c) The amount of usable marijuana transferred in metric units, if applicable;

(d) The number of immature plants transferred, if applicable;

(e) The amount of a finished product transferred in metric units, or units of the finished product, if applicable;

(f) A description of what was transferred;

(g) The date of the transfer; and

(h) The amount of money paid by a patient or a designated primary caregiver to a registered facility for the transfer of usable marijuana or an immature plant.

(4) The PRF must ensure that a registered facility does not transfer at any one time more usable marijuana or immature plants than a patient or designated primary caregiver is permitted to possess under ORS 475.320(1)(a). A PRF is not responsible for determining whether a patient or designated primary caregiver is limited in the amount of usable marijuana he or she can possess under 475.320(1)(b).

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

### **333-008-1250**

#### **Inspections**

(1) The Authority must conduct an initial inspection of every registered facility within six months of approving an application to ensure compliance with these rules, and must conduct a routine inspection of every registered facility at least every year.

(2) The Authority may conduct a complaint inspection at any time following the receipt of a complaint that alleges a registered facility is in violation of ORS 475.314 or these rules.

(3) The Authority may conduct an inspection at any time if it believes, for any reason, that a registered facility or a PRF is in violation of ORS 475.314 or these rules.

(4) A PRF and any employees, contractors, or other individuals working at a registered facility must cooperate with the Authority during an inspection.

(5) If an individual at a registered facility fails to permit the Authority to conduct an inspection the Authority may seek an administrative warrant authorizing the inspection pursuant to ORS 431.262.

Stat. Auth.: ORS 431.262, 475.314, 475.338

Stats. Implemented: ORS 431.262, 475.314

### **333-008-1260**

#### **Violations**

(1) The following are violations of ORS 475.314 or these rules:

(a) A PRF or an employee of a facility failing to cooperate with an inspection;

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- (b) The submission by a PRF, employee, or owner of a facility of false or misleading information to the Authority;
- (c) Transferring usable marijuana or immature plants to an individual who is not a patient or a designated primary caregiver;
- (d) Accepting a transfer of usable marijuana or immature plants without a valid authorization from the patient;
- (e) Possessing a mature marijuana plant at the registered facility;
- (f) Failing to document and maintain information in the manner required by these rules;
- (g) Failing to account for flowers or other usable marijuana plant material in accordance with OAR 333-008-1230(10);
- (h) Failing to submit a plan of correction in accordance with OAR 333-008-1275;
- (i) Failing to comply with an emergency suspension or final order of the Authority, including failing to pay a civil penalty; or
- (j) Failing to comply with ORS 475.314 or any of these rules.

(2) It is a violation of ORS 475.314 and these rules to operate a facility without being registered by the Authority.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

### **333-008-1275**

#### **Enforcement**

(1)(a) Informal Enforcement. If, during an inspection the Authority documents violations of ORS 475.314 or any of these rules, the Authority may issue a written Notice of Violation to the PRF that cites the laws alleged to have been violated and the facts supporting the allegations.

(b) The PRF must submit to the Authority a signed plan of correction within 10 business days from the date the Notice of Violation was mailed to the person. A signed plan of correction will not be used by the Authority as an admission of the violations alleged in the Notice.

(c) A PRF must correct all deficiencies within 10 business days from the date of the Notice, unless an extension of time is requested from the Authority. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(d) The Authority must determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Authority it must notify the PRF in writing and request that the plan of correction be modified and resubmitted no later than 10 business days from the date the letter of non-acceptance was mailed.

(e) If the registered facility does not come into compliance by the date of correction reflected on the plan of correction, the Authority may propose to revoke the registration of the facility or impose civil penalties.

(f) The Authority may conduct an inspection at any time to determine whether a registered facility has corrected the deficiencies in a Notice of Violation.

(2) Formal Enforcement. If, during an inspection or based on other information the Authority determines that a registered facility or PRF is in violation of ORS 475.314 or these rules the Authority may issue:

(a) A Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470.

(b) A Notice of Imposition of Civil Penalties in accordance with ORS 183.745. Civil penalties may be issued for any violation of ORS 475.314 and these rules, not to exceed \$500 per violation per day.

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- (c) An Order of Emergency Suspension pursuant to ORS 183.430.
  - (3) The Authority must determine whether to use the informal or formal enforcement process based on the nature of the alleged violations, whether there are mitigating or aggravating factors, and whether the PRF or the registered facility has a history of violations.
  - (4) The Authority must issue a Notice of Proposed Revocation if the:
    - (a) Facility no longer meets the criteria in ORS 475.314(3)(a) to (d); or
    - (b) PRF is not a resident of Oregon, has disqualifying criminal convictions as described in OAR 333-008-1120, or a court has issued an order that prohibits the PRF from participating in the OMMP under ORS 475.300 through 475.346 unless a new PRF is approved by the Authority.
  - (5) The Authority may maintain a civil action against a facility that is operating but not registered in accordance with ORS 475.314 and these rules.
  - (6) The Authority may revoke the registration of a facility for failure to comply with an ordinance adopted by a city or county pursuant to Oregon Laws 2014, chapter 79, section 2, if the city or county:
    - (a) Has provided the facility with due process substantially similar to the due process provided to a registration or license holder under the Administrative Procedures Act, ORS 183.413 to 183.470; and
    - (b) Provides the Authority with a final order that is substantially similar to the requirements for a final order under ORS 183.470 that establishes the facility is in violation of the local ordinance.
  - (7) The Authority must post a final order revoking the registration of a facility on the Authority's website and provide a copy of the final order to the OMMP.
  - (8) To the extent permitted by law, if the Authority discovers violations that may constitute criminal conduct or conduct that is in violation of laws within the jurisdiction of other state or local governmental entities, the Authority may refer the matter to the applicable agency.
  - (9) If the registration of a facility is revoked the PRF must make arrangements to return the usable marijuana and immature plants in amounts still possessed by the facility, to the person who transferred the usable marijuana or immature plants and must document the same.
  - (10) The Authority is not required to accept the surrender of a registration and may proceed with an enforcement action even if a PRF has surrendered the facility's registration.
- Stat. Auth.: ORS 431.262, 475.314 & 475.338  
Stats. Implemented: ORS 431.262 & 475.314

**333-008-1280**  
**Confidentiality**

- (1) Any criminal background information received by the Authority about a PRF during the criminal background check process is confidential and is not subject to disclosure without a court order.
- (2) The name of a PRF and the address of a registered facility is confidential and is not subject to disclosure without a court order, except as provided in ORS 475.331(2) and section (5) of this rule, or unless a PRF has authorized disclosure.
- (3) If an application has been denied, the information submitted to the Authority in an application for registration of a facility is not confidential and may be subject to disclosure under ORS 192.410 through 192.505.
- (4) A final order revoking the registration of a facility is not confidential and may be posted on the Authority's website or otherwise made public by the Authority.

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(5) Authorized employees of state and local law enforcement agencies may verify with the Authority at all times whether:

- (a) A location is the location of a registered facility; or
- (b) A person is listed as the PRF of a registered facility.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314, 475.331

### **333-008-1290**

#### **Change of Location**

(1) A registered facility that changes location must submit a new application that complies with OAR 333-008-1020.

(2) A facility may not operate at a new location unless it is registered by the Authority.

Stat. Auth.: ORS 475.314, 475.338

Stats. Implemented: ORS 475.314

### **333-008-1400**

#### **Moratoriums**

(1) For purposes of this rule, “moratorium” means an ordinance, adopted by the governing body of a city or county by May 1, 2014, that specifically suspends the operation of registered medical marijuana facilities within the area subject to the jurisdiction of the city or county, for a period of time that does not extend past May 1, 2015.

(2) If a city or county adopts a moratorium it must notify the Authority and provide a copy of the ordinance.

(3) An applicant applying for registration of a facility proposing to operate in an area subject to a moratorium may submit a request, in writing, to withdraw the application and may request a refund of the fees.

(4) A PRF of a registered facility located in an area subject to a moratorium may submit a request, in writing, to surrender its registration and request a refund of the fees.

(5) Upon receipt of a request to withdraw an application or surrender a registration under sections (3) or (4) of this rule the Authority shall determine whether the ordinance falls within the definition of moratorium and inform the applicant or PRF in writing whether:

- (a) The application is considered withdrawn and the fees refunded; or
- (b) The registration has been surrendered and the fees refunded.

(6) The Authority may refund all fees, including the non-refundable registration fee.

(7) Notifications or requests described in sections (2) to (4) of this rule may be submitted to the Authority:

(a) By mail at P.O. Box 14116, Portland, OR 97293; or

(b) By electronic mail to [medmj.dispensaries@state.or.us](mailto:medmj.dispensaries@state.or.us).

Stat. Auth.: Oregon Laws 2014, Chapter 79, Section 3

Stats. Implemented: Oregon Laws 2014, Chapter 79, Section 3

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**333-008-1190**  
**Appendix A**

**Mold and Mildew limits for cannabis products (CFU/g)**

	<b>Total yeast and mold (mold and mildew)</b>
<b>Unprocessed materials*</b>	$10^4$
<b>Processed materials*</b>	$10^4$
<b>CO<sub>2</sub> and solvent based extracts</b>	$10^3$

\*Unprocessed materials include minimally processed crude cannabis preparations such as inflorescences, accumulated resin glands (kief), and compressed resin glands (hashish). Processed materials include various solid or liquid infused edible preparations, oils, topical preparations, and water-processed resin glands (“bubble hash”).

*Source: American Herbal Pharmacopoeia Monograph, December 18<sup>th</sup>, 2013*

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## **Oregon Medical Marijuana Program rules**

### **333-008-0010**

#### **Definitions**

For the purposes of OAR 333-008-0000 through 333-008-0120, the following definitions apply:

- (1) “Act” means the Oregon Medical Marijuana Act.
- (2) “Applicant” means a person applying for an Oregon Medical Marijuana registry identification card on a form prescribed by the Authority.
- (3) “Attending physician” means a Doctor of Medicine (MD) or Doctor of Osteopathy (DO), licensed under ORS chapter 677, who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.
- (4) “Authority” means the Oregon Health Authority.
- (5) “Debilitating medical condition” means:
  - (a) Cancer, glaucoma, agitation incident to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of these medical conditions;
  - (b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:
    - (A) Cachexia;
    - (B) Severe pain;
    - (C) Severe nausea;
    - (D) Seizures, including but not limited to seizures caused by epilepsy; or
    - (E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;
  - (c) Post-traumatic stress disorder; or
  - (d) Any other medical condition or side effect related to the treatment of a medical condition adopted by the Authority by rule or approved by the Authority pursuant to a petition submitted under OAR 333-008-0090.
- (6) “Delivery” means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship, but does not include transfer of marijuana from one patient to another patient if no consideration is paid for the transfer.
- (7) “Designated primary caregiver” means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority. “Designated primary caregiver” does not include the person's attending physician.
- (8) “Food stamps” means the Supplemental Nutrition Assistance Program as defined and governed by ORS 411.806 through 411.845.
- (9) “Grow site” means a specific location registered by the Authority used by the grower to produce marijuana for medical use by a specific patient.
- (10) “Grow site registration card” means the card issued to the patient and displayed at the grow site.
- (11) “Grower” has the same meaning as “person responsible for a marijuana grow site.”
- (12) “Immature plant” has the same meaning as “seedling or start.”
- (13) “Marijuana” means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks

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of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(14) “Mature plant” means a marijuana plant that does not fall within the definition of a seedling or a start.

(15) “Medical marijuana facility” is a facility, registered by the Authority, under OAR 333-008-1050.

(16) “Medical use of marijuana” means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

(17) “Oregon Health Plan (OHP)” means the medical assistance program administered by the Authority under ORS chapter 414.

(18) “OMMP” refers to the office within the Authority that administers the provisions of the OMMA, and all policies and procedures pertaining thereto, as set forth in these rules.

(19) “Parent or legal guardian” means the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age.

(20) “Patient” has the same meaning as “registry identification cardholder.”

(21) “Person responsible for a marijuana grow site” means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose.

(22) “Person responsible for a medical marijuana facility” has the meaning given that term in OAR 333-008-1010.

(23) “Primary responsibility” as that term is used in relation to an attending physician means that the physician:

(a) Provides primary health care to the patient; or

(b) Provides medical specialty care and treatment to the patient as recognized by the American Board of Medical Specialties; or

(c) Is a consultant who has been asked to examine and treat the patient by the patient's primary care physician licensed under ORS chapter 677, the patient's physician assistant licensed under ORS chapter 677, or the patient's nurse practitioner licensed under ORS chapter 678; and,

(d) Has reviewed a patient's medical records at the patient's request and has conducted a thorough physical examination of the patient, has provided or planned follow-up care, and has documented these activities in the patient's medical record.

(24) “Production” includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(25) “Registry identification card” means a document issued by the Authority that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.

(26) “Registry identification cardholder” means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.

(27) “Replacement registry identification card” means a new card issued in the event that a registry identification cardholder's card, designated primary caregiver identification card, grower



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identification card, or grow site registration card is lost or stolen, or if a registry identification cardholder's designation of primary caregiver, grower, or grow site has changed.

(28) "Seedling or start" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter. A seedling or start that does not meet all three criteria shall be considered a mature plant.

(29) "Supplemental Security Income (SSI)" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources.

(30) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae and any mixture or preparation thereof, that are appropriate for medical use. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(31) "Written documentation" means a statement signed and dated by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records, maintained in accordance with standard medical record practices.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

### **333-008-0020**

#### **New Registration Application and Verification**

(1) A person may apply for a registry identification card on forms prescribed by the Authority. In order for an application to be considered complete, an applicant must submit the following:

(a) An application form signed and dated by the applicant;

(b) Copies of legible and valid U.S. state or federal issued photographic identification that includes last name, first name, and date of birth from the applicant, the designated primary caregiver, and grower, as applicable. Acceptable forms of current U.S. state or federal issued photographic identification include but are not limited to:

(A) Driver's license;

(B) State identification card;

(C) Passport; or

(D) Military identification card.

(c) Written documentation, which may consist of relevant portions of the applicant's medical record, signed by the applicant's attending physician within 90 days of the date of receipt by the Authority, which describes the applicant's debilitating medical condition and states that the use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition;

(d) If applicable, a completed and notarized "Declaration of Person Responsible for Minor" form for any person under 18 years of age, signed and dated by the person responsible for the minor;

(e) The name of a designated primary caregiver, if any;

(f) The name of a designated grower (either the patient or another person), if any and the location of the grow site; and

(g) An application fee and grow site registration fee, if applicable, in the form of cash, bank check, money order, or personal check.

(2) The Authority shall process an application prior to issuing registry identification cards to assure that the application is complete and information provided has been verified.

(a) The Authority shall only accept applications that are mailed or are hand-delivered.

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(b) If an applicant does not provide all the information required and the application is considered incomplete, the Authority shall notify the applicant of the information that is missing, and shall allow the applicant 14 days to submit the missing information.

(c) If an applicant does not provide the information necessary to declare an application complete, or to complete the verification process within the timelines established in subsections (2)(b) and (3)(e) of this rule, the application shall be rejected as incomplete. An applicant whose application is rejected as incomplete may reapply at any time. If an applicant submits an application fee and the application is subsequently denied or rejected, the application fee may be applied toward a new application submitted within one year of the denial or rejection date.

(d) The Authority may reject an application if the application or supporting documents appear to be altered (for example, writing is whited out). An application shall be denied in accordance with OAR 333-008-0030 if an application or supporting documents are determined to have been falsified.

(e) The Authority may verify information on each application and accompanying documentation, including:

(A) Contacting each applicant by telephone or by mail. If proof of identity is uncertain, the Authority may require a face-to-face meeting and may require the production of additional identification materials;

(B) Contacting a minor's parent or legal guardian;

(C) Contacting the Oregon Medical Board to verify that an attending physician is licensed to practice in the state and is in good standing;

(D) Contacting the attending physician to request further documentation to support a finding that the physician is the applicant's attending physician. The Authority shall notify the applicant of the intent to review the medical records and request the applicant's authorization to conduct the review. Failure to authorize a review of medical records may result in the application being declared incomplete, or denial of an application. If the Authority is unable to verify that the applicant's attending physician meets the definition under OAR 333-008-0010(3) the applicant will be allowed 30 days to submit written documentation or a new attending physician's declaration from a physician meeting the requirements of these rules. Failure to submit the required attending physician documentation is grounds for denial under ORS 475.309 and OAR 333-008-0030;

(E) Contacting the Division of Medical Assistance Programs, Department of Human Services-Self Sufficiency, or the Social Security Administration (SSA) to verify eligibility for benefits; and

(F) Conducting a criminal records check under ORS 181.534 of any person whose name is submitted as a grower.

(3) Application fees.

(a) A non-refundable application fee of \$200 is required at the time of application.

(b) If applicable as specified in OAR 333-008-0025, a non-refundable grow site registration fee of \$50 is required at the time of application.

(c) An applicant who can demonstrate current receipt of SSI benefits, current eligibility for OHP benefits or current receipt of food stamp benefits through the Oregon SNAP program qualifies for a reduced non-refundable application fee.

(A) An applicant demonstrating receipt of SSI benefits by providing a copy of a current monthly SSI benefit card showing dates of coverage is entitled to a reduced application fee of \$20.

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(B) An applicant demonstrating current eligibility for OHP benefits by providing a copy of the applicant's current eligibility statement is entitled to a reduced application fee of \$50.

(C) An applicant demonstrating receipt of current food stamp benefits, verified by enrollment in Oregon's Food Stamp Management Information System database system and by providing current proof of his or her food stamp benefits, is entitled to a reduced application fee of \$60.

(D) An applicant who falls within one of the categories listed in subparagraph (i) or (ii) of this paragraph and who provides a copy of the applicable determination from the United States Department of Veteran's Affairs (VA), is entitled to a reduced application fee of \$20:

(i) Receives service-connected compensation from the VA based on a finding by the VA of 100% service-connected disability; or

(ii) Receives a needs-based pension from the VA based on a finding by the VA of non-service connected disability.

(d) The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. Upon receipt by the Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

(e) The Authority shall notify an applicant who submits a reduced application fee for which the applicant is not eligible and will allow the applicant 14 days from the date of notice to pay the correct application fee and submit a current valid proof of eligibility.

(4) The application forms referenced in this rule may be obtained by contacting the Oregon Medical Marijuana Program (OMMP) at PO Box 14450, Portland, OR 97293-0450 or by calling 971-673-1234.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

### **333-008-0025**

#### **Marijuana Grow Site Registration**

(1) A patient may register a marijuana grow site with the Authority. The address of a medical marijuana facility may not be listed by a patient on the grow site application as the location of the marijuana grow site. The Authority will register only one grow site per patient, and will only register grow sites in Oregon.

(2) To register a marijuana grow site, an applicant or patient must submit to the Authority an application, prescribed by the Authority, that includes:

(a) The name of the grower;

(b) The date of birth of the grower;

(c) The physical address of the marijuana grow site where marijuana is to be produced;

(d) The mailing address of the grower;

(e) The registry identification card number of the patient, if known, for whom the marijuana is being produced; and

(f) A non-refundable grow site registration fee of \$50 in the form of cash, bank check, money order, or personal check. If the grower is the applicant, he or she is not required to pay the grow site registration fee. The Authority shall place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. Upon receipt by the

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January 28th, 2015

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Authority of a notice of non-sufficient funds (NSF) or stop payment, an applicant will be allowed 14 days to submit payment in the form of a bank check or cash. Application fees paid in the form of cash must be hand-delivered. Applicants are advised not to make payments in cash through the United States mail or private delivery services. The Authority will not accept responsibility for payments of cash that are lost in the mail or stolen in transit.

(3) The Authority shall conduct a criminal background check on the grower as authorized under ORS 475.304.

(a) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offense occurred on or after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(b) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, if the offenses occurred after January 1, 2006, may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(c) The Authority shall notify a patient by certified mail that the grower is ineligible and the patient will be allowed the opportunity to identify another grower.

(4) The Authority shall issue a marijuana grow site registration card to a patient who has met the requirements of section (2) of this rule, unless the grower is disqualified under section (3) of this rule.

(5) A grower must display a marijuana grow site registration card for each patient for whom marijuana is being produced, at the marijuana grow site at all times.

(6) All usable marijuana, plants, seedlings and seeds, associated with the production of marijuana for a patient by a grower, are the property of the patient and must be provided to the patient, or, if the marijuana is usable marijuana or an immature marijuana plant, transferred to a registered medical marijuana facility, upon request.

(7) All marijuana produced for a patient must be provided to the patient or designated primary caregiver when the grower ceases producing marijuana for the patient.

(8) A grower must return the grow site registration card to the patient to whom the card was issued when requested to do so by the patient or when the grower ceases producing marijuana for the patient.

(9) A patient or the designated primary caregiver of the patient may reimburse the grower for the costs of supplies and utilities associated with production of marijuana for patient. No other costs associated with the production of marijuana for the patient, including the cost of labor, may be reimbursed.

(10) A grower may produce marijuana for no more than four patients or designated primary caregivers concurrently.

(11) The Authority may not register a grow site if the location of the grow site is the same location as a medical marijuana facility.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

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**333-008-0045****Interim Changes**

- (1) A patient shall notify the Authority within 30 calendar days of any change in the patient's name, address, telephone number, attending physician, designated primary caregiver, grower or grow site address.
- (2) A patient shall notify, as applicable, the designated primary caregiver, the grower, and the person responsible for a medical marijuana facility of any changes in status including, but not limited to:
  - (a) The assignment of another individual as the designated primary caregiver for the patient;
  - (b) The assignment of another individual as a grower for the patient;
  - (c) The revocation of an Authorization to Transfer form under OAR 333-008-1230; or
  - (d) The end of eligibility of the patient to hold a registry identification card.
- (3) If the Authority is notified by the patient that a designated primary caregiver or a grower has changed, the Authority shall notify the designated primary caregiver or the grower by mail at the address of record confirming the change in status and informing the caregiver or grower that their card is no longer valid and must be returned to the Authority within seven calendar days.
- (4) A patient who has been diagnosed by an attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the patient's debilitating medical condition shall return the registry identification card and all associated OMMP cards to the Authority within 30 calendar days of notification of the diagnosis or notification of the contraindication. If, due to circumstances beyond control of the patient he or she is unable to obtain a second medical opinion about the patient's continuing eligibility to use medical marijuana before the 30-day period has expired, the Authority may grant the patient additional time to obtain a second opinion before requiring the patient to return the registry identification card and all associated cards.
- (5) Change forms may only be submitted to the Authority via mail or in person at the OMMP office.
- (6) If a patient's designated primary caregiver, grower or grow site has changed, the non-refundable fee to receive a replacement card is \$100. If the patient qualifies for the reduced application fee of \$20, the non-refundable fee to receive a replacement card is \$20.
- (7) If a patient is registering a new grow site at any time other than when submitting a new application or a renewal application, a grow site registration fee will not be charged.

Stat. Auth.: ORS 475.309 & 475.312

Stats. Implemented: ORS 475.309 & 475.312

**333-008-0050****Confidentiality**

- (1) The Authority shall create and maintain either paper or computer data files of patients, designated primary caregivers, growers, and grow site addresses. The data files shall include all information collected on the application forms or equivalent information from other written documentation, plus a copy of OMMP registry identification cards, effective date, date of issue, and expiration date. Except as provided in section (2) of this rule, the names and identifying information of registry identification cardholders and the name and identifying information of a pending applicant for a card, a designated primary caregiver, a grower, and a marijuana grow site location, shall be confidential and not subject to public disclosure.

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(2) Names and other identifying information made confidential under section (1) of this rule may be released to:

- (a) Authorized employees of the Authority as necessary to perform official duties of the Authority, including the production of any reports of aggregate (i.e., non-identifying) data or statistics;
- (b) Authorized employees of state or local law enforcement agencies when they provide a specific name or address. Information will be supplied only as necessary to verify:
  - (A) That a person is or was a lawful possessor of a registry identification card;
  - (B) That a person is or was a person responsible for a registered medical marijuana facility;
  - (C) That the address is or was a documented grow site, and how many people are authorized to grow at that grow site;
  - (D) How many people a person was or is authorized to grow for; or
  - (E) That an address is or was the location of a registered medical marijuana facility.
- (c) Other persons (such as, but not limited to, employers, lawyers, family members) upon receipt of a properly executed release of information signed by the patient, the patient's parent or legal guardian, designated primary caregiver or grower. The release of information must specify what information the Authority is authorized to release and to whom.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 - 475.346

### **333-008-0120**

#### **System to Allow Verification of Data at All Times**

- (1) The Authority shall establish an interactive method to allow authorized employees of state and local law enforcement agencies to use the Oregon State Police Law Enforcement Data System (LEDS) to query an OMMP data file in order to verify at any time whether a particular patient, designated primary caregiver, grower, person responsible for a medical marijuana facility, grow site location, or medical marijuana facility is listed or registered with the Authority.
- (2) LEDS access will only allow a yes or no answer to the query and the information obtained may not be used for any other purpose other than verification.
- (3) The Authority may allow the release of reports related to verification if it is without identifying data.
- (4) The Authority shall have staff available by phone to verify law enforcement agency employee questions during regular business hours in case the electronic verification system is down, and in the event the system is expected to be down for more than two business days, the Authority shall ensure program staff are available by phone for verification purposes.

Stat. Auth.: ORS 475.338

Stats. Implemented: ORS 475.300 – 475.346

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: April 6, 2015

Order \_\_\_      Ordinance \_\_\_      Resolution XX      Motion \_\_\_      Information \_\_\_  
No.              No.              No. 2015-3184

**SUBJECT: Hazelfern Cellars Winery – a recommendation to Yamhill County on a winery conditional use permit for a property outside city limits and outside the Newberg urban growth boundary, but inside the urban reserve area.**

Contact Person (Preparer) for this Motion: Steve Olson, Associate Planner  
Dept.: Community Development  
File No.: G-15-001

HEARING TYPE:              LEGISLATIVE

## RECOMMENDATION:

Adopt Resolution No. 2015-3184, recommending that Yamhill County approve the proposed winery conditional use permit at 4008 NE Zimri Drive.

**EXECUTIVE SUMMARY:** On February 17, 2015 the City of Newberg received a copy of a Yamhill County conditional use permit application to convert an existing equestrian facility at 4008 NE Zimri Drive into a winery. The property is located outside the city limits and outside the Newberg urban growth boundary, but within the urban reserve area. Yamhill County has jurisdiction over the site, and will make the final decision on the conditional use permit application. The Newberg Urban Area Growth Management Agreement states that the City Council shall make a recommendation to the County on land use applications, including conditional use permits, within the urban reserve area. The City has 60 days from the receipt of the application to make a recommendation.

The site is at 4008 NE Zimri Drive, tax lot 3209-1400. It is approximately 4.5 acres, and has County zoning AF-10. The site has an existing residential house with a brand new equestrian facility and gravel parking area.

The applicant, Hazelfern Cellars Inc., proposes to convert the equestrian facility into a winery and to plant a vineyard on a large portion of the property. The residential house will remain in use as a residence, and no new buildings will be built.

The City's intent in the Urban Area Growth Management Agreement is to recommend that the County only allow development in the Urban Reserve Area that is limited in scope and consistent with the future urban development of the property.

- No new buildings are proposed, so the development is limited in scope. A future development plan is not required because the development is only changing the use of an existing building.
- A large portion of the site will be planted as a vineyard, which will serve to further protect the property from subdivision and redevelopment. The site is in the urban reserve, so at some point in the future it is anticipated that the property may be brought into the urban growth boundary and the city limits. The proposed winery and vineyard will not preclude the future urbanization of the property, and will in fact help preserve the site intact.

Staff recommends that the City Council recommend that Yamhill County approve the requested winery

conditional use permit.

**FISCAL IMPACT:** There is no fiscal impact to the City from the conditional use permit.

**STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):** The winery conditional use permit does not hinder the future urbanization of the parcel and the vineyard further dedicates the land to agricultural use in the interim.

**ATTACHMENTS:**

Resolution no. 2015-3184 with

Exhibit A: Existing and proposed site plans

Exhibit B: Findings

1. Partition application
2. Comprehensive Plan map





## ***RESOLUTION No. 2015-3184***

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**A RESOLUTION RECOMMENDING THAT YAMHILL COUNTY APPROVE  
THE PROPOSED CONDITIONAL USE PERMIT FOR A WINERY AT 4008 NE  
ZIMRI DRIVE, TAX LOT 3209-1400.**

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### **RECITALS:**

1. On February 17, 2015 the City of Newberg received a copy of a Yamhill County conditional use permit application to convert an equestrian facility into a winery at 4008 NE Zimri Drive.
2. The site is located outside the city limits and outside the urban growth boundary, but within Newberg's urban reserve area. Yamhill County will make the final decision on the conditional use permit application. Under the terms of the Newberg Urban Area Growth Management Agreement, the City Council shall hold a legislative hearing and make a recommendation to the County within 60 days of receiving a copy of the application.
3. The applicant intends to convert an existing equestrian facility into a winery, and plant a vineyard on most of the property. The residential house on the property will remain in use as a residence. No new buildings are proposed.
4. Notice of the hearing was posted in the *Newberg Graphic* on March 18, 2015.
5. The Newberg City Council held a hearing on April 6, 2015 to consider the conditional use permit proposal. The City Council finds that the proposal is limited in scope, and consistent with the future urban development of the property.

### **THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The City Council finds that the proposed conditional use permit, as shown in Exhibit A, meets the criteria for development in the urban reserve area and adopts the findings, which are attached hereto as Exhibit B. Exhibits A and B are hereby adopted and by this reference incorporated.

2. The City Council recommends that Yamhill County approve the proposed conditional use permit for a winery at 4008 NE Zimri Drive, Yamhill County tax lot 3209-1400, as shown in the attached application in Attachment 1.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 7, 2015.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 6<sup>th</sup> day of April, 2015.

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Sue Ryan, City Recorder

**ATTEST** by the Mayor this 9<sup>th</sup> day of April, 2015.

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Bob Andrews, Mayor

**EXHIBIT A: SITE PLANS – EXISTING AND PROPOSED**

**Existing Property Layout:**



- A** Existing Equestrian Bldg  
 \*State of the art indoor facility (see supporting photos and specs)  
 \*Full drainage system  
 \*Plumbing  
 \*Secure/Locked Doors  
 \*3000 gallon water storage tanks
- B** Existing Gravel Arena/Parking  
 \*80' x 180'; Levelled  
 \*Compact gravel  
 \*Outdoor
- C** Existing Residential Farmhouse  
 \*Built in 1915  
 \*Remodeled in 2010
- D** Existing Driveway/Parking  
 \*(2) Access points to NE Zimri Dr.  
 \*Turn around area
- E** South Access Point  
 \*Existing
- F** North Access Point  
 \*Existing
- Existing trees with trunk diameter larger than 8" \*(10) trees
- Existing water well
- Existing driveway and parking

# Future Property Layout:



- A** **Converted Winery Bldg**  
 \*Add tasting room (2-3 years out)  
 \*Add restroom and septic to coincide with tasting room (2-3 years out)
- B** **Existing Outdoor Arena/Parking**  
 \*80' x 180'; Leveled  
 \*Compact gravel  
 \*Outdoor  
 \*Use for future parking (if needed)  
 \*Use as outdoor event space
- C** **Existing Residential Farmhouse**  
 \*Built in 1915  
 \*Remodeled in 2010
- D** **Existing Driveway/Parking**  
 \*(2) Access points to NE Zimri Dr.  
 \*Turn around area
- E** **South Access Point**  
 \*Private Entrance
- F** **North Access Point**  
 \*Winery Entrance
- G** **Future Vineyard**  
 \*2.2 acres
- H** **Future Patio**  
 \*Outdoor

- Existing trees with trunk diameter larger than 8" \*(10) trees
- Existing water well
- Existing driveway and parking
- Future Vineyard

## EXHIBIT B: FINDINGS

The applicable Newberg Urban Area Growth Management Agreement criteria are:

*It is the City's intent to recommend that the County only allow development in the Urban Reserve Area that is **limited in scope and that is consistent with the future urban development of the property.***

*1. Future Development Plan: The City Council shall recommend approval, recommend approval with conditions, or recommend against the future development plan in accordance with the following criteria:*

*(a) The current development shall not cause more than 10 percent of the property to be used for site improvements including buildings, parking areas, improved recreation areas, and storage areas, unless the City agrees the development intensity will not prohibit future urban development.*

*(b) The future development plan shall allow for the efficient future urban development of the remainder of the property. It shall allow for construction of future urban streets and utilities, and shall allow for required setbacks to current and future property lines.*

*(c) The plan is consistent with adopted plans and policies for the area, such as street or utility plans and policies in this agreement.*

*B. Submittal Requirements 1. A future development plan shall be required for any development in the Urban Reserve Area requiring a Yamhill County Type B or Type C review, **excluding any development that involves a change in use to existing buildings only.** The future development plan shall be used solely to evaluate the current proposal's compatibility with potential future urban development. It does not bind or commit the applicants, property owners, review bodies, or governing bodies to approve or carry out the proposed future development.*

**Findings:** The site is at 4008 NE Zimri Drive, tax lot 3209-1400. It is approximately 4.5 acres, and contains an existing residential house, equestrian facility, gravel parking lot, and a vacant hillside. The property is outside of the Newberg city limits and outside the urban growth boundary, but within the urban reserve area. The site has County AF-10 zoning, in which wineries are a conditional use.

The applicant, Hazelfern Cellars Inc., proposes to convert the equestrian facility into a winery and to plant a vineyard on a large portion of the property. The residential house will remain in use as a residence, and no new buildings will be built. The current development does not cause more than 10% of the property to be used for site improvements because no new buildings are being constructed as part of this development; the applicant is converting an existing equestrian building to a winery building. The applicant was not required to create a future development plan showing how future streets could be laid out on the property because the development only involves a change in use to existing buildings.

The City's intent under the Urban Area Growth Management Agreement is to recommend that the County only allow development in the UGB that is limited in scope and consistent with the future urban development of the property.

- No new buildings are proposed, so the development is limited in scope. A future development plan is not required because the development is only changing the use of existing buildings.
- A large portion of the site will be planted as a vineyard, which will serve to further protect the property from subdivision and redevelopment. The site is in the urban reserve, so at some point in the future it is anticipated that the property may be brought into the city urban growth boundary and the city limits. The

proposed winery and vineyard will not preclude the future urbanization of the property, and will in fact help preserve the site intact.

Docket \_\_\_\_\_  
Date \_\_\_\_\_  
Rec'd by \_\_\_\_\_  
Receipt # \_\_\_\_\_  
Fee \_\_\_\_\_

YAMHILL COUNTY DEPARTMENT OF PLANNING & DEVELOPMENT  
**LAND USE APPLICATION**

525 NE Fourth Street, McMinnville, OR 97128 • Tel: 503-434-7516 • Fax: 503-434-7544

APPLICANT			LEGAL OWNER (IF DIFFERENT)		
Hazelfern Cellars Inc.			Laing, Bryan and Laura		
Last name	First	MI	Last name	First	MI
4008 NE Zimri Drive			4008 NE Zimri Drive		
Mailing address (Street or PO Box)			Mailing address (Street or PO Box)		
Newberg, Oregon 97132			Newberg, Oregon 97132		
City	State	Zip	City	State	Zip
971-645-3354			971-645-3354		
Telephone			Telephone		
blaing@hazelferncellars.com			blaing@hazelferncellars.com		
E-mail address			E-mail address		

If the applicant is not the legal owner, state interest in property:  
**Applicant is corporation owned and operated by the legal owners**

PROPERTY INFORMATION	
Tax Lot(s): 320901400	Zone: AF-10
Size of Tract (include all adjacent tax lots)	4.5 acres

- TYPE OF APPLICATION** (what is requested?): Conditional Use Permit
- JUSTIFICATION FOR REQUEST** YCZO Section(s): See attached narrative  
  
A Planner will assist you in identifying the review criteria that apply to your request. The review criteria are used to determine whether your application will be approved or denied. It is your responsibility to provide adequate written justification and any other evidence you feel is relevant to explain how your request complies with the review criteria. Failure to provide adequate justification may result in your application being denied, or deemed incomplete until additional information is provided.
- Present use of property: Single-family dwelling and brand-new equestrian building
- Please list the type of buildings that are currently on the property (i.e. manufactured home, pole building, agricultural barn, etc.):  
Single-family dwelling, equestrian building, and poultry barn
- Is there a septic system on the property?     Yes     No
- How will water be provided?     Well     City     Other \_\_\_\_\_
- How is the property accessed? NE Zimri Drive

Land Use Application

Page 2 of 2

8. To your knowledge, do any of the following natural hazards exist on the property?

- Floodplain
- Areas of erosion
- Steep slopes
- Fish or wildlife habitat
- Soil limitations for building or septic


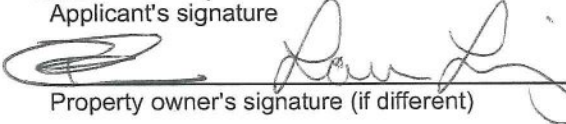
**THE APPLICANT MUST SUBMIT:**

1. Completed application form, signed by the applicant and property owner (if different). The owner's signature must be notarized.
2. Site plan drawn to scale showing property lines, location and size of all existing buildings, existing and proposed access roads, and location and size of any proposed new buildings.
3. Written justification of how the application complies with the approval criteria. Attach additional sheets to this form.
4. Filing fee (make check payable to Yamhill County).

**NOTE: Fees are not transferrable or refundable.**

I hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that the above information is true and correct to the best of my knowledge. I understand that issuance of an approval based on this application will not excuse me from complying with other effective ordinances and laws regulating the use of the land and buildings.

I hereby grant permission for and consent to Yamhill County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.

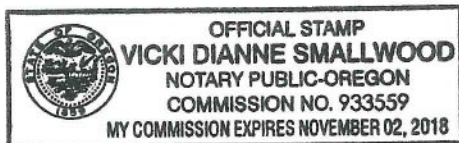
	President	2/13/15
Applicant's signature		Date
	Property owner's signature (if different)	2/13/15
		Date


State of Oregon

County of Multnomah

Signed before me on this 13<sup>th</sup> day of February, 20 15

by Bryan + Laura Laing



  
 Notary Public for Oregon  
 My Commission expires 11/2/2018



## Application Narrative

### A. Introduction

Hazelfern Cellars Inc. (“Hazelfern”) seeks to convert an existing 4,000 square-foot equestrian building located at 4008 NE Zimri Drive, Newberg, Oregon 97132, into a winery facility. The equestrian building was built in 2014 by the previous owners of the property and has never housed an animal. It is equipped with an advanced floor drainage system, plumbing, and large water tanks. The property on which the equestrian building is located is 4.5 acres in size, is located north-west of Newberg, has a residential dwelling, and an open area suitable for planting a vineyard.

In addition to wine production areas, the winery facility will also include a tasting room, an outdoor terrace area, a professional kitchen, parking area, and a newly planted vineyard. Hazelfern proposes to market and sell wine at retail in the tasting room, to host up to three special events per year, which may include small weddings, to make available small pre-packaged snacks, and to possibly provide acoustic music consistent with the County’s noise regulations.

The property is located within an Agriculture/Forestry Small Holding District (AF-10) zone. Wineries are a conditional use within this zone. The following narrative identifies the applicable land use criteria and explains why Hazelfern’s proposed winery use meets these criteria.

### B. Applicable Criteria

*YCZO 501.03 Conditional Uses: In the AF-10 District, pursuant to the Type B application procedure set forth in Section 1301, and subject to the conditional use review criteria listed in Section 1203,<sup>1</sup> and any other applicable criteria established by this ordinance, the following uses may be allowed conditionally:*

....

*P. Winery, including production and wholesale and retail sale of wine, subject to Section 1101 site design review and the following:*

- 1. A winery shall be permitted to conduct on-site marketing activities events such as festivals and group tastings that are directly related to promotion and sale of the wine produced on-site with an anticipated maximum of 750 daily visitors. Only three such events may be conducted in one calendar year, and the events shall not exceed a duration of three days. The frequency and duration of these events may be further limited through site design review approval based on the adequacy of public facilities.*

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<sup>1</sup> The italicized text here and throughout Section B of this application narrative is copied verbatim from the YCZO as it appears on the County’s website at [http://www.co.yamhill.or.us/plan/planning/ordinance/zoning\\_toc.asp](http://www.co.yamhill.or.us/plan/planning/ordinance/zoning_toc.asp). The reference to “Section 1203” copied here appears to be a typographical error, as Section 1203 pertains to variances and Section 1202 contains conditional use criteria. Hazelfern’s application therefore responds to the Section 1202 criteria below.

Response: Hazelfern's proposed use qualifies as a winery because the current equestrian building will be converted into a winery facility designed for wine production and the sale of wine. The focus of the proposed winery facility is the production of high quality wines. Hazelfern proposes to sell these wines at wholesale and also to market the wines for retail sale in the proposed tasting room and wine clubs.

Hazelfern will limit special events at the winery such as those described in YCZO 501.03P(1) to three per year.

2. *The winery shall allow only the sale of:*
  - a. *Wines produced in conjunction with the winery;*
  - b. *Items directly related to wine, the sales of which are incidental to the retail sale of wine on-site and do not exceed 25 percent of the total sales gross receipts of the retail facility. Such items include those served by a limited service restaurant, as defined in ORS 624.010, and local agricultural products commonly sold in conjunction with wine; and*
  - c. *Wines not produced in conjunction with the winery, the sales of which are incidental to the sale of wine produced on-site.*

Response: Hazelfern will sell wines produced in conjunction with the winery facility and will limit its income from other (incidental) sales to 25 percent of its on-site retail sales of wines produced in conjunction with the winery facility. In addition, Hazelfern agrees to limit food sales as required by YCZO 501.03P(2)(b).<sup>2</sup>

YCZO 1202: Conditional Use Criteria and Requirements

....

*1202.02 Review Criteria*

*A conditional use may be authorized, subject to the Type B application procedure set forth in Section 1301, upon adequate demonstration by the applicant that the proposed use will be compatible with vicinity uses, and satisfies all relevant requirements of this ordinance and the following general criteria;*

- A. The use is listed as a conditional use in the underlying zoning district;*

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<sup>2</sup> Pursuant to 2013 Senate Bill 841, the Oregon Legislature has recently granted broader food privileges to permitted use wineries in the Exclusive Farm Use and Agriculture/Forestry Large Holding District zones. Although these rules are not directly applicable in the AF-10 zone, the County may consider them in interpreting the County's AF-10 rules.

Response: As described above, the property is zoned AF-10, and a winery is a conditional use in this zone.

*B. The use is consistent with those goals and policies of the Comprehensive Plan which apply to the proposed use;*

Response: There are several Comprehensive Plan policies that are relevant to the proposed use. First, I.B., Goal 1, Policy A speaks to “encouraging opportunities for small scale or intensive agricultural and forestry activities” within rural residential zones. Hazelfern’s proposed winery will provide a market for the grapes that are produced in the area and eventually on the property, thus facilitating continued agricultural use of the surrounding land and improving the agricultural use of the property.

The proposed winery and future vineyard also furthers provision I.F., Goal 1, Policy B, which is to promote economic development projects that do not conflict with the agriculture character of the County. Hazelfern plans to use grapes from the surrounding areas and from the future vineyard located on the property to produce wine which helps facilitate the preservation and growth of farming in the County

Hazelfern’s proposed winery is also consistent with Comprehensive Plan policies regarding demand and appropriate siting of rural development. As required by provision I.B., Goal 1, Policy B, there is adequate demand for the proposed winery given the growth of the local wine industry and increasing consumer demand for Oregon wine. *See Full Glass Research, The Economic Impact of the Wine and Wine Grape Industries on the Oregon Economy (January, 2015), available at [http://www.oregonwine.org/media/139991/or\\_econreport\\_2014\\_final.pdf](http://www.oregonwine.org/media/139991/or_econreport_2014_final.pdf).* Hazelfern’s proposed winery is appropriately sited because its production of wine will be located within a suitable existing facility, the property is suitable for vineyard development, and is near other wineries and related visitor accommodations as described below.

*C. The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features;*

Response: The Hazelfern property is well-suited for the proposed winery given its shape, location, and the existence of improvements already on the property. The property can be accessed by either the south access point or the north access point. Hazelfern plans to use the south access point entry as the entrance to the private residence and the north access point entry as the entrance to the winery facility. The north and south access points are currently connected with a large driveway that provides ample turn around and access for emergency vehicles. The property also has plenty of existing parking to support the tasting room and it has a 180’ to 80’ level area for any overflow situations or event parking.

As previously mentioned, the property already has an existing equestrian building that can easily be converted into a winery facility. The facility was built in 2014 by the previous owners and has never housed animal. The facility is equipped with an advanced floor drainage system, plumbing and large water tanks. Hazelfern plans to make some adjustments to the

facility in order to separate and secure the bonded wine space from the tasting room area. Hazelfern also plans to add a bathroom with septic before opening the tasting room.

Hazelfern also plans to plant a vineyard on the eastern part of the property. The soil is saum soil and is ideal for growing premium grapes for wine.

There are no natural hazards on the property.

*D. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district;*

Response: The proposed winery is consistent with the character of the surrounding area. The Hazelfern property is surrounded by open land and, within the vicinity, there are other vineyards and wineries, including Zimri Cellars Vineyard, Bells Up Vineyard and Winery, Medici Vineyard and Winery, and Prive' Vineyard and Winery. The Allison Inn and Spa, which caters to wine country visitors, is located approximately 1 mile south of the Hazelfern property, off NE Zimri Drive.

The Hazelfern property and the adjacent parcels are zoned AF-10. The proposed winery facility and future vineyard will help to further solidify the agricultural character of the local AF-10 zone, discouraging further residential subdivision in this rural area consistent with the Statewide Planning Goals and the Yamhill County Comprehensive Plan.

*E. The proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected by the use; and*

Response: The proposed winery is located along NE Zimri Drive, which is designated as a Resource Road in the County's Transportation System Plan. Resource Roads are designed to carry traffic in volumes of 500 or more vehicles per day. Because winery visitors generally visit multiple wineries in a single day, Hazelfern's proposed tasting room should not significantly increase traffic above existing levels. The limitation on special events in the AF-10 zone further ensures that the proposed winery facility will not draw a significant amount of new traffic to the area. The local road infrastructure is therefore adequate to accommodate the proposed winery.

The shape of the property with the proposed winery also provides for efficient access by emergency responders. The property has two access points, which are connected with a large driveway that provides ample turn around and access for emergency vehicles.

The proposed winery will use water from the existing well. The facility currently is equipped with water tanks to store water for on-site usage. Hazelfern is planning to add a septic tank to the existing drainage system in order to support the bathroom and sanitation needs before it opens the tasting room.

Attachment 1

*F. The use is or can be made compatible with existing uses and other allowable uses in the area.*

Response: The proposed winery is compatible with existing and allowed uses in the area for the reasons described above.

*YCZO 1101: Site Design Review Process and Standards*

....

*1101.04 Preliminary Site Development Plan Requirements*

*[This section details various technical requirements for site plans]*

Response: Please see the enclosed site plan and accompanying materials. These materials satisfy the County's site design requirements.

**C. Request for permit to run with the land**

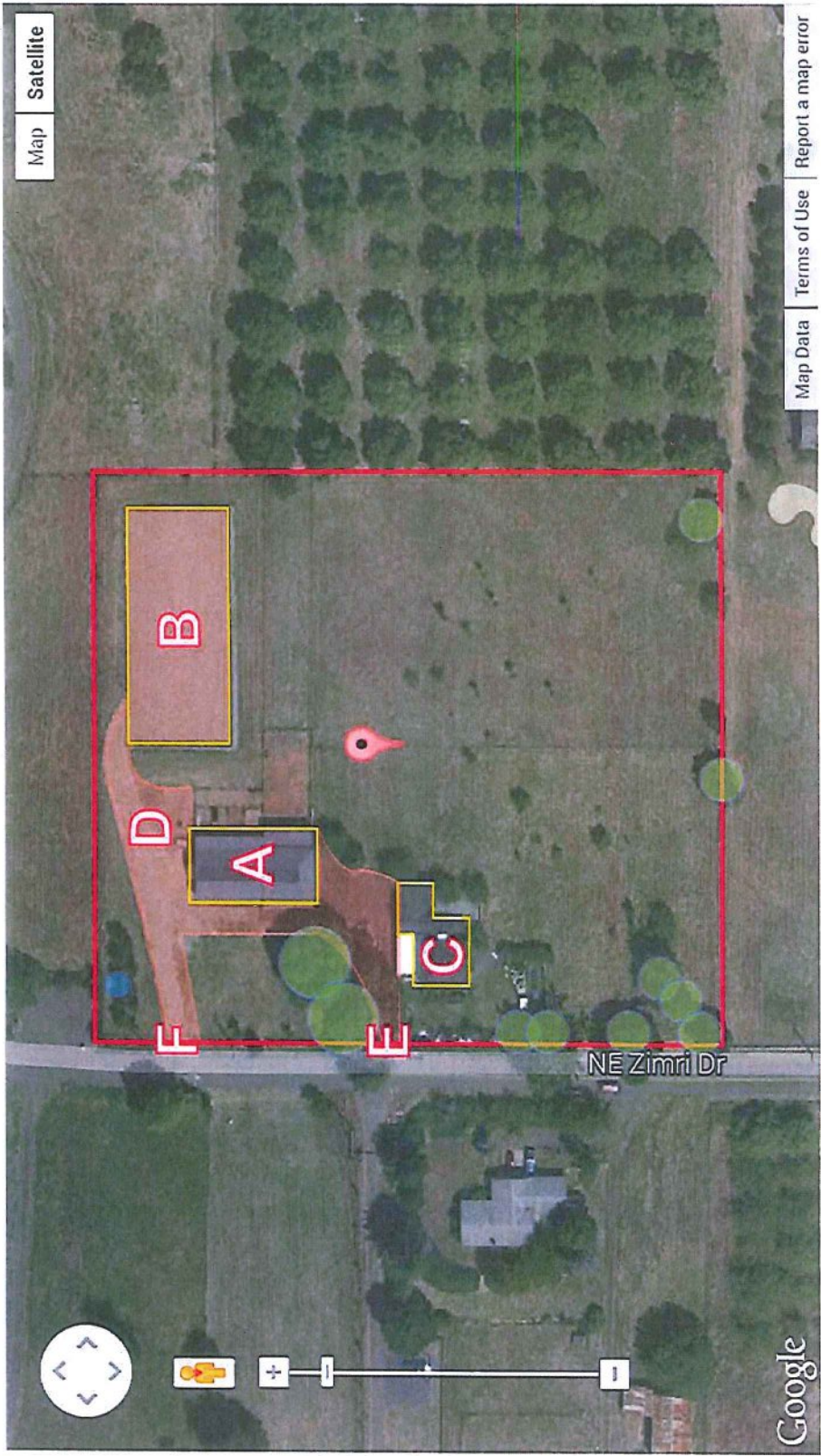
Hazelfern requests that the County issue a conditional use permit for the proposed winery that is appurtenant to the property (i.e., "runs with the land") rather than a permit that is personal to Hazelfern. All restrictions in a conditional use permit issued by the County should apply in the event of a change in ownership of the winery, and the County has authority to revoke a conditional use permit in the event of noncompliance with the conditions of the permit. Any change in ownership of the winery therefore should not have an impact on the use of the property as a land use matter.

**D. Conclusion**

For the reasons described above, Hazelfern meets the applicable criteria to site the proposed winery on the Hazelfern property. Hazelfern respectfully requests that the County issue a conditional use permit authorizing the conversion of the equestrian building into the proposed winery facility.

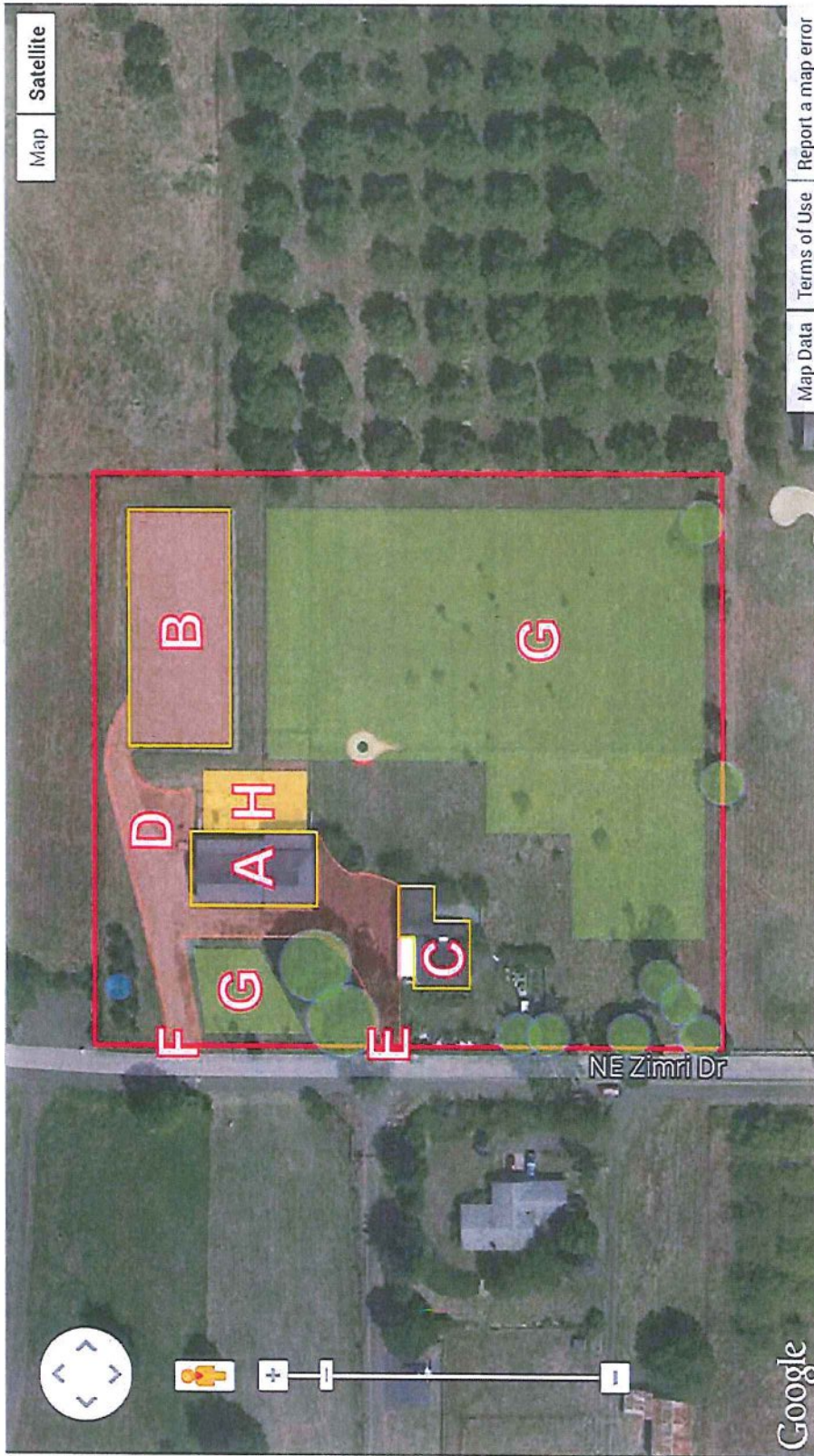
Attachment 1

# Existing Property Layout:

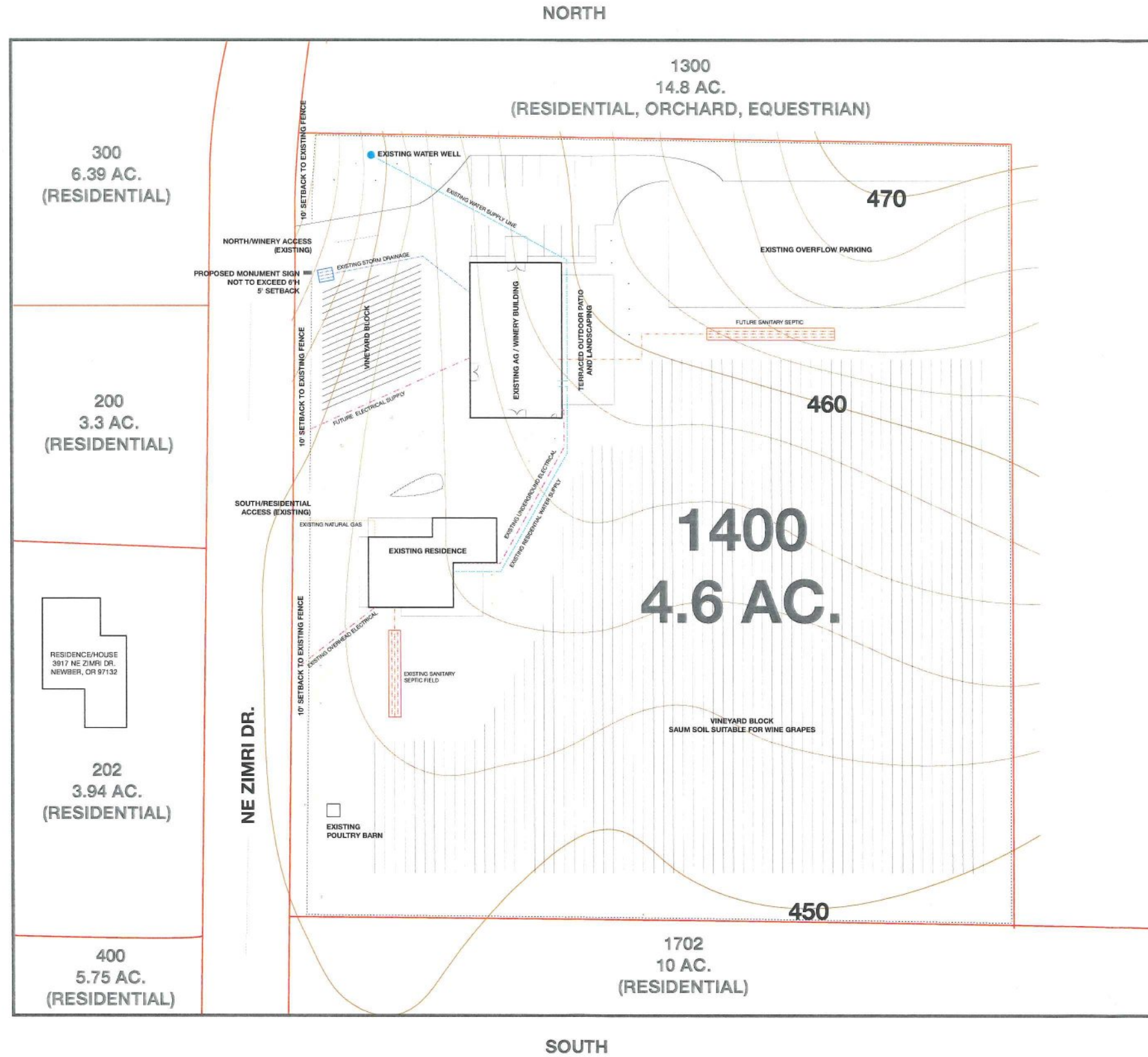


- A** Existing Equestrian Bldg  
 \*State of the art indoor facility (see supporting photos and specs)  
 \*Full drainage system  
 \*Plumbing  
 \*Secure/Locked Doors  
 \*3000 gallon water storage tanks
- B** Existing Gravel Arena/Parking  
 \*80' x 180'; Leveled  
 \*Compact gravel  
 \*Outdoor
- C** Existing Residential Farmhouse  
 \*Built in 1915  
 \*Remodeled in 2010
- D** Existing Driveway/Parking  
 \*(2) Access points to NE Zimri Dr.  
 \*Turn around area
- E** South Access Point  
 \*Existing
- F** North Access Point  
 \*Existing
- Existing trees with trunk diameter larger than 8"  
 \*(10) trees
- Existing water well
- Existing driveway and parking

# Future Property Layout:



- A** **Converted Winery Bldg**  
 \*Add tasting room (2-3 years out)  
 \*Add restroom and septic to coincide with tasting room (2-3 years out)
- B** **Existing Outdoor Arena/Parking**  
 \*80' x 180'; Levelled  
 \*Compact gravel  
 \*Outdoor  
 \*Use for future parking (if needed)  
 \*Use as outdoor event space
- C** **Existing Residential Farmhouse**  
 \*Built in 1915  
 \*Remodeled in 2010
- D** **Existing Driveway/Parking**  
 \*(2) Access points to NE Zimri Dr.  
 \*Turn around area
- E** **South Access Point**  
 \*Private Entrance
- F** **North Access Point**  
 \*Winery Entrance
- G** **Future Vineyard**  
 \*2.2 acres
- H** **Future Patio**  
 \*Outdoor
- Existing trees with trunk diameter larger than 8"**  
 \*(10) trees
- Existing water well**
- Existing driveway and parking**
- Future Vineyard**



- |                                    |                                |
|------------------------------------|--------------------------------|
| VINEYARD BLOCKS                    | — WATER SUPPLY                 |
| --- FENCE                          | - - - ELECTRICAL               |
| — TOPOGRAPHIC LINE (2' INCREMENTS) | — NATURAL GAS SUPPLY           |
| • EXISTING TREES ≥ 8" DIAM         | - - - STORM DRAINAGE           |
| • PLANNED NEW TREES                | - - - SANITARY SEPTIC DRAINAGE |

**HAZELFERN CELLARS**  
 SITE PLAN

4008 NE ZIMRI DR.  
 NEWBERG, OR 97132

0' 25' 50'  
 SCALE: 10" = 50' - 0"



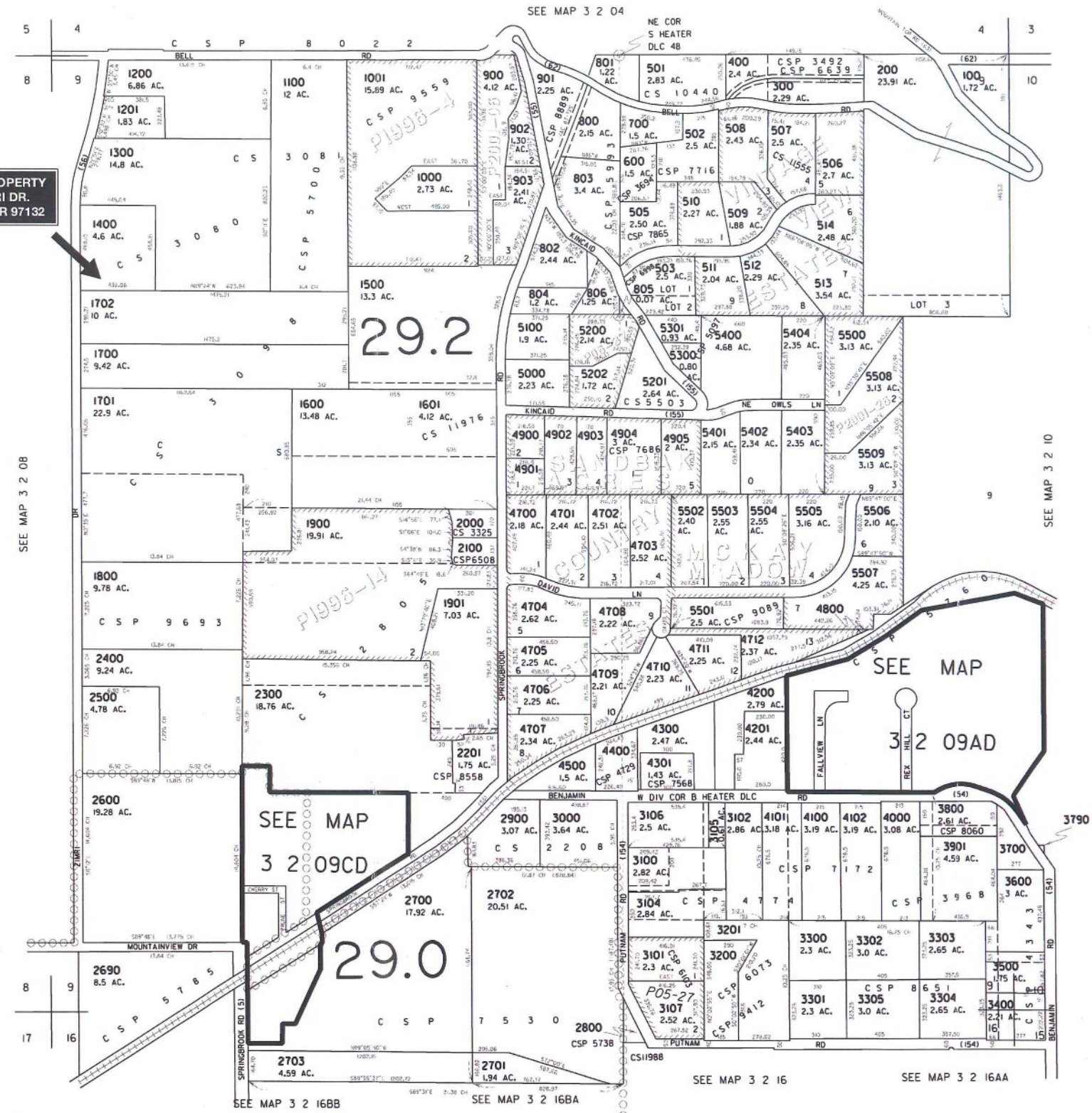


THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

SECTION 9 T3S R2W W.M.  
YAMHILL COUNTY  
1" = 400'

3 2 09  
& INDEX

SUBJECT PROPERTY  
4008 NE ZIMRI DR.  
NEWBERG, OR 97132



- CANCELLED
- 500
- 504
- 806
- 1902
- 2200
- 3103
- 3900
- 4600

REVISED 7-28-05 BH

3 2 09

THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

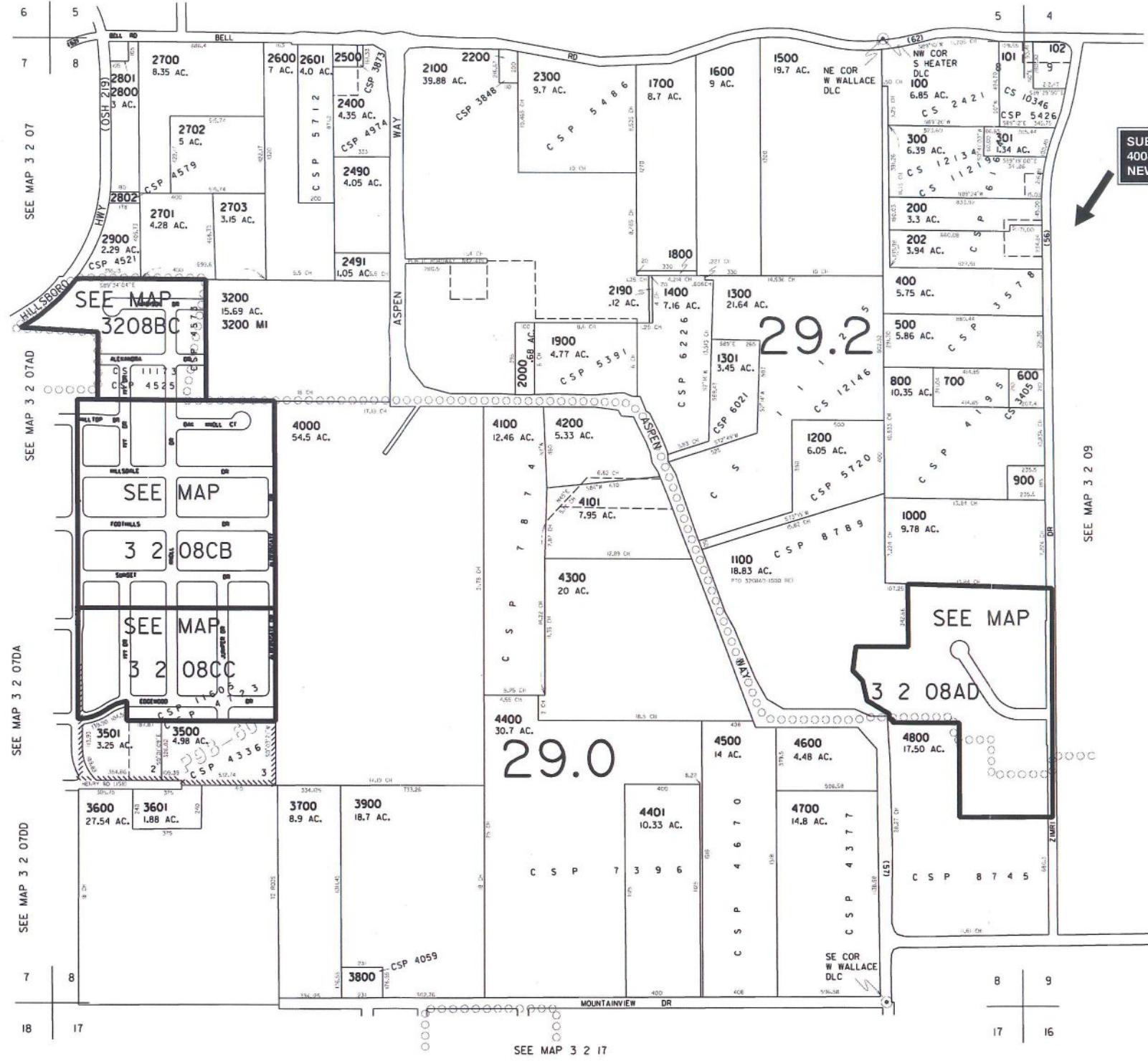
SECTION 8 T3S R2W W.M.  
YAMHILL COUNTY  
1" = 400'

3 2 08  
NEWBERG

SEE MAP 3 2 05

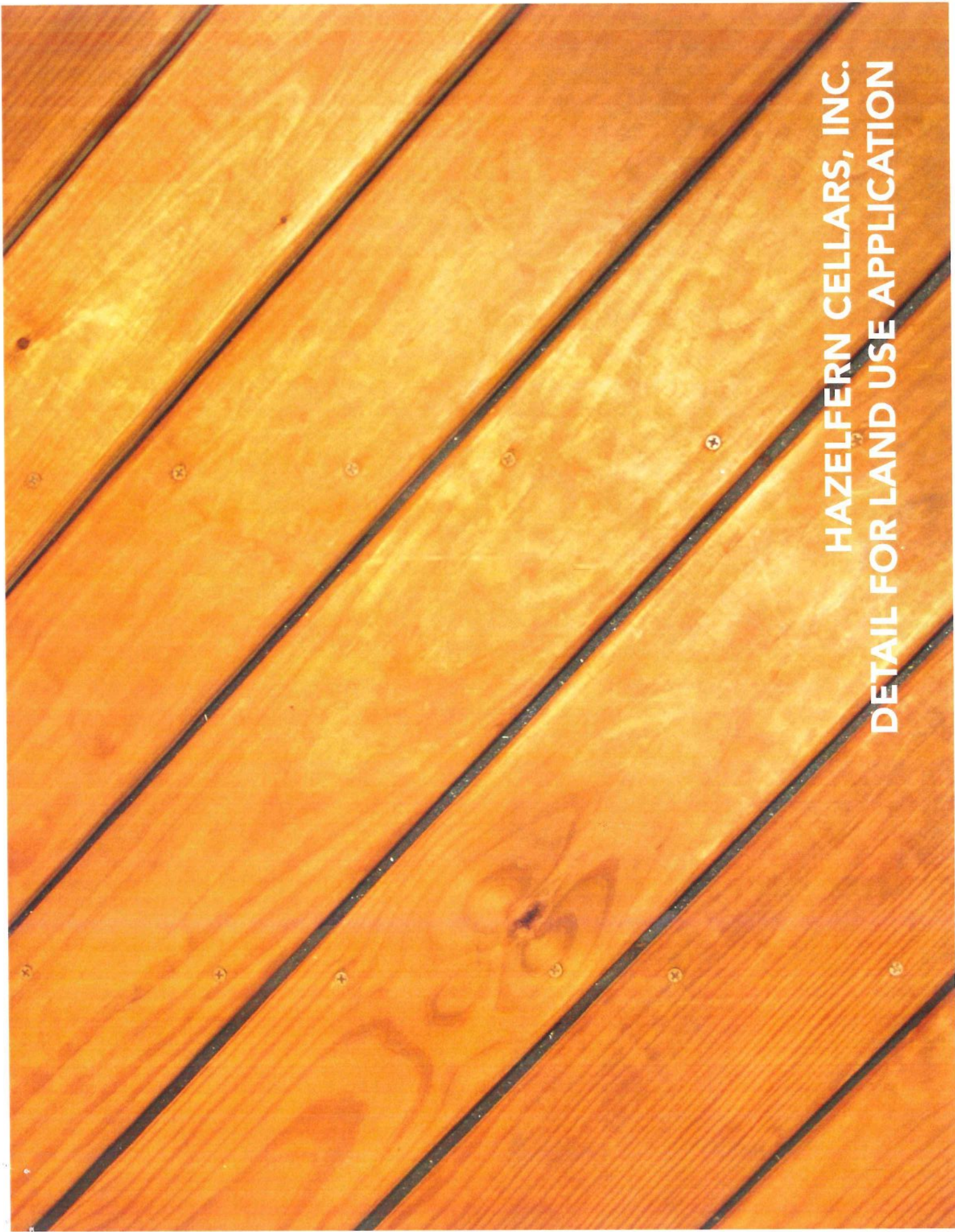
- CANCELLED
- 201
- 3000
- 3001
- 3100
- 3300
- 3400
- 3502
- 3503
- 3504

SUBJECT PROPERTY  
4008 NE ZIMRI DR.  
NEWBERG, OR 97132

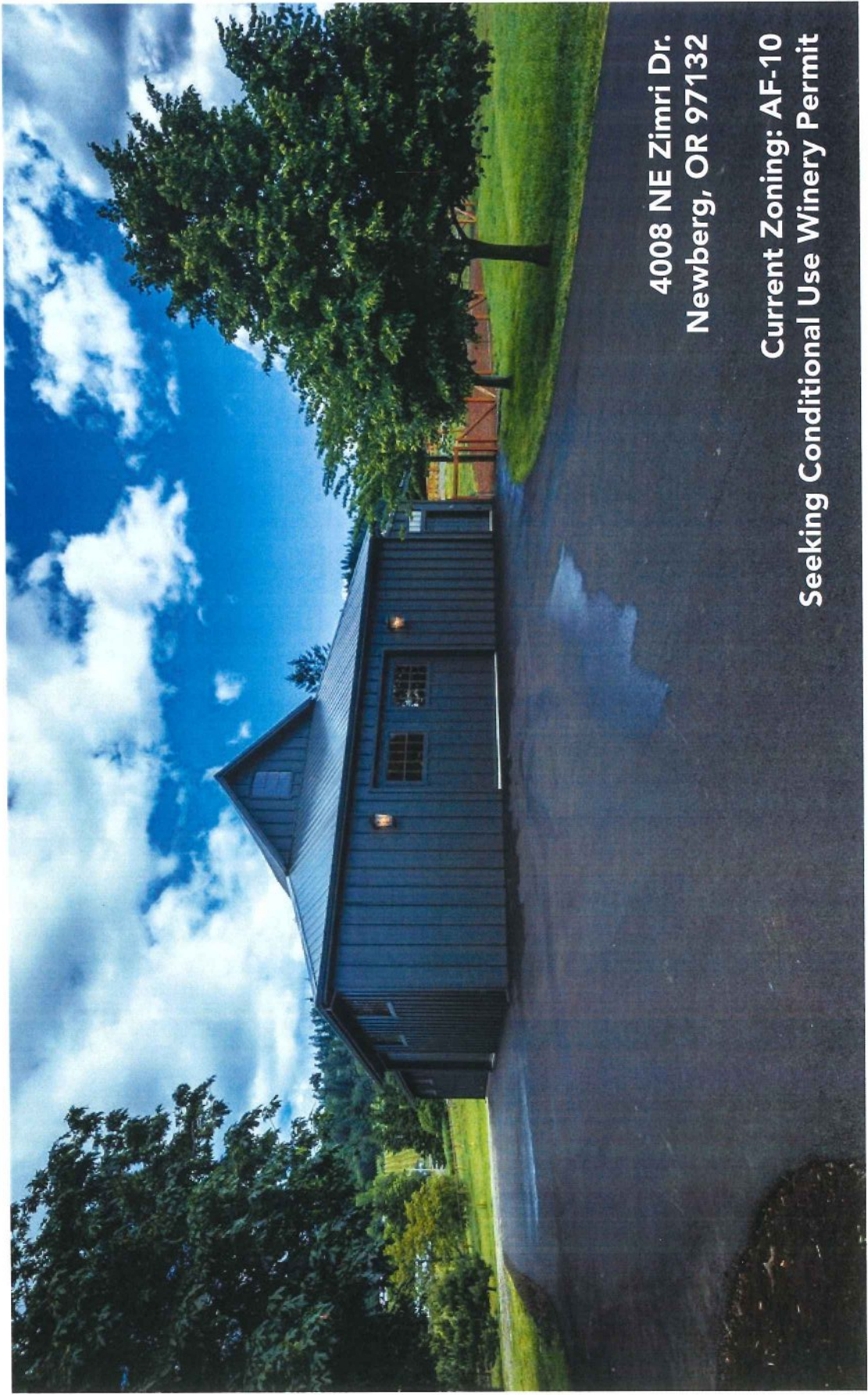


REVISED 4-5-06 IH

3 2 08



**HAZELFERN CELLARS, INC.  
DETAIL FOR LAND USE APPLICATION**



4008 NE Zimri Dr.  
Newberg, OR 97132

Current Zoning: AF-10  
Seeking Conditional Use Winery Permit

Attachment 1

# Location Relative to Existing Wineries and Vineyards:

Map Satellite

Google Imagery ©2015, City of Newberg, DigitalGlobe, Metro, Portland Oregon, State of Oregon, U.S.

**A** NE BOLL RD

**B** NE WILKERSON WAY

**C** NE BOLL RD

**D** NE BOLL RD

**E** NE BOLL RD

**F** NE ZIMRI DR

**G** NE BOLL RD

**AREA OF FOCUS**

NE Bell Rd  
 NE Springbrook Rd  
 E Zimri Dr  
 The Allison Inn & Spa  
 E Mountainview Dr  
 Crestview Dr  
 George Fox University: Newberg Campus  
 E Edgewood Dr  
 N Main St  
 Crater Ln  
 NE Cullen Rd  
 NE Bell Rd  
 NE Springbrook Rd  
 Chehalam Glenn Golf Course  
 E 3rd St  
 E 2nd St  
 E 1st St  
 (240)  
 (219)

- |          |  |          |  |
|----------|--|----------|--|
| <b>A</b> | <b>Subject Property:</b><br>Hazelfern Cellars Inc<br>4008 NE Zimri Dr<br>Newberg, OR 97132 | <b>D</b> | <b>Medici Vineyard &amp; Winery</b><br>28005 NE Bell Rd<br>Newberg, OR 97132 |
| <b>B</b> | <b>Volare Vineyard &amp; Winery</b><br>16225 NE Wilkerson Way<br>Newberg OR 97132          | <b>E</b> | <b>Prive' Vineyard &amp; Winery</b><br>28155 NE Bell Rd<br>Newberg, OR 97132 |
| <b>C</b> | <b>Bells Up Vineyard &amp; Winery</b><br>27895 NE Bell Rd<br>Newberg OR 97132              | <b>F</b> | <b>Zimri Cellars Vineyard</b><br>4213 NE Zimri Dr<br>Newberg, OR 97132       |
|          |  | <b>G</b> | <b>Ellis Vineyard</b><br>28800 NE Bell Rd<br>Newberg, OR 97132               |

Attachment 1

Soil Map—Yamhill County, Oregon



Attachment 1

Soil Map—Yamhill County, Oregon

## MAP LEGEND

**Area of Interest (AOI)**

- Area of Interest (AOI)

**Soils**

- Soil Map Unit Polygons
- Soil Map Unit Lines
- Soil Map Unit Points

**Special Point Features**

- Blowout
- Borrow Pit
- Clay Spot
- Closed Depression
- Gravel Pit
- Gravelly Spot
- Landfill
- Lava Flow
- Marsh or swamp
- Mine or Quarry
- Miscellaneous Water
- Perennial Water
- Rock Outcrop
- Saline Spot
- Sandy Spot
- Severely Eroded Spot
- Sinkhole
- Slide or Slip
- Sodic Spot

**Water Features**

- Streams and Canals

**Transportation**

- Rails
- Interstate Highways
- US Routes
- Major Roads
- Local Roads

**Background**

- Aerial Photography

**MAP INFORMATION**

The soil surveys that comprise your AOI were mapped at 1:24,000.

**Warning:** Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service  
 Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>  
 Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Yamhill County, Oregon  
 Survey Area Data: Version 2, Sep 24, 2014

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Jul 8, 2010—Sep 4, 2011

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

## Map Unit Legend

Yamhill County, Oregon (OR071)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
2774C	Saum silt loam, 2 to 12 percent slopes	4.7	97.0%
2774D	Saum silt loam, 12 to 20 percent slopes	0.1	3.0%
<b>Totals for Area of Interest</b>		<b>4.8</b>	<b>100.0%</b>

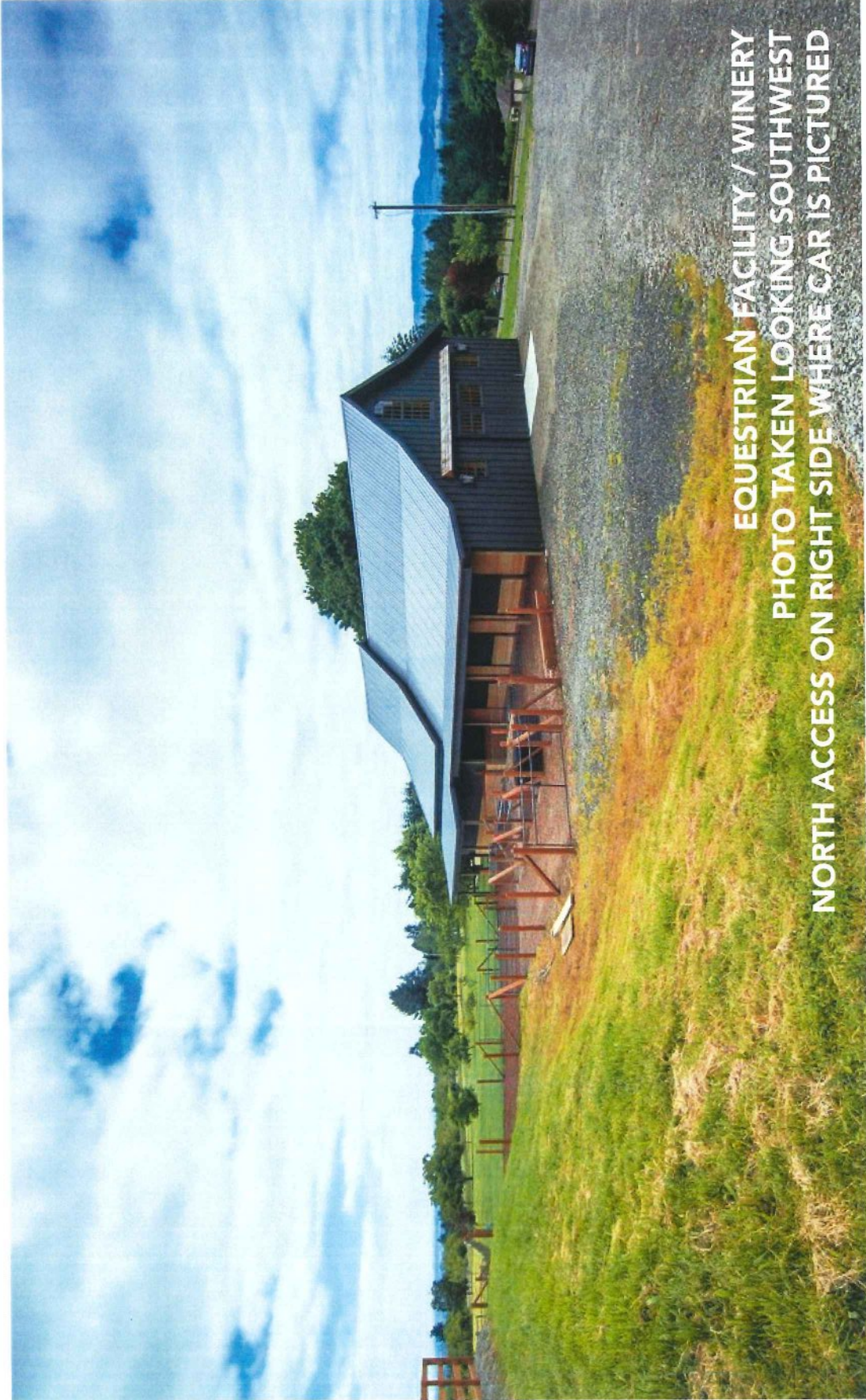
Note: Saum soil is a volcanic basalt-based soil very closely related to Jory soil. It is an ideal soil for growing premium grapes for wine, and the neighboring vineyards are all on Saum soil.





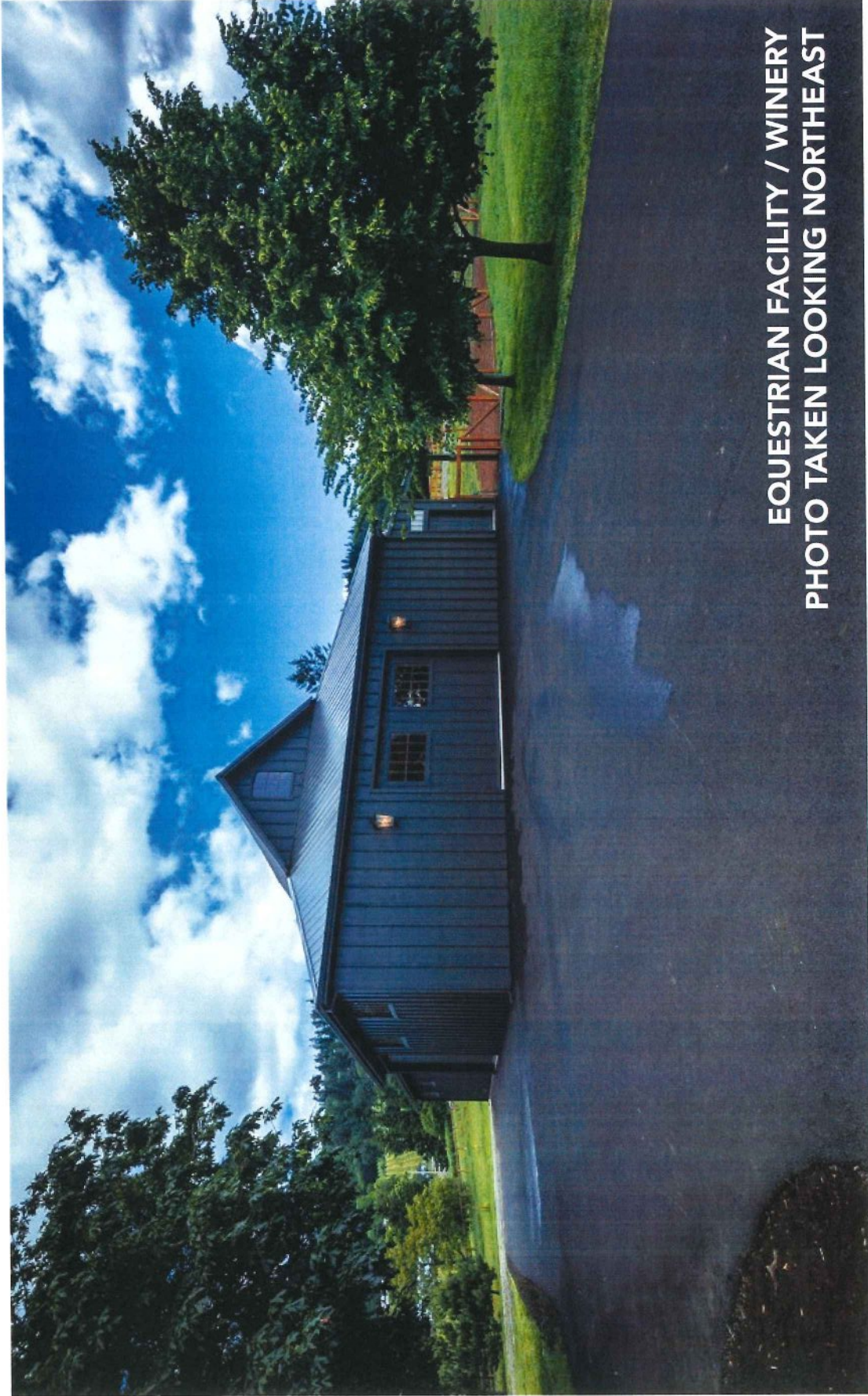
**EXISTING PROPERTY PHOTOS:  
EQUESTRIAN FACILITY / WINERY**

Attachment 1



**EQUESTRIAN FACILITY / WINERY  
PHOTO TAKEN LOOKING SOUTHWEST  
NORTH ACCESS ON RIGHT SIDE WHERE CAR IS PICTURED**

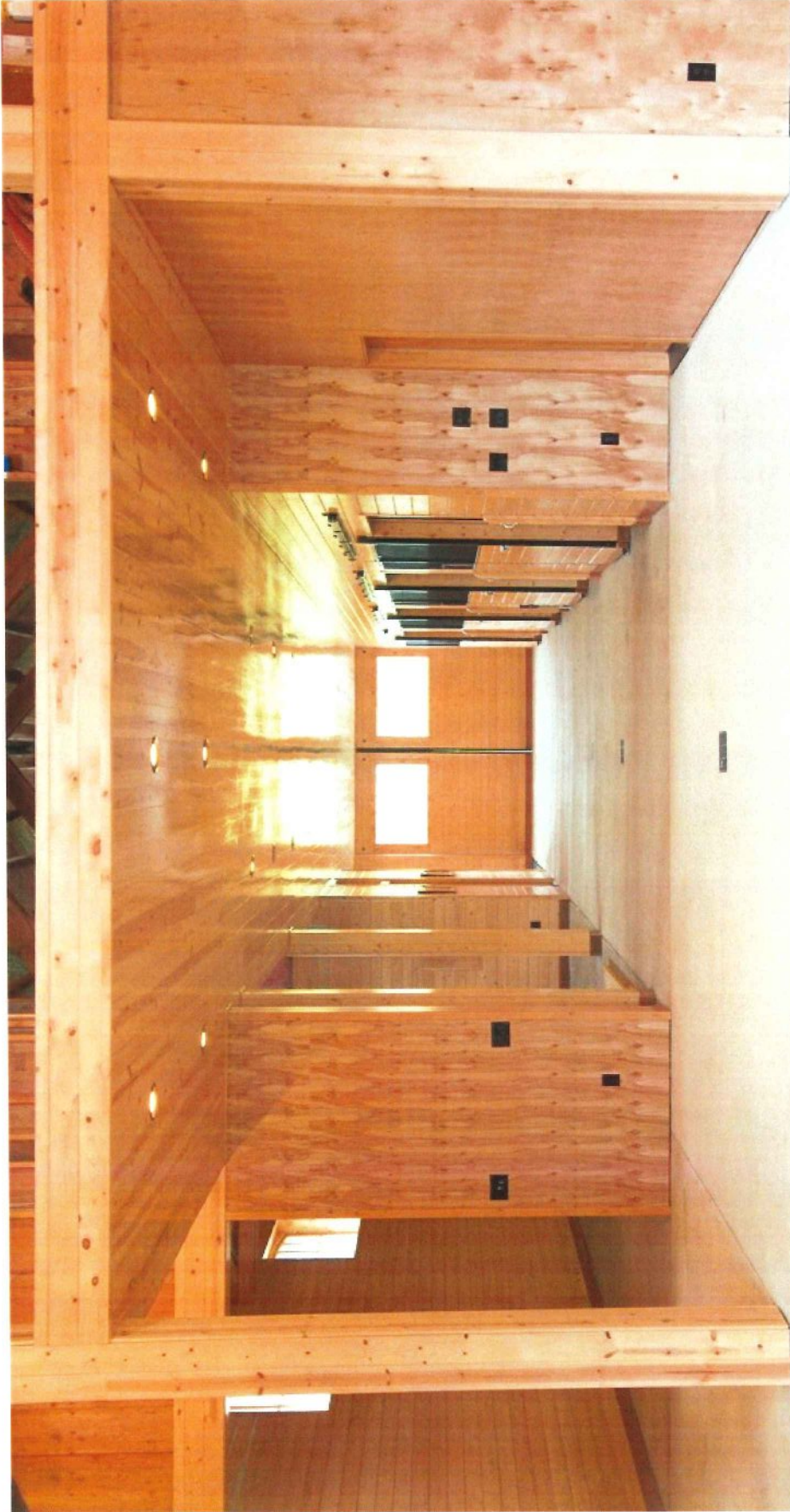
Attachment 1



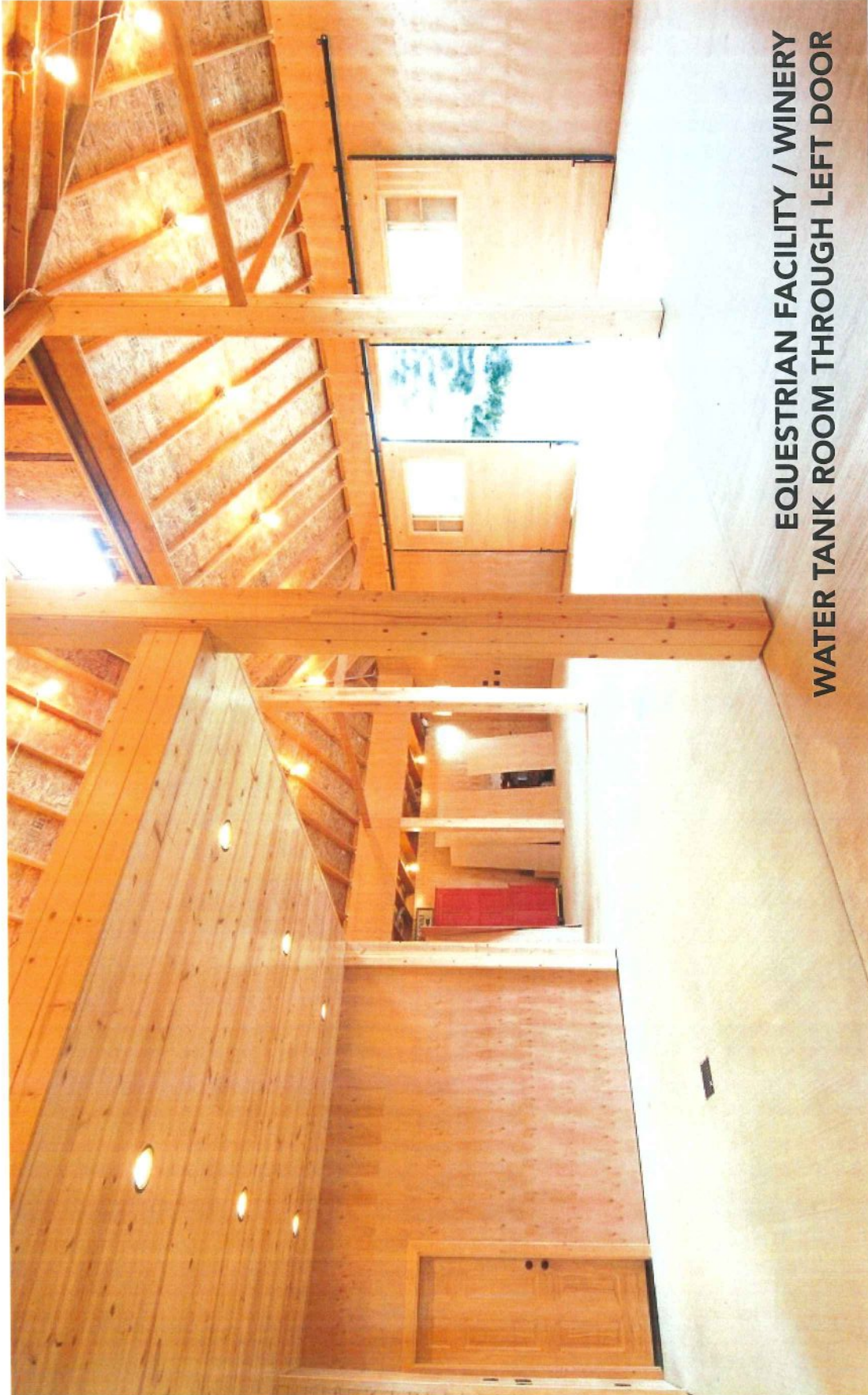
**EQUESTRIAN FACILITY / WINERY  
PHOTO TAKEN LOOKING NORTHEAST**



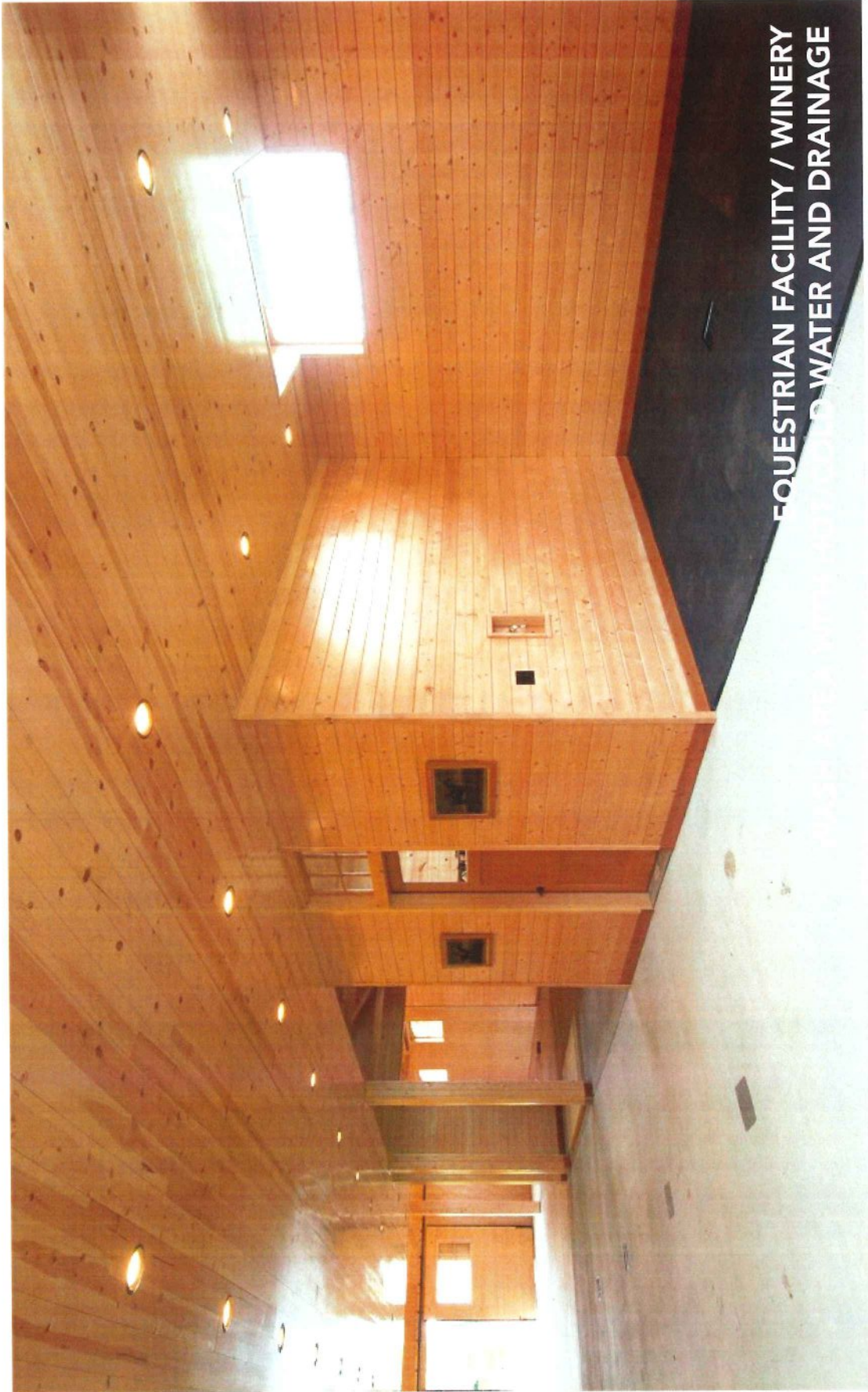
**EQUESTRIAN FACILITY / WINERY**



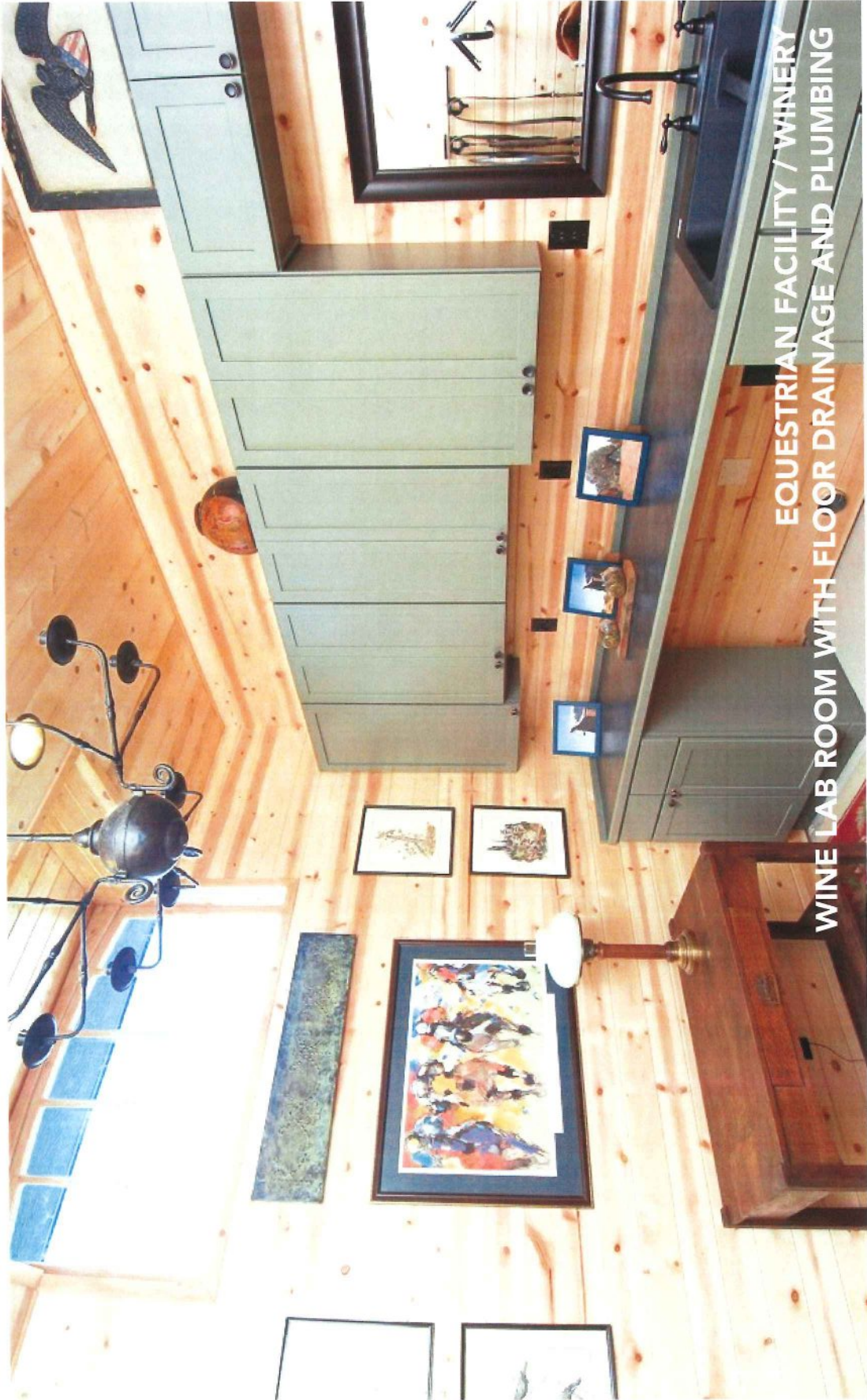
**EQUESTRIAN FACILITY / WINERY  
DRAINAGE THROUGHOUT**



**EQUESTRIAN FACILITY / WINERY  
WATER TANK ROOM THROUGH LEFT DOOR**



EQUESTRIAN FACILITY / WINERY  
WATER AND DRAINAGE



WINE LAB ROOM WITH FLOOR DRAINAGE AND PLUMBING  
EQUESTRIAN FACILITY / WINERY



Attachment 1

