REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: March 21, 2016				
Order ___ No.	Ordinance XX No. 2016-2798	Resolution ___ No.	Motion ___	Information ___

SUBJECT: An ordinance amending the Newberg Development Code regarding recreational marijuana producers and processors; and declaring an emergency	**Contact Person (Preparer) for this Motion: Doug Rux, Director** **Dept.: Community Development** **File No.: DCA-15-003**

HEARING TYPE: ☒ **LEGISLATIVE** ☐ **QUASI-JUDICIAL** ☐ **NOT APPLICABLE**

RECOMMENDATION:

Adopt Ordinance No. 2016-2798 amending the Newberg Development Code for recreational marijuana producers and processors.

EXECUTIVE SUMMARY:

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

- Prohibits Recreational Marijuana Producer as an indoor or outdoor use in R-1, R-2, R-3, R-4, R-P, AR, R-1/PD, R-1/0.1, R-1/.04, R-1/6.6, R-1/SP, R-2/PD, R-2/SP, SD/LDR, SD/MMR, R-3/PD, RP/SP, RP/LU, C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2,PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, CC, M-4-C, CF, CF/RF, RF, I, IO, FHO, AI, AIO, H, SC, BI.

- Adds Recreational Marijuana Producer as an indoor permitted use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.

- Adds Recreational Marijuana Producer as a conditional outdoor use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.

- Adds Recreational Marijuana Processor as a permitted indoor use in M-1, M-2, M-3, M-4-I and SD/E.

- Prohibits Recreational Marijuana Processor in all residential, commercial, community facility, institutional, airport industrial and miscellaneous districts and subdistricts.

- Add definitions for Recreational Marijuana Producer and Processor.

B. BACKGROUND: The Oregon voters passed Measure 91 on recreational marijuana in November 2014. The Oregon Legislature enacted four bills during the 2015 legislative session related to the Oregon Medical Marijuana Act and Measure 91. House Bill (HB) 3400 was the omnibus bill covering recreational marijuana and modifications to the medical marijuana program. HB 2014 was enacted addressing taxes on the sale of recreational marijuana, SB 460 related to limited retail sales of marijuana from medical marijuana dispensaries and SB 844 enacted a task force on researching the medical and public health properties of cannabis. In addition to the enacting of the four bills the

Oregon Liquor Control Commission adopted temporary Oregon Administrative Rules (OAR's) on October 22, 2015 that were subsequently modified on November 20, 2015 for recreational marijuana under Chapter 845, Division 25

On September 8, 2015 the Newberg City Council was provided background information on medical and recreational marijuana at its Work Session. At the City Council Business Session on September 8th they established the Marijuana Subcommittee (Subcommittee) comprised of Councilors Rourke, Bacon and McKinney along with non-voting member Mayor Andrews. The City Council also directed staff to bring back an ordinance with a ban of the sale of recreational marijuana from Medical Marijuana Dispensaries.

On September 21, 2015 the Newberg City Council passed Ordinance No. 2015-2787 declaring a ban on the early sale of recreational marijuana by marijuana dispensaries and declaring an emergency.

The Subcommittee met on November 19, 2015 to review the similarities and differences between the medical marijuana and recreational marijuana programs. The Subcommittee met on December 9, 2015 and discussed initiating a Request for Council Action (RCA) to initiate the Development Code amendment process for place, time and manner regulations for recreational marijuana producers and processors. The Subcommittee was also provided a timeline of dates and activities that would need to occur to prepare place, time and manner land use regulations for recreational marijuana producers and processors. The Subcommittee subsequently passed a motion 3-0 directing staff to create a Request for Council Action (RCA) to initiate the Development Code Amendment for recreational marijuana producer and processor regulations to bring forward for Council consideration on January 4, 2016.

The City Council adopted Resolution No. 2015-3248 on January 4, 2016 initiating the Development Code amendment process (Attachment 1).

The Subcommittee met again on January 12, 2016 and developed recommendations on recreational marijuana producers and processors.

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.	1/4/16:	The Newberg City Council initiated the Development Code amendment.
2.	2/25/16:	After proper notice, the Planning Commission held a legislative hearing to consider the item, took public comment, and approved Resolution 2016-313.
3.	3/21/16:	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 no comments on the application. If the city receives additional written comments by the comment deadline, Planning staff will forward them to the City Council.

E. ANALYSIS:

Place, Time and Manner: Recreational Marijuana Producers and Processors have certain limitations per HB 3400 and OAR 845-025. HB 3400 states (bracketed and italicized text is deleted and bold text is new).

HB 3400, Section 33 allows local governments to regulate the location of marijuana producer and processor sites. Specifically the law reads:

(Land Use)

> **SECTION 33.** Section 59, chapter 1, Oregon Laws 2015, is amended to read:
> **Sec. 59.** [*(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.*]
> [*(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.*]
> **(1) For purposes of this section, "reasonable regulations" includes:**
>
> **(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.**

Oregon Laws 2015, Chapter 1 as related to Production license and Processor license states:

> SECTION 19. Production license. (1) The production of marijuana is subject to regulation by the Oregon Liquor Control Commission. (2) A marijuana producer must have a production license issued by the commission for the premises at which the marijuana is produced.
>
> SECTION 20. Processor license. (1) The processing of marijuana items is subject to regulation by the Oregon Liquor Control Commission. (2) A marijuana processor must have a processor license issued by the commission for the premises at which marijuana items are processed.

Oregon Administrative Rule, Division 25 provides the following definitions:

GENERAL REQUIREMENTS APPLICABLE TO ALL MARIJUANA LICENSES

> **845-025-1015**
> **Definitions**
>
> (38) "Premises" or "licensed premises" includes the following areas of a location licensed under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015:

(a) All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;
(b) All areas outside a building that the Commission has specifically licensed for the production, processing, wholesale sale or retail sale of marijuana items; and
(c) For a location that the Commission has specifically licensed for the production of marijuana outside a building, the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, leases or has a right to occupy.
(d) "Premises" or "licensed premises" does not include a primary residence.
(39) "Primary Residence" means real property inhabited for the majority of a calendar year by an owner, renter or tenant, including manufactured homes and vehicles used as domiciles.

Oregon Administrative Rule, Division 25 provides the following on when the Oregon Liquor Control Commission would deny a license application:

OAR 845-025-1115
Denial of Application (1) The Commission must deny an initial or renewal application if:
(a) An applicant is under the age of 21 or, until January 1, 2020, has not been a resident or Oregon for at least two years. If the Commission determines that an applicant is a non-resident the Commission will hold that application under review until 30 days after the 2016 Oregon Legislature adjourns.
(b) The applicant's land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.
(c) The proposed licensed premises is located:
(A) On federal property.
(B) At the same physical location or address as a:
(i) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon laws 2015;
(ii) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or
(iii) Medical marijuana dispensary registered under ORS 475.314.
(C) At the same physical location or address as a liquor licensee licensed under ORS chapter 471 or as a retail liquor agent appointed by the Commission.
(d) The proposed licensed premises of a producer applicant is:
(A) On public land; or
(B) On the same tax lot or parcel as another producer licensee under common ownership.
(e) The proposed licensed premises of a processor who has applied for an endorsement to process extracts is located in an area that is zoned exclusively for residential use.

Oregon Administrative Rule, Division 25 states the following on restrictions:

OAR 845-025-1230
Licensed Premises Restrictions and Requirements (1) A licensed premises may not be located:
(a) On federal property; or
(b) At the same physical location or address as a:
(A) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon Laws 2015;

(B) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or
(C) Medical marijuana dispensary registered under ORS 475.314.
(D) Liquor licensee licensed under ORS Chapter 471 or as a retail liquor agent appointed by the Commission.
(2) The licensed premises of a producer applicant may not be on:
(a) Public land; or
(b) The same tax lot or parcel as another producer licensee under common ownership.

(4) The licensed premises of a processor who has an endorsement to process extracts may not be located in an area that is zoned exclusively for residential use.
(5) The licensed premises of a processor, wholesaler, laboratory and retailer must be enclosed on all sides by permanent walls and doors.
(11) The general public is not permitted in limited access areas on a licensed premises, except for the licensed premises of a retailer and as provided by section (14) of this rule. In addition to licensee representatives, the following individuals are permitted to be present in limited access areas on a licensed premises, subject to the requirements in section (12) of this rule:
(a) Laboratory personnel, if the laboratory is licensed by the Commission;
(b) A contractor, vendor or service provider authorized by a licensee representative to be on the licensed premises; (c) Another licensee or that licensee's representative;
(d) Up to seven invited guests per week subject to requirements of section (12) of this rule; or (e) Tour groups as permitted under section (14) of this rule.
(12) Prior to entering a licensed premises all visitors permitted by section (11) of this rule must be documented and issued a visitor identification badge from a licensee representative that must remain visible while on the licensed premises. A visitor badge is not required for government officials. All visitors described in subsection (11) of this rule must be accompanied by a licensee representative at all times.

Oregon Administrative Rule, Division 25 states the following on recreational marijuana producers:

RECREATIONAL MARIJUANA PRODUCERS

OAR 845-025-2000
Definitions As used in OAR 845-025-2000 to 845-025-2080:
(1) "Canopy" means the surface area utilized to produce mature marijuana plants calculated in square feet and measured using the outside boundaries of any area that includes mature marijuana plants including all of the space within the boundaries.
(2) "Indoor production" means producing marijuana in any manner:
(a) Utilizing artificial lighting on mature marijuana plants; or
(b) Other than "outdoor production" as that is defined in this rule.
(3) "Outdoor production" means producing marijuana:
(a) In an expanse of open or cleared ground; or
(b) In a greenhouse, hoop house or similar non-rigid structure that does not utilize any artificial lighting on mature marijuana plants, including but not limited to electrical lighting sources.

HB 3400, Section 14 limits where processing extracts can occur. The law reads:

(License Holders)

SECTION 14. Section 20, chapter 1, Oregon Laws 2015, is amended to read:
Sec. 20. (1) The processing of marijuana items is subject to regulation by the Oregon Liquor Control Commission.
(2) A marijuana processor must have a processor license issued by the commission for the premises at which marijuana items are processed. **To hold a processor license under this section, a marijuana processor:**
(a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;
(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;
(c) If the marijuana processor processes marijuana extracts, may not be located in an area zoned exclusively for residential use; and
(d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.
(3) The commission shall adopt rules that:
(a) Require a marijuana processor to annually renew a license issued under this section;
(b) Establish application, licensure and renewal of licensure fees for marijuana processors;
(c) Require marijuana processed by a marijuana processor to be tested in accordance with section 92 of this 2015 Act; and
(d) Require a marijuana processor to meet any public health and safety standards and industry best practices established by the commission by rule related to:
(A) Cannabinoid edibles;
(B) Cannabinoid concentrates;
(C) Cannabinoid extracts; and
(D) Any other type of cannabinoid product identified by the commission by rule.
(4) Fees adopted under subsection (3)(b) of this section:
(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana processors; and
(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

HB 3400, Section 34 identifies marijuana as a crop for purposes of farm use, farm, farming practice and as farm product as noted below. This section also requires a land use compatibility statement prior to issuance of any license.

(Land Use)

SECTION 34. (1) Notwithstanding any other provision of law, marijuana is:
(a) A crop for the purposes of "farm use" as defined in ORS 215.203;
(b) A crop for purposes of a "farm" and "farming practice," both as defined in ORS

30.930;
(c) A product of farm use as described in ORS 308A.062; and
(d) The product of an agricultural activity for purposes of ORS 568.909.
(2) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses on land designated for exclusive farm use:
(a) A new dwelling used in conjunction with a marijuana crop;
(b) A farm stand, as described in ORS 215.213 (1)(r) or 215.283 (1)(o), used in conjunction with a marijuana crop; and
(c) A commercial activity, as described in ORS 215.213 (2)(c) or 215.283 (2)(a), carried on in conjunction with a marijuana crop.
(3) A county may allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones under this section and ORS 215.213 and 215.283.
(4)(a) Prior to the issuance of a license under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, the Oregon Liquor Control Commission shall request a land use compatibility statement from the city or county that authorizes the land use. The land use compatibility statement must demonstrate that the requested license is for a land use that is allowable as a permitted or conditional use within the given zoning designation where the land is located. The commission may not issue a license if the land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.
(b) A city or county that receives a request for a land use compatibility statement under
this subsection must act on that request within 21 days of:
(A) Receipt of the request, if the land use is allowable as an outright permitted use; or
(B) Final local permit approval, if the land use is allowable as a conditional use.
(c) A city or county action concerning a land use compatibility statement under this subsection is not a land use decision for purposes of ORS chapter 195, 196, 197 or 215.

HB 3400 allows opt-in for medical marijuana grow sites to also produce recreational marijuana. The law reads:

MEDICAL MARIJUANA GROW SITE OPT-IN
OPERATIVE JANUARY 1, 2016

SECTION 116. (1) A person responsible for a marijuana grow site under ORS 475.304 may apply for a license under section 19, chapter 1, Oregon Laws 2015, to produce marijuana at the address of the marijuana grow site, provided that all individuals registered with the Oregon Health Authority to produce marijuana at the address are listed on the application submitted to the Oregon Liquor Control Commission under section 28, chapter 1, Oregon Laws 2015.
(2) Notwithstanding any other provision of sections 3 to 70, chapter 1, Oregon Laws 2015, the commission may issue a license under section 19, chapter 1, Oregon Laws 2015, to a person responsible for a marijuana grow site under ORS 475.304 if the

person responsible for the marijuana grow site:
(a) Meets any criminal background check requirements established by the commission by rule;
(b) Agrees to be subject to the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, including section 59, chapter 1, Oregon Laws 2015, and section 34 of this 2015 Act, and rules adopted under sections 3 to 70, chapter 1, Oregon Laws 2015, that apply to marijuana producers; and
(c) Submits proof, in a form and manner prescribed by the commission, of having obtained the permission to apply for licensure under section 19, chapter 1, Oregon Laws 2015, of each individual who holds a registry identification card issued under ORS 475.309 for whom the person produces marijuana at the address of the marijuana grow site.
(3) The commission by rule or order may waive the application of any rule adopted under sections 3 to 70, chapter 1, Oregon Laws 2015, to a person responsible for a marijuana grow site that holds a license under section 19, chapter 1, Oregon Laws 2015.
(4) A person responsible for a marijuana grow site that holds a license under section 19, chapter 1, Oregon Laws 2015:
(a) May not possess more than the amount or number of marijuana plants permitted pursuant to ORS 475.300 to 475.346;
(b) Must allow each marijuana plant to be tracked using the system developed and maintained under section 23 of this 2015 Act;
(c) May sell immature marijuana plants and usable marijuana in excess of amounts produced for individuals who hold a registry identification card issued under ORS 475.309 to a person who holds a license under section 20, 21 or 22, chapter 1, Oregon Laws 2015, in accordance with rules adopted by the commission; and
(d) May transfer marijuana and usable marijuana to other registrants under ORS 475.300 to 475.346 in accordance with rules adopted by the authority.
(5) In a form and manner prescribed by the commission, a person responsible for a marijuana grow site that holds a license under section 19, chapter 1, Oregon Laws 2015, may surrender the person's license. If the person surrender's the person's license, the person is no longer subject to the provisions of this section.
(6) Notwithstanding ORS 475.331, the authority may provide information to the commission as is necessary for the commission to determine whether a person responsible for a marijuana grow site that holds a license under section 19, chapter 1, Oregon Laws 2015, is in compliance with this section.
(7) This section does not prohibit or otherwise restrict the duties, functions and powers of a person responsible for a marijuana grow site as set forth in ORS 475.300 to 475.346, except that the person is not subject to any requirement related to the reporting or tracking of mature marijuana plants and usable marijuana.

The Newberg Municipal Code states the following regarding horticulture and light manufacturing:

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:
"**Horticulture**" means the cultivation of a garden, orchard, or nursery, or the cultivation of flowers, fruits, vegetables, or ornamental plants for commercial purposes. It excludes farm stands or other on-site retail sale of the products.

"**Light manufacturing category**" means a category of uses under Chapter 15.303 NMC that involves manufacturing, processing, fabrication, packaging, or assembly of goods. These types of firms are involved in the secondary processing and assembly of materials and components into finished products, generally for the wholesale market, for transfer to other plants, or to order for firms or consumers. The external impact from these uses is generally less than heavy manufacturing. Outdoor storage and processing of goods and materials is less than 10 percent of the site. Transportation needs are often met by truck. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site (typically fewer than five per day per 1,000 square feet of floor area).

Use Categories

15.303.100 Agricultural uses.
The following agricultural uses defined in NMC 15.050.030
A. Horticulture
B. Livestock and poultry farming.
C. Home gardening.
D. Home livestock and poultry raising. [Ord. 2673 § 1 (Exh. A § 5), 9-16-13.]

15.303.506 Light manufacturing category.
A. Characteristics. Light Manufacturing involve manufacturing, processing, fabrication, packaging, or assembly of goods. These types of firms are involved in the secondary processing and assembly of materials and components into finished products, generally for the wholesale market, for transfer to other plants, or to order for firms or consumers. The external impact from these uses is generally less than heavy manufacturing. Outdoor storage and processing of goods and materials is less than 10 percent of the site. Transportation needs are often met by truck. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site (typically fewer than five per day per 1,000 square feet of floor area).
B. Accessory Uses. Retail sales of goods produced on site, provided the floor area devoted to retail sales is small (less than 10 percent of the floor area, up to 2,000 square feet).
C. Examples. Instrument and machinery manufacturers, food processors, furniture manufacturers, wineries, wholesale bakeries.
D. Exclusions. Heavy Manufacturing is a separate category. [Ord. 2763 § 1 (Exh. A § 5), 9-16-13.]

	USES	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
100	AGRICULTURALU SES																			
Def.	Horticulture	P	P	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	
	INDUSTRIAL USES																			
	Light Manufacturing										P	P	P	P					P(33)	

Key:

P: Permitted use
S: Special use – Use requires a special use permit
C: Conditional use – Requires a conditional use permit
X: Prohibited use
(#): See notes for limitations

Notes.
(1) Limited to sites with preexisting agricultural uses, including at time of annexation.
(33) Must be aviation-related. See Chapter 15.332 NMC.

TIME

HB 3400, Section 33 allows local government to regulate the manner and access of marijuana producers and processors sites. Specifically the law reads:

> **SECTION 33.** Section 59, chapter 1, Oregon Laws 2015, is amended to read:
> **Sec. 59.** [*(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.*]
> [*(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.*]
> **(1) For purposes of this section, "reasonable regulations" includes:**
> **(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;**
> **(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;**
>
> **(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and**
>
> **(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to**

the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.
(3) Regulations adopted under this section must be consistent with city and county comprehensive plans and zoning ordinances and applicable provisions of public health and safety laws.

HB 3400, Section 33 allows local government to regulate the hours of marijuana grow sites and processing sites. There are no additional provisions in Oregon Revised Statutes (ORS) or OAR's regarding hours of operation for grow sites or processors. The Planning Commission may want to consider the hours required for growing marijuana which is likely on a 24-hour bases. For processors, the operation could be considered similar to an industrial operation, the Development Code does not limit hours.

MANNER

HB 3400, Section 33 allows local government to regulate the manner of marijuana producers and processors sites. Specifically the law reads:

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:
Sec. 59. [*(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.*]
[*(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.*]
(1) For purposes of this section, "reasonable regulations" includes:
(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;
(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;

(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and

(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.
(3) Regulations adopted under this section must be consistent with city and county

comprehensive plans and zoning ordinances and applicable provisions of public health and safety laws.

HB 3400, Section 13 authorizes OLCC to limit mature grow canopies. The law reads:

(License Holders)

SECTION 13. (1) Subject to subsection (2) of this section, the Oregon Liquor Control Commission shall adopt rules restricting the size of mature marijuana plant grow canopies at premises for which a license has been issued under section 19, chapter 1, Oregon Laws 2015. In adopting rules under this subsection, the commission shall:
(a) Limit the size of mature marijuana plant grow canopies, for premises where marijuana is grown outdoors and for premises where marijuana is grown indoors, in a manner calculated to result in premises that produce the same amount of harvested marijuana leaves and harvested marijuana flowers regardless of whether the marijuana is grown outdoors or indoors.
(b) Adopt a tiered system under which the permitted size of a marijuana producer's mature marijuana plant grow canopy increases at the time of licensure renewal under section 19, chapter 1, Oregon Laws 2015, except that the permitted size of a marijuana producer's mature marijuana plant grow canopy may not increase following any year during which the commission disciplined the marijuana producer for violating a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or a rule adopted under a provision of sections 3 to 70, chapter 1, Oregon Laws 2015.
(c) Take into consideration the market demand for marijuana items in this state, the number of persons applying for a license under section 19, chapter 1, Oregon Laws 2015, and to whom a license has been issued under section 19, chapter 1, Oregon Laws 2015, and whether the availability of marijuana items in this state is commensurate with the market demand.
(2) This section does not apply to a premises for which a license has been issued under section 19, chapter 1, Oregon Laws 2015, if the premises is used only to propagate immature marijuana plants.

GENERAL REQUIREMENTS APPLICABLE TO ALL MARIJUANA LICENSEES

OAR 845-025-1030 Application Process
(g) For producers:
(A) The proposed canopy size and tier as described in OAR 845-025-2040 and a designation of the canopy area within the license premises.
(B) A report describing the applicant's electrical and water usage, on a form prescribed by the Commission. The report must describe the estimated water usage taking into account all portions of the premises and expected requirements of the operation.
(C) A description of the growing operation including growing media, a description of equipment to be used in the production, and whether production will be indoor, outdoor or both.

(D) A water right permit or certificate number; a statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or proof from the Oregon Water Resources Department that the water to be used for production is from a source that does not require a water right.

(h) For processors:
(A) On a form prescribed by the Commission, the proposed endorsements as described in OAR 845-025-3210.
(B) A description of the type of products to be processed, a description of equipment to be used, including any solvents, gases, chemicals or other compounds used to create extracts or concentrates.

Oregon Administrative Rule, Division 25 establishes fees for recreational marijuana producers and processors.

OAR 845-025-1060
Fees (1) At the time of initial license or certificate application an applicant must pay a $250 nonrefundable application fee.
(2) If the Commission approves an application and grants an annual license, the following fees must be paid, prorated for an initial license that is issued for six months or less:
(a) Producers:
(A) Tier I $3,750
(B) Tier II $5,750
(b) Processors: $4,750

Oregon Administrative Rule, Division 25 provides for civil penalties for failure to comply with local ordinances.

OAR 845-025-1295
Local Ordinances The Commission may impose a civil penalty, suspend or cancel any licensee for failure to comply with an ordinance adopted by a city or county pursuant to section 34, chapter 614, Oregon Laws 2015 if the city or county:
(1) Has provided the licensee with due process substantially similar to the due process provided to a licensee under the Administrative Procedures Act, ORS 183.413 to 183.470; and
(2) Provides the Commission with a final order that is substantially similar to the requirements for a final order under ORS 183.470 that establishes that the licensee has violated the local ordinance.

Oregon Administrative Rule, Division 25 establishes security requirements for recreational marijuana producers.

SECURITY

OAR 845-025-1470
Producer Security Requirements (1) In addition to the security requirements in OAR 845-025-1400 to 845-025-1460, a producer must effectively prevent public access and obscure from public view all areas of marijuana production. A producer may satisfy this requirement by:

(a) Submitting a security plan as described in OAR 845-025-1400;
(b) Fully enclosing indoor production on all sides so that no aspect of the production area is visible from the exterior satisfies; or
(c) Erecting a solid wall or fence on all exposed sides of an outdoor production area that is at least eight (8) feet high.
(2) If a producer chooses to dispose of usable marijuana by any method of composting, as described in OAR 845-025-7750, the producer must prevent public access to the composting area and obscure the area from public view.

Oregon Administrative Rule, Division 25 establishes safety inspections and requirements to contact local governments on water and sanitary sewer to ensure compliance.

HEATH AND SAFETY

OAR 845-025-1600
State and Local Safety Inspections
(1) All marijuana licensees may be subject to inspection of licensed premises by state or local government officials to determine compliance with state or local health and safety laws.
(2) A licensee must contact any utility provider to ensure that the licensee complies with any local ordinance or utility requirements such as water use, discharge into the sewer system, or electrical use.

Oregon Administrative Rule, Division 25 establishes that producers may have indoor and outdoor operations.

RECREATIONAL MARIJUANA PRODUCERS

OAR 845-025-2020
Producer Privileges
(1) A producer may only plant, cultivate, grow, harvest and dry marijuana in the manner approved by the Commission and consistent with chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015 and these rules.
(2) A producer may engage in indoor or outdoor production of marijuana, or a combination of the two.
(3) A producer may sell or deliver:
(a) Usable marijuana to the licensed premises of a marijuana processor, wholesaler, retailer, laboratory, or research certificate holder;
(b) Dried mature marijuana plants that have been entirely removed from any growing medium to the licensed premises of a marijuana processor or research certificate holder; or
(c) Immature marijuana plants and seeds to the licensed premises of a marijuana producer, wholesaler, retailer or research certificate holder.
(4) A producer may not sell a mature marijuana plant other than as provided in section (3)(b) of this rule.
(5) A producer may provide a sample of usable marijuana to a marijuana wholesaler, retailer or processor licensee for the purpose of the licensee determining whether to purchase the product. The sample product may not be consumed on a licensed premises. Any sample provided to another licensee must be recorded in CTS.

Oregon Administrative Rule, Division 25 limits where a producer may operate, not in a primary residence.

> **OAR 845-025-2030**
> **Licensed Premises of Producer**
> (1) The licensed premises of a producer authorized to cultivate marijuana indoors includes all public and private enclosed areas used in the business operated at the location and any areas outside of a building that the Commission has licensed.
> (2) The licensed premises of a producer authorized to cultivate marijuana outdoors includes the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, leases or has the right to occupy.
> (3) A producer may not engage in any privileges of the license within a primary residence.
> (4) The licensed premises of a producer may not be located at the same physical location or address as a marijuana grow site registered under ORS 475.304 unless the producer is also a person responsible for a marijuana grow site and has been issued a license by the Commission in accordance with section 116, chapter 614, Oregon Laws 2014, and OAR 845-025-1100.

Oregon Administrative Rule, Division 25 limits the size of canopy cover for mature marijuana plants.

> **OAR 845-025-2040**
> **Production Size Limitations** (1) Cultivation Batches and Cultivate Batch Sizes.
> (a) A producer must establish cultivation batches and assign each cultivation batch a unique identification number. (b) A cultivation batch may not have more than 100 immature plants.
> (c) A producer may have an unlimited number of cultivation batches at any one time.
> (2) Canopy Size Limits.
> (a) Indoor Production.
> (A) Tier I: Up to 5,000 square feet.
> (B) Tier II: 5,001 to 10,000 square feet.
> (b) Outdoor production.
> (A) Tier I: Up to 20,000 square feet.
> (B) Tier II: 20,001 to 40,000 square feet.
> (c) Mixed production. If a producer intends to have a mixture of indoor and outdoor production the Commission will determine the producer's tiers and canopy sizes by applying the ratio in section (4) of this rule.
> (d) For purposes of this section, square footage of canopy space is measured starting from the outermost point of the furthest mature flowering plant in a designated growing space and continuing around the outside of all mature flowering plants located within the designated growing space.
> (e) A producer may designate multiple grow canopy areas at a licensed premises but those spaces must be separated by a physical boundary such as an interior wall or by at least 10 feet of open space.
> (f) If a local government adopts an ordinance that would permit a producer to have a higher canopy size limit than is permitted under this rule, the local government may petition the Commission for an increase in canopy size limits for that jurisdiction. If the

Commission grants such a petition, the Commission may amend this rule in addition to considering changes to the license fee schedule.
(g) On an annual basis, the Commission will evaluate market demand for marijuana items, the number of person applying for producer licenses or licensed as producers and whether the availability of marijuana items in this state is commensurate with the market demand. Following this evaluation the Commission may amend this rule as needed.
(3) Canopy Size Limit – Designation and Increases.
(a) A producer must clearly identify designated canopy areas and proposed canopy size in the initial license application. A producer may change a designated canopy area within a production type at any time with prior written notice to Commission, but a producer may only change canopy tiers at the time of renewal in accordance with subsection (b) of this section.
(b) A producer may submit a request to change canopy tiers at the time the producer submits an application for renewal of the license. The Commission will grant a request to increase the canopy tier for the producer's next licensure term if:
(A) The producer's renewal application is otherwise complete;
(B) There are no bases to deny or reject the producer's renewal application;
(C) The producer has not already reached the applicable maximum canopy size set forth in section (2) of this rule; and
(D) During the preceding year of licensure, the producer has not been found to be in violation, and does not have any pending allegations of violations of chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, or these rules.
(c) The Commission shall give a producer an opportunity to be heard if a request is rejected under this section.
(4) Mixed cultivation methods.
(a) A producer may produce marijuana indoors and outdoors at the same time on the same licensed premises. The Commission must be notified of a producer's plan to engage in the indoor and outdoor production of marijuana at the time of initial licensure or at renewal, and not at any other time. A producer who utilizes mixed production may only change designated canopy areas from one production type to another at the time the producer submits a renewal application.
(b) The Commission must approve the canopy size applicable to each method.
(c) The Commission will use a 4:1 ratio, for outdoor and indoor respectively, to allocate canopy size limits under this section, not to exceed the sum canopy size limits set forth in section (2) of this rule. For example, if a Tier II producer in the first year of licensure has 5,000 square feet of indoor canopy space, then the producer may have up to 20,000 square feet of outdoor canopy space at the same time.
(5) Violations. An intentional violation of this rule is a Category I violation and may result in license revocation. All other violations are Category III violations.

HB 3400, Section 14 established requirements to hold a processor license. The law states:

SECTION 14. Section 20, chapter 1, Oregon Laws 2015, is amended to read:
Sec. 20. (1) The processing of marijuana items is subject to regulation by the Oregon Liquor Control Commission.
(2) A marijuana processor must have a processor license issued by the commission for the premises at which marijuana items are processed. **To hold a processor license under**

this section, a marijuana processor:
(a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;
(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;
(c) If the marijuana processor processes marijuana extracts, may not be located in an area zoned exclusively for residential use; and
(d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.
(3) The commission shall adopt rules that:
(a) Require a marijuana processor to annually renew a license issued under this section;
(b) Establish application, licensure and renewal of licensure fees for marijuana processors;
(c) Require marijuana processed by a marijuana processor to be tested in accordance with section 92 of this 2015 Act; and
(d) Require a marijuana processor to meet any public health and safety standards and industry best practices established by the commission by rule related to:
(A) Cannabinoid edibles;
(B) Cannabinoid concentrates;
(C) Cannabinoid extracts; and
(D) Any other type of cannabinoid product identified by the commission by rule.
(4) Fees adopted under subsection (3)(b) of this section:
(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana processors; and
(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

HB 3400, Section 72 established producer reporting requirements on quantities sold. The law states:

(Form and Style Amendments)

SECTION 72. Section 35, chapter 1, Oregon Laws 2015, is amended to read:
Sec. 35. On or before the 20th day of each month, every marijuana producer shall file with the Oregon Liquor Control Commission a statement of the quantities of marijuana flowers, marijuana leaves[,] and immature marijuana plants sold by the marijuana producer during the preceding calendar month.

HB 3400, Section 91established requirements for testing and includes a definition of "Processing" and "Producing". The law states:

TESTING
OPERATIVE JANUARY 1, 2016

SECTION 91. As used in sections 91 to 99 of this 2015 Act:
(1) "Cannabinoid" means any of the chemical compounds that are the active constituents of marijuana.
(2) "Cannabinoid concentrate or extract" means a substance obtained by separating cannabinoids from marijuana by a mechanical, chemical or other process.
(3) "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate or extract or the dried leaves or flowers of marijuana have been incorporated.
(4)(a) "Cannabinoid product" means a cannabinoid edible or any other product intended for human consumption or use, including a product intended to be applied to a person's skin or hair, that contains cannabinoids or the dried leaves or flowers of marijuana.
(b) "Cannabinoid product" does not include:
(A) Usable marijuana by itself;
(B) A cannabinoid concentrate or extract by itself; or
(C) Industrial hemp, as defined in ORS 571.300.
(5)(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.
(b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300.
(6) "Marijuana item" means marijuana, usable marijuana, a cannabinoid product or a cannabinoid concentrate or extract.
(7) "Processing" means the compounding or conversion of marijuana into cannabinoid products or cannabinoid concentrates or extracts.
(8) "Producing" means:
(a) Planting, cultivating, growing, trimming or harvesting marijuana; or
(b) Drying marijuana leaves and flowers.
(9)(a) "Usable marijuana" means the dried leaves and flowers of marijuana.
(b) "Usable marijuana" does not include:
(A) The seeds, stalks and roots of marijuana; or
(B) Waste material that is a by-product of producing or processing marijuana.

HB 3400, Section 23 established a tracking system for production and processing. The law states:

(Seed to Sale Tracking System)

SECTION 23. (1) The Oregon Liquor Control Commission shall develop and maintain a system for tracking the transfer of marijuana items between licensed premises.
(2) The purposes of the system developed and maintained under this section include, but are not limited to:
(a) Preventing the diversion of marijuana items to criminal enterprises, gangs, cartels and other states;
(b) Preventing persons from substituting or tampering with marijuana items;

(c) Ensuring an accurate accounting of the production, processing and sale of marijuana items;
(d) Ensuring that taxes are collected for the purpose of being distributed as described in section 44, chapter 1, Oregon Laws 2015;
(e) Ensuring that laboratory testing results are accurately reported; and
(f) Ensuring compliance with the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, rules adopted under the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, and any other law of this state that charges the commission with a duty, function or power related to marijuana.
(3) The system developed and maintained under this section must be capable of tracking, at a minimum:
(a) The propagation of immature marijuana plants and the production of marijuana by a marijuana producer;
(b) The processing of marijuana by a marijuana processor;
(c) The receiving, storing and delivering of marijuana items by a marijuana wholesaler;
(d) The sale of marijuana items by a marijuana retailer to a consumer;
(e) The purchase and sale of marijuana items between licensees, as permitted by sections 3 to 70, chapter 1, Oregon Laws 2015;
(f) The transfer of marijuana items between licensed premises;
(g) The collection of taxes imposed upon the retail sale of marijuana items under section 70 of this 2015 Act; and
(h) Any other information that the commission determines is reasonably necessary to accomplish the duties, functions and powers of the commission under sections 3 to 70, chapter 1, Oregon Laws 2015.

Oregon Administrative Rule, Division 25 requires endorsements for recreational marijuana processors.

RETAIL MARIJUANA PROCESSORS

OAR 845-025-3200
Definitions For purposes of OAR 845-025-3200 to 845-025-3290:
(1) "Cannabinoid topical" means a cannabinoid product intended to be applied to skin or hair.
(2) "Food" means a raw, cooked, or processed edible substance, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

OAR 845-025-3210
Endorsements
(1) A marijuana processor may only process and sell cannabinoid products, concentrates or extracts if the processor has received an endorsement from the Commission for that type of processing activity. Endorsements types are:
(a) Cannabinoid edible processor;
(b) Cannabinoid topical processor;
(c) Cannabinoid concentrate processor; and
(d) Cannabinoid extract processor.

(2) An applicant must request an endorsement upon submission of an initial application but may also request an endorsement at any time following licensure.
(3) In order to apply for an endorsement an applicant or processor licensee must submit a form prescribed by the Commission that includes a description of the type of products to be processed, a description of equipment to be used, and any solvents, gases, chemicals or other compounds proposed to be used to create extracts or concentrates.
(4) Only one application and license fee is required regardless of how many endorsements an applicant or licensee requests or at what time the request is made.
(5) An individual processor licensee may hold multiple endorsements.
(6) For the purposes of endorsements any cannabinoid product that is intended to be consumed orally is considered a cannabinoid edible.
(7) If a processor is no longer going to process the product for which the processor is endorsed the processor must notify the Commission in writing and provide the date on which the processing of that product will cease.
(8) The Commission may deny a processor's request for an endorsement if the processor cannot or does not meet the requirements in OAR 845-025-3200 to 845-025-3290 for the endorsement that is requested. If the Commission denies approval the processor has a right to a hearing under the procedures of ORS chapter 183.

Oregon Administrative Rule, Division 25 establishes requirements for equipment and surfaces for processors.

OAR 845-025-3220
General Processor Requirements
(1) A processor must:
(a) Use equipment, counters and surfaces for processing that are food-grade and do not react adversely with any solvent being used.
(b) Have counters and surface areas that are constructed in a manner that reduce the potential for development of microbials, molds and fungi and that can be easily cleaned.
(c) Maintain the licensed premises in a manner that is free from conditions which may result in contamination and that is suitable to facilitate safe and sanitary operations for product preparation purposes.
(d) Store all marijuana items not in use in a locked area, including products that require refrigeration in accordance with OAR 845-025-1410.
(e) Assign every process lot a unique identification number and enter this information into CTS.
(2) A processor may provide a sample of a cannabinoid product, concentrate or extract to a marijuana wholesaler or retailer for the purpose of the wholesaler or retailer licensee determining whether to purchase the product but the product may not be consumed on a licensed premises. Any sample provided to another licensee must be recorded in CTS.
(3) A processor may not process or sell a marijuana item:
(a) That by its shape and design is likely to appeal to minors, including but not limited to:
(A) Products that are modeled after non-cannabis products primarily consumed by and marketed to children; or
(B) Products in the shape of an animal, vehicle, person or character.
(b) That is made by applying cannabinoid concentrates or extracts to commercially available candy or snack food items.

Oregon Administrative Rule, Division 25 establishes limitations on where processors can locate in regards to restaurant operations.

OAR 845-025-3250
Cannabinoid Edible Processor Requirements
(1) A cannabinoid edible processor may only process in a food establishment licensed by the Oregon Department of Agriculture (ODA) and must comply with the applicable provisions of OAR 603, Division 21, Division 22, Division 24, Division 25, with the exception of OAR 603- 025-0020(17) and Division 28.
(2) A cannabinoid edible processor may not:
(a) Engage in processing in a location that is operating as a restaurant, seasonal temporary restaurant, intermittent temporary restaurant, limited service restaurant, single-event temporary restaurant, commissary, mobile unit, bed or breakfast, or warehouse licensed under ORS 624;
(b) Share a food establishment with a person not licensed and endorsed by the Commission as a cannabinoid edible processor;
(c) Process food intended for commercial sale that does not contain cannabinoids, at the licensed premises; or
(d) Use a cannabinoid concentrate or extract to process food unless that concentrate or extract was made by a processor licensed by the ODA under ORS 616.706.
(3) A cannabinoid edible processor may share a food establishment with another cannabinoid edible processor if:
(a) The schedule, with specific hours and days that each processor will use the food establishment, is prominently posted at the entrance to the food service establishment and has been approved by the Commission:
(A) The schedule must be submitted to the Commission in writing and will be approved if it demonstrates that use of a shared food establishment by multiple cannabinoid edible processors does not create an increased compliance risk.
(B) A processor licensee may only change the schedule with prior written approval from the Commission. (b) Each licensee designates a separate area to secure, in accordance with OAR 845-025-1410, any marijuana, cannabinoid products, concentrates or extracts that a licensee stores at the food establishment. If a cannabinoid edible processor does not store marijuana, cannabinoid products, concentrates or extracts at the food establishment those items must be stored on a licensed premises.
(4) A food establishment used by a cannabinoid edible processor is considered a licensed premises and must meet the security and other licensed premises requirements in these rules.
(5) A cannabinoid edible processor is strictly liable for any violation found at a shared food establishment during that processor's scheduled time or within that processor's designated area in the food establishment.

Oregon Administrative Rule, Division 25 establishes rules for concentrate and extract processors.

OAR 845-025-3260
Cannabinoid Concentrate and Extract Processor Requirements
(1) Cannabinoid Concentrates or Extracts. A processor with a cannabinoid concentrate or extract endorsement:

(a) May not use Class I solvents as those are classified in the Federal Drug Administration Guidance, Table I, published in the Federal Register on December 24, 1997 (62 FR 67377).
(b) Must:
(A) Only use a hydrocarbon-based solvent that is at least 99 percent purity.
(B) Only use a non-hydrocarbon-based solvent that is food-grade.
(C) Work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.
(D) Use only potable water and ice made from potable water in processing.
(E) If making a concentrate or extract that will be used in a cannabinoid edible, be endorsed as a cannabinoid edible processor and comply with OAR 845-025-3250.
(2) Cannabinoid Extracts. A processor with an endorsement to make cannabinoid extracts:
(a) May not use pressurized canned butane.
(b) Must:
(A) Process in a:
(i) Fully enclosed room clearly designated on the current diagram of the licensed premises.
(ii) Spark proof room equipped with evacuation fans and lower explosive limit (LEL) detectors.
(B) Use a commercially manufactured professional grade closed loop extraction system designed to recover the solvents and built to codes of recognized and generally accepted good engineering practices, such as:
(i) The American Society of Mechanical Engineers (ASME);
(ii) American National Standards Institute (ANSI);
(iii) Underwriters Laboratories (UL); or
(iv) The American Society for Testing and Materials (ASTM).
(C) If using CO2 in processing, use a professional grade closed loop CO2 gas extraction system where every vessel is rated to a minimum of nine hundred pounds per square inch.
(D) Have equipment and facilities used in processing approved for use by the local fire code official;
(E) Meet any required fire, safety, and building code requirements specified in:
(i) Applicable Oregon laws;
(ii) National Fire Protection Association (NFPA) standards;
(iii) International Building Code (IBC);
(iv) International Fire Code (IFC); and
(F) Have an emergency eye-wash station in any room in which cannabinoid extract is being processed; and
(G) Have all applicable material safety data sheets readily available to personnel working for the processor.
(3) Cannabinoid Concentrates. A processor with an endorsement to make cannabinoid concentrates:
(a) May not:
(A) Use denatured alcohol.
(B) If using carbon dioxide, apply high heat or pressure.
(b) Must only use or store dry ice in a well-ventilated room to prevent against the accumulation of dangerous levels of CO2. (c) May use:
(A) A mechanical extraction process;

(B) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or
(C) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use heat over 180 degrees or pressure.

Oregon Administrative Rule, Division 25 limits where topical processor may operate in regards to restaurants.

OAR 845-025-3280
Cannabinoid Topical Processor
A processor with a cannabinoid topical endorsement may not engage in processing in a location that is operating as a restaurant, seasonal temporary restaurant, intermittent temporary restaurant, limited service restaurant or single-event temporary restaurant licensed under ORS 624.

Oregon Administrative Rule, Division 25 establishes rules for waste from production and processing operations.

WASTE MANAGEMENT

OAR 845-025-7750
Waste Management
(1) A licensee must:
(a) Store, manage and dispose of solid and liquid wastes generated during marijuana production and processing in accordance with applicable state and local laws and regulations which may include but are not limited to:.
(A) Solid waste requirements in ORS 459 and OAR 340 Divisions 93 to 96;
(B) Hazardous waste requirements in ORS 466 and OAR 340, Divisions 100 to 106; and
(C) Wastewater requirements in ORS 468B and OAR 340, Divisions 41 to 42, 44 to 45, 53, 55 and 73.
(b) Store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.
(2) A licensee may give or sell marijuana waste to a producer, processor or wholesale licensee or research certificate holder. Any such transaction must be entered into CTS pursuant to OAR 845- 025-7500.
(3) In addition to information required to be entered into CTS pursuant to OAR 845-025-7500, a licensee must maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all waste activity related to the disposal of marijuana.

HB 3400, Section 89 allows local government to regulate the manner and access hours of marijuana grow sites and processing sites. There are no additional provisions in ORS or OAR's regarding manner of operation for grow sites or processors. The City Council may want to consider if a grow site can occur outdoors or indoors. If outdoors what type of visual screening or security requirements should be established? There may be other manners of operation the City COuncil identifies for discussion and consideration.

Staff therefore proposes the following code amendments for Recreational Marijuana Producers and Processors:

- Prohibit Recreational Marijuana Producer as an indoor or outdoor use in R-1, R-2, R-3, R-4, R-P, AR, R-1/PD, R-1/0.1, R-1/.04, R-1/6.6, R-1/SP, R-2/PD, R-2/SP, SD/LDR, SD/MMR, R-3/PD, RP/SP, RP/LU, C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2,PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, CC, M-4-C, CF, CF/RF, RF, I, IO, FHO, AI, AIO, H, SC, BI.

- Add Recreational Marijuana Producer as an indoor permitted use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.

- Add Recreational Marijuana Producer as a conditional outdoor use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.

- Add Recreational Marijuana Processor as a permitted indoor use in M-1, M-2, M-3, M-4-I and SD/E.

- Prohibits Recreational Marijuana Processor in all residential, commercial, community facility, institutional, airport industrial and miscellaneous districts and subdistricts.

- Add definitions for Recreational Marijuana Producer and Processor.

F. MARIJUANA SUBCOMMITTEE RECOMMENDATION: The Subcommittee developed the following recommendations.

Marijuana Processors:

1. Allow Recreational Marijuana Processor in industrial zoning categories as a permitted use indoors (M-1, M-2, M-3, M-4 and SD/E).

2. Prohibit Recreational Marijuana Processor in AI and AIO and all residential, commercial community facility, institutional and miscellaneous districts and subdistricts.

3. Add a definition for Recreational Marijuana Processor.

Marijuana Producers:

1. Allow Recreational Marijuana Producer as a conditional use indoors in certain residential districts or subdistricts (R-1, R-2, R-1/PD, R-1/0.1, R-1/.04, R-1/6.6, R-1/SP, R-2/PD, R-2/SP and SD/LDR).

2. Prohibit Recreational Marijuana Producer in commercial districts and subdistricts.

3. Prohibit Recreational Marijuana Producer in the Community Facility district and subdistrict.

4. Prohibit Recreational Marijuana Producer in the Institutional district and subdistrict.

5. Allow Recreational Marijuana Producer in industrial zones as a permitted use indoors in M-1, M-2, M-3, M-4, SD/E, M-1/SP and II.

6. Allow Recreational Marijuana Producer in industrial zones as a conditional use outdoors in M-1, M-2, M-3, M-4, M-1/SP, SD/E and II.

7. Prohibit Recreational Marijuana Producer in AI and AIO.

8. Prohibit Recreational Marijuana Producer in H, SC and BI.

9. Add a definition for Recreational Marijuana Producer.

G. PLANNING COMMISSION RECOMMENDATION

The Newberg Planning Commission held a public hearing on February 25, 2016, heard public testimony, and approved Resolution 2015-313, which recommends that the City Council:

- Prohibit Recreational Marijuana Producer as an indoor or outdoor use in R-1, R-2, R-3, R-4, R-P, AR, R-1/PD, R-1/0.1, R-1/.04, R-1/6.6, R-1/SP, R-2/PD, R-2/SP, SD/LDR, SD/MMR, R-3/PD, RP/SP, RP/LU, C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2,PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, CC, M-4-C, CF, CF/RF, RF, I, IO, FHO, AI, AIO, H, SC, BI.

- Add Recreational Marijuana Producer as an indoor permitted use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.

- Add Recreational Marijuana Producer as a conditional outdoor use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.

- Add Recreational Marijuana Processor as a permitted indoor use in M-1, M-2, M-3, M-4-I and SD/E.

- Prohibits Recreational Marijuana Processor in all residential, commercial, community facility, institutional, airport industrial and miscellaneous districts and subdistricts.

- Add definitions for Recreational Marijuana Producer and Processor.

FISCAL IMPACT: The fiscal impact of allowing recreational marijuana producers and processors is unknown at this time.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):
Recreational Marijuana Producers and Processors are a legal activity under state law, and the city wishes to allow businesses the opportunity to operate in the city. Zoning restrictions on the uses are appropriate to address potential adverse impacts on adjacent uses.

ATTACHMENTS:
Ordinance 2016-2798 with
Exhibit "A": Proposed Development Code Text Amendment
Exhibit "B": Findings
1. Resolution No. 2015-3248
2. Planning Commission Resolution 2016-313

ORDINANCE NO. 2016-2798

AN ORDINANCE AMENDING THE NEWBERG DEVELOPMENT CODE REGARDING RECREATIONAL MARIJUANA PRODUCERS AND PROCESSORS; AND DECLARING AN EMERGENCY

RECITALS:

1. Measure 91 was approved by Oregon voters in November 2014 and House Bill 3400 was enacted by the Oregon Legislature in 2015 related to recreational marijuana.

2. The Oregon Liquor Control Commission adopted temporary Oregon Administrative Rules (OAR's) on October 22, 2015 that were subsequently modified on November 20, 2015 for recreational marijuana under Chapter 845, Division 25.

3. The Newberg City Council established the Marijuana Subcommittee on September 8, 2015 to review and provide recommendations on local place, time and manner regulations for recreational marijuana.

4. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding recreational marijuana producers and processors on January 4, 2016, under City Council Resolution 2015-3248.

5. The Marijuana Subcommittee met on January 12, 2016 and developed recommendations to the Planning Commission on recreational marijuana producers and processors.

6. After proper notice, the Newberg Planning Commission held a hearing on February 25, 2016 to consider the amendment for recreational marijuana producers and processors. The Commission considered testimony, deliberated, and found that adding regulations for recreational marijuana producers and processors would be in the best interests of the city. The Planning Commission approved Resolution 2016-313, which recommends that the City Council adopt the proposed amendments to the Newberg Development Code.

7. After proper notice, the Newberg City Council held a hearing on March 21, 2016 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 recreational marijuana producers and processors 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 March 22, 2016.

ADOPTED by the City Council of the City of Newberg, Oregon, this 21st day of March, 2016, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

_____
Sue Ryan, City Recorder

ATTEST by the Mayor this _____ day of _____, 2016.

_____
Bob Andrews, Mayor

Exhibit "A" to Ordinance 2016-2798
Development Code Amendments –File DCA-15-003
Recreational Marijuana Producers
and Processors

Section 1. The Newberg Development Code 15.05.030 shall be amended to read 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

"Marijuana processor" means a person who processes marijuana items in this state.

"Marijuana producer" means a person who produces marijuana in this state.

Section 2. Newberg Development Code, Zoning Use Table, Section 15.305.020 shall be amended to read as follows:

See Exhibit A, Attachment 1

Section 3. Newberg Development Code, Zoning Use Table, Section 15.305.030 shall be amended to read as follows:

See Exhibit A, Attachment 2

Section 4. Newberg Development Code, Stream Corridor Overlay Subdistrict, Section 15.342.110 is amended to read as follows:

15.342.110 Prohibited uses and activities.

The following activities or uses are prohibited within this subdistrict:

A. Except as provided in NMC 15.342.040(R), the planting or propagation of any plant identified

as a nuisance plant as determined by a qualified botanist or indicated as a nuisance plant on the Newberg plant list.

B. The removal of native trees that are greater than six inches in diameter at breast height, except as is otherwise permitted within this chapter.

C. Any use dealing with hazardous substances or materials, including but not limited to gas service stations.

D. Public pathways, except those in conjunction with public lands, public parks or public easements that have been acquired by other than eminent domain. [Ord. 2451, 12-2-96. Code 2001 § 151.475.]

E. Recreational Marijuana Producer and Recreational Marijuana Processor.

Section 5. Newberg Development Code, Civic Corridor Overlay Subdistrict, Section 15.350.030 is amended to read as follows:

15.350.030 Permitted buildings and uses.
All **uses** permitted in the underlying primary district are permitted within the CC subdistrict except as follows:

A. In addition to the **buildings** and **uses** permitted conditionally in NMC 15.305.020, the **planning commission** may grant a **conditional use permit** for any of the following **buildings** and **uses** in accordance with a Type III procedure:

1. Facilities which exist for the purpose of providing for the temporary care and/or lodging of adult indigent **persons**.

2. **Hospitals**.

B. The following **uses** are prohibited within the CC subdistrict:

1. **Automobile sales**, new and used.

2. Car washes, coin-operated or mechanical.

3. Garages, repair.

4. Service stations. [Amended during 11/13 supplement; Ord. 2561, 4-1-02. Code 2001 § 151.526.3.]

5. Recreational Marijuana Producer and Recreational Marijuana Processor.

Section 6. Newberg Development Code, Bypass Interchange Overlay, Section 15.356.050 is amended to read as follows:

15.356.050 Prohibited uses.

A. Several commercial types of **uses** are permitted outright or with conditional **use** approval in Newberg's industrial districts (M-1, M-2, and M-3). The area within the Newberg UGB near the Oregon 219 Interchange is generally planned for industrial **use**. To protect the interchange area from commercial development, the following **uses** are prohibited within the M-1, M-2, and M-3 districts within the boundaries of the bypass interchange overlay:

1. **Automobile sales**, new and used.

2. Billboards.

3. Car washes.

4. Convenience grocery stores.

5. **Restaurants** larger than 2,000 square feet or with drive-up service windows.

6. Service stations.

7. Drive-in theaters.

8. Auction sales.

9. Bakeries, retail.

10. **Building** material sales.

11. Driving ranges.

12. Feed and seed stores.

13. Miniature **golf courses**.

14. Skating rinks.

15. Recreational Marijuana Producer and Recreational Marijuana Processor.

B. The industrial commercial subdistrict of the M-4 district shall not be applied within the boundaries of the BI overlay. [Ord. 2734 § 1 (Exh. B), 3-7-11; Ord. 2708 § 2, 12-1-08; Ord. 2602, 9-20-04. Code 2001 § 151.531.4.]

Section 7. Newberg Development Code, Interim Industrial Overlay, Section 15.358.030 is amended to read as follows:

15.358.030 Permitted uses.
All **uses** of land and water that are permitted in the underlying zoning district(s) are also permitted in the interim industrial overlay, with the exception of those **uses** listed in NMC 15.358.050. In addition, the following are permitted:

A. Contractor's equipment or storage.

B. Construction material storage. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.2.]

C. Recreational Marijuana Producer (indoor).

Section 8. Newberg Development Code, Interim Industrial Overlay, Section 15.358.040 is amended to read as follows:

15.358.040 Conditional uses.
A. **Use** of land and water that are listed as conditional **uses** in the underlying zoning district(s) may also be allowed in the interim industrial overlay, with the exception of **uses** included in the list of prohibited **uses** in NMC 15.358.050.

B. Proposed conditional **uses** in the interim industrial overlay are subject to the standard conditional **use** criteria and procedures of this **code**. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.3.]

C. Recreational Marijuana Producer (outdoor).

Section 9. Newberg Development Code, Interim Industrial Overlay, Section 15.358.050 is amended to read as follows:

15.358.050 Prohibited uses.
The following **uses** are prohibited in the interim industrial overlay:

A. **Cemeteries**.

B. Garbage dumps, sanitary landfills.

C. **Parks**.

D. Permanent **buildings**.

E. **Wrecking yards** for motor vehicles, **building** materials, and other similar items. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.4.]

F. Recreational Marijuana Processor.

Findings –File DCA-15-003
Recreational Marijuana Producers and Processors

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 January 4, 2016. The Marijuana Subcommittee meet on January 12, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Marijuana Producers and Processors. The Planning Commission, after proper notice, held a public hearing on February 25, 2016. The City Council considered the recommendation of the Planning Commission at a public hearing on March 21, 2016, and decided 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 Recreational Marijuana Producer and Processor 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 January 4, 2016. The Marijuana Subcommittee meet on January 12, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Producers and Processors. The Planning Commission, after proper notice, held a public hearing on February 25, 2016. The City Council considered the recommendation of the Planning Commission at a future public hearing on March 21, 2016, and decided 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 Recreational Marijuana Producers and Processors 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 Recreational Producer or Processor operation is a legal operation under State law. Allowing Recreational Marijuana Producer as a conditional use indoors in certain residential districts and subdistricts; as a permitted use indoors in industrial districts or subdistricts or as a conditional use for outdoor operations; prohibiting Recreational Marijuana Producer in commercial, community facility, institutional and airport districts and subdistricts; and allowing Recreational Marijuana Processor as a permitted use in M-1, M-2, M-3, M-4, and SD/E 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.

Exhibit A, Attachment 1

Chapter
15.305
ZONING
USE

15.305.020 Zoning use table - Use Districts.

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 UseStandards
100	AGRICULTURALUSES																			
Def.	Horticulture	P	P	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	
Def.	Livestock and poultry farming	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Def.	Home gardening	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Home livestock and poultry raising	S	S															S		NMC Title 6
200	RESIDENTIAL USES																			
Def.	Dwelling, single-family detached	P(2)	P	P(3)		P		C(4)	C(5)								P	P(6)		Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, single-family attached	S(2)	S	S(3)		S		C(4)	C(5)								P	P(6)		NMC15.415.050; subject to density limits of NMC15.405.010(B)
Def.	**Manufactured home**on individual **lot**	S(2)	S	S(3)	P(7)	S												P(6)		NMC15.445.050 –15.445.070; subject to density limits of NMC15.405.010(B)
Def.	Manufactured dwelling park		S	S	S															NMC15.445.075 –15.445.160
Def.	Mobile home park		S	S	S															NMC15.445.075 –15.445.160
Def.	Manufactured home subdivision		S		S															NMC15.445.075 –15.445.160
Def.	Dwelling, two-family (duplex)	P(2)	P	P	C	P		C(4)	P(8)/C(5)								P			Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, multifamily	C	P	P	C	P		C(4)	P(8)/C(5)								P			Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, accessory	C	S	S		S											S			Chapter15.445 NMC, Article V
Def.	Dwelling, mixed use						P(9)	P(10)	P(8)/C(5)	P(11)	C	C								
Def.	Dwelling, caretaker										P	P	P	C					P(12)	Limited to one per **lot**, and allowed whenever the**use** requires the on-site residence of such **person**.
Def.	Dormitory		C	P		P											P			
Def.	Home occupation(no more than one outside paid employee)	S	S	S(13)	S	S	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S	S	S(13)	NMC15.415.060
Def.	Home occupation(more than one outside paid employee)	C	C	C(13)	C	C	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C	C	C(13)	NMC15.415.060
300	INSTITUTIONAL AND PUBLIC USES																			
310	**INSTITUTIONAL CARE AND HOUSING**																			
Def.	Family child care home	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)							P	P(13)		Chapter 657AORS
312	Day care	P	P	P	C	P	P	P	P		C	C	C	C	P		P		P(14)	Chapter 657AORS
Def.	Residential care home (5 or fewer people)	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)							P	P(13)		ORS 197.665
Def.	Residential care facility (6 – 15 people)	C	P	P	C	P		C	C								P			ORS 197.665
315	Group care facility(16+ people)	C	C	C		C		C									P			
316	Hospital	C	C	C		C		P	P								P			
Def.	Prison										C	C	C	C						
320	**ASSEMBLY**																			
321	Religious institution, place of worship	P	P	P	P	P	P	P	P	P		P(29)				C	P			
322	Private club, lodge, meeting hall			C	C			P	P	C							P			
330	**SCHOOLS**																			

330	School, primary or secondary	P	P	P		P										C				
331	College	P	P	P		P	P	P	P(15)							C	P			
332	Commercial educational services	C	C	C		C	P	P	P								C			
340	**PARKS AND OPEN SPACEs**																			
341	Open space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
342	Park	P	P	P	P	P	P	P	P	P				P(16)		P(17)	P			
Def.	Golf course	P	P	P												P(17)				
350	**PUBLIC SERVICES**																			
351	Community services	C	C	C	C	P		P	P	P						C	P			
352	Emergency services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Pound, dog or cat							C	C		C	P	P	C	C					
Def.	Cemetery	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	Chapter 97.46ORS
360	**TRANSPORTATION**																			
Def.	Transportation facilities and improvements	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Transit center							P	P	P	P	P	P							
Def.	Parking facility			P		C	C	P	P(18)	C	P	P	P		P		P			
Def.	**Airport, landing field**											C	C						P	
Def.	**Heliport, helipad**	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	
Def.	Marina									C										
	Pilings, piers, docks, and similar in-waterstructures									C										
370	UTILITIES																			
Def.	Basic utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Utility distribution plant or yard											P	P	P						
Def.	Wastewater treatment plant											C	P	C						
Def.	Telecommunication facility incorporated into existing structure/utility pole and no taller than 18 feet above existing structure/utility pole	C	C	C	C	C	S	S	S	S	S	S	S	S	S		S			Chapter15.445 NMC, Article IV
Def.	**Telecommunication facility**, including**radio** towers and transmitters, which are 100 feet or less in height, except those incorporated into an existing**structure** no taller than 18 feet above that **structure**.						C	C	C		C	S(19)	S(19)	P	C		C			Chapter15.445 NMC, Article IV
Def.	**Telecommunication facility**, including**radio** towers and transmitters, which are over 100 feet						C	C	C		C	C	C	C	C		C			Chapter15.445 NMC, Article IV
400	COMMERCIAL USES																			
410	**COMMERCIAL OFFICES**																			
411	Medical office			C		P	P(20)	P	P(21)								P			
412	Local business office					P(22)	P(20)	P	P(21)											
420	**COMMERCIAL SALES AND RENTALS**																			
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)											NMC5.15.050 et seq.
	Medical marijuana dispensary							P(35)	P(35)											
425	Retail food and beverage production							S	S											Chapter15.445 NMC, Article VIII
430	**EATING AND DRINKING ESTABLISHMENTS**																			
430	Eating and drinking – Alcohol-related							P	P(21)	P										Requires liquor license
430	Eating and drinking – Non-alcohol-related						P(20)	P	P(21)	P	P	P							C(26)	
440	COMMERCIAL SERVICES																			
441	Personal services					P	P(20)	P	P(21)	P										
442	Commercial services						P(20)	P	P(21)											
443	Commercial vehicle service							P	C		P(27)	P			P(28)					
Def.	Kennel, commercial							C	C		C	P	P	C	C					
450	**COMMERCIAL RECREATION**																			

451	Commercial recreation – Indoors							P	P(15)		P(29)	P(29)								
452	Commercial recreation – Outdoors							P				C								
453	Commercial recreation – Motor-vehicle-related											C							C(33)	
460	**COMMERCIAL LODGING**																			
Def.	Vacation rental home	C	C	S	S	S	S(13)	S(13)	S(13)	S(13)										Chapter15.445 NMC, Article VII
Def.	Bed and breakfast(2 or fewer rooms)	C	S	S		S	S	S	S	S										NMC15.445.010
Def.	Bed and breakfast(3 or more rooms)	C	C	C		C	C	S	S	S										NMC15.445.010
Def.	**Hotel** or **motel**							P	P(15)	P									C(26)	
Def.	Recreational vehicle park							C		C	C	C	C							NMC15.445.170
500	INDUSTRIAL USES																			
501	Traded sector industry office					P(30)	P(30)	P	P		P	P		P					P(33)	
502	Industrial services							C				P	P	P					P(33)	
503	Wholesale and industry sales							C(31)			P(31)	P	P	P					P(33)	
504	Warehouse, storage, and distribution										P(32)	P	P	P					P(33)	
505	Self-service storage							P			P	P	P	P						
506	Light manufacturing										P	P	P	P					P(33)	
507	Heavy manufacturing											P(34)	P	C						
508	Waste-related												C	C						
600	MISCELLANEOUS USES																			
Def.	**Accessory building**and **use** incidental to other permitted **uses**in the zone	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to permitted **uses** in the zone and not defined or categorized	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to conditional **uses** in the zone and not defined or categorized	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
	Medical Marijuana Processor										P	P	P	P						
	Medical Marijuana Grow Site	P(36)	P(36)	P(36)	C	C	C	C	C	C	C	C	C	C	C	C	C	C		
	Recreational Marijuana Processor	X	X	X	X	X	X	X	X	X	P(37)	P(37)	P(37)	P(37)	X	X	X	X	X	
	Recreational Marijuana Producer (Indoor)	X	X	X	X	X	X	X	X	X	P	P	P	P	X	X	X	X	X	
	Recreational Marijuana Producer (Outdoor)	X	X	X	X	X	X	X	X	X	C	C	C	C	X	X	X	X	X	

Key:

P: Permitted use

S: Special **use** – **Use** requires a special **use permit**

C: Conditional **use** – Requires a **conditional use permit**

X: Prohibited use

(#): See notes for limitations

Notes.

(1) Limited to sites with preexisting agricultural uses, including at time of annexation.

(2) Limited to one per **lot** as a permitted **use**. More than one per **lot** allowed only through a **conditional use permit** or planned unit development, subject to density limits of NMC 15.405.010(B).

(3) Permitted on individual **lots** created prior to November 17, 1992. Homes on individual **lots** created on or after November 17, 1992, will only be permitted through the planned unit development process.

(4) The permitted density shall be stated on the conditional use permit.

(5) The **dwelling units** must front onto Hancock or Second **Street**. No more than 30 percent of a single **street** frontage of a **block** may be occupied by residential **uses**. Contiguous residential **street** frontage must be less than 60 lineal feet. Density and parking standards for allowable **dwelling units** must be met.

(6) One residence per **lot** with the addition of a tie-down or **hangar** for an airplane. At a minimum, a paved tie-down or **hangar** shall be provided on the property, or the property shall include permanent rights to a private **hangar** within the **subdivision**. See Chapter 15.336 NMC.

(7) The homes are not subject to the development standards set forth in NMC 15.445.050 through 15.445.070.

(8) The units must be located on the same **lots** as another **use** permitted or conditionally permitted in the C-3 zone and may not occupy the first floor storefront area (the portion of the **building** closest to the primary **street**). There shall be no density limitation. **Private parking areas** or garages are not required for **dwelling units** located within **buildings** in existence prior to and including June 30, 1999. Parking shall be provided for all new **dwelling units** within any **building** constructed after June 30, 1999, in **private parking areas** or garages on the basis of one **parking space** for each **dwelling unit**.

(9) Permitted on the ground floor, one per **lot** in conjunction with any other **use** permitted or conditional **use** in the C-1 zone. On upper floors, **dwelling units** are unlimited and one **parking space** per **dwelling unit** is required.

(10) Permitted above any permitted **use** in the C-2 zone. There shall be no density limitation. Parking shall be provided in **private parking areas** or garages on the basis of one **parking space** for each **dwelling unit**.

(11) Must be located above ground floor commercial uses.

(12) One residence of area not more than 40 percent of the area of the **hangar** floor, up to a maximum of 1,500 square feet, for an **airport** caretaker or security officer on each separate **parcel**.

(13) Permitted in existing **dwelling units** only. New **dwelling units** may not be created for this **use** unless the **dwelling unit** would otherwise be allowed.

(14) Allowed exclusively for employers or employees of businesses located within this district.

(15) Facility over 40,000 square feet **gross floor area** requires a **conditional use permit**.

(16) Allowed in areas designated in industrial area plans.
(17) Limited to facilities owned or operated by a public agency.
(18) Parking garages are a conditional **use**, and must have first floor **street** frontage of 40 feet or less for ingress or egress. First floor development must be commercial.
(19) A **conditional use permit** is required if the facility is less than 2,000 feet from the nearest **telecommunication facility**.
(20) Businesses in the C-1 zone that have hours of operation between 10:00 p.m. and 7:00 a.m. require a conditional use permit.
(21) Drive-up service windows accessory to an existing business on the site with walk-in customer service, such as a drive-up bank window, are allowed only with a **conditional use permit**. Otherwise, drive-up service windows, except those in service on April 1, 2002, are prohibited. Changes in **use** will not be allowed.
(22) Retail sales of goods on site not allowed.
(23) Limited to secondhand stores.
(24) Store size is limited to 2,000 square feet gross floor area.
(25) Store size is limited to 5,000 square feet gross floor area.
(26) **Use** must demonstrate that it is compatible with **airport** operations.
(27) Limited to service stations.
(28) Limited to card lock fueling only. Retail services are limited to self-vending services.
(29) Permitted provided the **structure** is designed for easy conversion to industrial **use**, including not having fixed seating.
(30) Limited to 10,000 square feet maximum floor area.
(31) Allowed indoors only.
(32) Allowed indoors only. Outdoor **use** requires a **conditional use permit**.
(33) Must be aviation-related. See Chapter 15.332 NMC.
(34) Limited to expansion or change of existing heavy manufacturing uses.

(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 elementary or secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a). 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 elementary or secondary school or a private or parochial elementary or secondary 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 a.m. and 8:00 p.m.

(36) Allows up to 12 mature plants; indoor operations only.
(37) Indoor use only.

1 Code reviser's note: Section 25 of Ordinance 2763 provides:

SECTION 25: Grace period for previously permitted or conditional uses. Where an **applicant** demonstrates that a particular **use** was a permitted or conditional **use** on a specific property immediately prior to adoption of this ordinance, but that the **use** is no longer either a permitted or conditional **use** on that property due to this ordinance, the **applicant** may establish the **use** as either a permitted or conditional **use**, as provided in the prior **code**, provided the **use** is legally commenced prior to January 1, 2018.

Exhibit A, Attachment 2

15.305.030 Zoning use table - Use Subdistricts.

600	MISCELLANEOUS USES	R-1/PD	R-1/0.1	R-1/0.4	R-1/6.6	R-1/SP	R-2/PD	R-2/SP	SD/LDR	SD/MMR	R-3/PD	RP/SP	RP/LU	AO	ARO	C-1/SP	C-2/LU	C-2/PD	C-2/SP	C-3/LU	SD/V	SD/NC	SD/H	CC	CF/RF	RF	IO	M-1/SP	SD/E	FHO	II	AIO	H	SC	BI
	Medical Marijuana Processor																											P	P						
	Medical Marijuana Grow Site	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
	Recreational Marijuana Processor	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	X	X	X	X	X	X
	Recreational Marijuana Producer (Indoor)	x	x	x	x	x	x	x	x	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	X	P	X	X	X	X
	Recreational Marijuana Producer (Outdoor)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	C	C	X	C	X	X	X	X

Key:

P: Permitted use

S: Special **use** – **Use** requires a special **use permit**

C: Conditional **use** – Requires a **conditional use permit**

X: Prohibited use

(#): See notes for limitations

Attachment 1

RESOLUTION NO. 2016-3248

A RESOLUTION INITIATING AN AMENDMENT TO THE NEWBERG MUNICIPAL CODE, TITLE 15 DEVELOPMENT CODE FOR TIME, PLACE AND MANNER REGULATIONS FOR RECREATIONAL MARIJUANA PRODUCERS AND PROCESSORS

RECITALS:

1. The Oregon Legislature enacted four bills during the 2015 legislative session related to the Oregon Medical Marijuana Act and Measure 91. House Bill (HB) 3400 was the omnibus bill covering recreational marijuana and modifications to the medical marijuana program.

2. On September 8, 2015 the Newberg City Council was provided background information on medical and recreational marijuana at its Work Session. At its Business Session on September 8th the City Council established the Marijuana Subcommittee (Subcommittee) comprised of Councilors Rourke, Bacon and McKinney along with non-voting member Mayor Andrews.

3. The Subcommittee held its second meeting on December 9, 2015. A proposed timeline was included in their packet of material to address recreational marijuana time, place and manner. At the meeting staff raised a new timeline issue based on new information from the Oregon Liquor Control Commission (OLCC) on their timeline of implementing the recreational marijuana program. Specifically, OLCC has indicated they will start issuing licenses for Producers and Processers in the 2nd Quarter of 2016.

4. The Subcommittee subsequently passed a motion 3-0 directing staff to create an RCA to initiate the Development Code amendment process for recreational marijuana producers and processors to bring forward for Council consideration on January 4, 2016.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council initiates an amendment to the Newberg Municipal Code, Title 15 Development Code for Time, Place and Manner Regulations for Recreational Marijuana Producers and Processors. This starts the public process to study the proposed amendments.

2. By initiating this amendment, the council does not commit to taking any specific action on the proposal. It only wishes to give the amendment full consideration in a public hearing.

///

➢ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: January 5, 2016

ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of January, 2016.

Sue Ryan, City Recorder

ATTEST by the Mayor this 7th day of January, 2016.

Bob Andrews, Mayor

Attachment 2

PLANNING COMMISSION RESOLUTION 2016-313

A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL AMEND THE NEWBERG DEVELOPMENT CODE REGARDING RECREATIONAL MARIJUANA PRODUCERS AND PROCESSORS

RECITALS

1. In November 2014 voters in Oregon approved Ballot Measure 91 related to recreational marijuana.

2. House Bill (HB) 3400 was passed in the 2015 Oregon Legislative session related to recreational marijuana.

3. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding recreational marijuana producers and processors on January 4, 2016 by Resolution No. 2015-3248.

4. After proper notice, the Newberg Planning Commission held a hearing on February 25, 2016 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 recreational marijuana producers and processors, and adding definitions for recreational marijuana producers and processors, 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 25th day of February, 2016.

Planning Commission Chair

ATTEST:

Bobbie Morgan

Planning Commission Secretary

List of Exhibits:

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

Exhibit "A" to Planning Commission Resolution 2016-313
Development Code Amendments –File DCA-15-003
Recreational Marijuana Producers and Processors

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

Note: Existing text is shown in regular font.
Added text is shown in <u>double-underline</u>
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:

<u>"Marijuana processor" means a person who processes marijuana items in this state.</u>

<u>"Marijuana producer" means a person who produces marijuana in this state.</u>

Section 2. Newberg Development Code, Zoning Use Table, Section 15.305.020 shall be amended to read as follows:

See Exhibit A, Attachment 1

Section 3. Newberg Development Code, Zoning Use Table, Section 15.305.030 shall be amended to read as follows:

See Exhibit A, Attachment 2

Section 4. Newberg Development Code, Stream Corridor Overlay Subdistrict, Section 15.342.110 is amended to read as follows:

15.342.110 Prohibited uses and activities.

The following activities or uses are prohibited within this subdistrict:

A. Except as provided in NMC <u>15.342.040</u>(R), the planting or propagation of any plant

identified as a nuisance plant as determined by a qualified botanist or indicated as a nuisance plant on the Newberg plant list.

B. The removal of native trees that are greater than six inches in diameter at breast height, except as is otherwise permitted within this chapter.

C. Any use dealing with hazardous substances or materials, including but not limited to gas service stations.

D. Public pathways, except those in conjunction with public lands, public parks or public easements that have been acquired by other than eminent domain. [Ord. 2451, 12-2-96. Code 2001 § 151.475.]

E. Recreational Marijuana Producer and Recreational Marijuana Processor.

Section 5. Newberg Development Code, Civic Corridor Overlay Subdistrict, Section 15.350.030 is amended to read as follows:

15.350.030 Permitted buildings and uses.
All **uses** permitted in the underlying primary district are permitted within the CC subdistrict except as follows:

A. In addition to the **buildings** and **uses** permitted conditionally in NMC 15.305.020, the **planning commission** may grant a **conditional use permit** for any of the following **buildings** and **uses** in accordance with a Type III procedure:

1. Facilities which exist for the purpose of providing for the temporary care and/or lodging of adult indigent **persons**.

2. **Hospitals**.

B. The following **uses** are prohibited within the CC subdistrict:

1. **Automobile sales**, new and used.

2. Car washes, coin-operated or mechanical.

3. Garages, repair.

4. Service stations. [Amended during 11/13 supplement; Ord. 2561, 4-1-02. Code 2001 § 151.526.3.]

5. Recreational Marijuana Producer and Recreational Marijuana Processor.

Section 6. Newberg Development Code, Bypass Interchange Overlay, Section 15.356.050 is amended to read as follows:

15.356.050 Prohibited uses.

A. Several commercial types of **uses** are permitted outright or with conditional **use** approval in Newberg's industrial districts (M-1, M-2, and M-3). The area within the Newberg UGB near the Oregon 219 Interchange is generally planned for industrial **use**. To protect the interchange area from commercial development, the following **uses** are prohibited within the M-1, M-2, and M-3 districts within the boundaries of the bypass interchange overlay:

1. **Automobile sales**, new and used.

2. Billboards.

3. Car washes.

4. Convenience grocery stores.

5. **Restaurants** larger than 2,000 square feet or with drive-up service windows.

6. Service stations.

7. Drive-in theaters.

8. Auction sales.

9. Bakeries, retail.

10. **Building** material sales.

11. Driving ranges.

12. Feed and seed stores.

13. Miniature **golf courses**.

14. Skating rinks.

15. Recreational Marijuana Producer and Recreational Marijuana Processor.

B. The industrial commercial subdistrict of the M-4 district shall not be applied within the boundaries of the BI overlay. [Ord. 2734 § 1 (Exh. B), 3-7-11; Ord. 2708 § 2, 12-1-08; Ord. 2602, 9-20-04. Code 2001 § 151.531.4.]

Section 7. Newberg Development Code, Interim Industrial Overlay, Section 15.358.030 is amended to read as follows:

15.358.030 Permitted uses.
All uses of land and water that are permitted in the underlying zoning district(s) are also permitted in the interim industrial overlay, with the exception of those uses listed in NMC 15.358.050. In addition, the following are permitted:

A. Contractor's equipment or storage.

B. Construction material storage. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.2.]

C. Recreational Marijuana Producer (indoor).

Section 8. Newberg Development Code, Interim Industrial Overlay, Section 15.358.040 is amended to read as follows:

15.358.040 Conditional uses.
A. Use of land and water that are listed as conditional uses in the underlying zoning district(s) may also be allowed in the interim industrial overlay, with the exception of uses included in the list of prohibited uses in NMC 15.358.050.

B. Proposed conditional uses in the interim industrial overlay are subject to the standard conditional use criteria and procedures of this code. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.3.]

C. Recreational Marijuana Producer (outdoor).

Section 9. Newberg Development Code, Interim Industrial Overlay, Section 15.358.050 is amended to read as follows:

15.358.050 Prohibited uses.
The following uses are prohibited in the interim industrial overlay:

A. Cemeteries.

B. Garbage dumps, sanitary landfills.

C. Parks.

D. Permanent **buildings**.

E. **Wrecking yards** for motor vehicles, **building** materials, and other similar items. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.4.]

F. Recreational Marijuana Processor.

Exhibit A, Attachment 1

Chapter
15.305
ZONING
USE

15.305.020 Zoning use table - Use Districts.

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 UseStandards
100	AGRICULTURALUSES																			
Def.	Horticulture	P	P	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	
Def.	Livestock and poultry farming	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Def.	Home gardening	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Home livestock and poultry raising	S	S															S		NMC Title 6
200	RESIDENTIAL USES																			
Def.	Dwelling, single-family detached	P(2)	P	P(3)		P		C(4)	C(5)								P	P(6)		Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, single-family attached	S(2)	S	S(3)		S		C(4)	C(5)								P	P(6)		NMC15.415.050; subject to density limits of NMC15.405.010(B)
Def.	Manufactured homeon individual lot	S(2)	S	S(3)	P(7)	S												P(6)		NMC15.445.050 –15.445.070; subject to density limits of NMC15.405.010(B)
Def.	Manufactured dwelling park		S	S	S															NMC15.445.075 –15.445.160
Def.	Mobile home park		S	S	S															NMC15.445.075 –15.445.160
Def.	Manufactured home subdivision		S		S															NMC15.445.075 –15.445.160
Def.	Dwelling, two-family (duplex)	P(2)	P	P	C	P		C(4)	P(8)/C(5)								P			Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, multifamily	C	P	P	C	P		C(4)	P(8)/C(5)								P			Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, accessory	C	S	S		S											S			Chapter15.445 NMC, Article V
Def.	Dwelling, mixed use						P(9)	P(10)	P(8)/C(5)	P(11)	C	C								
Def.	Dwelling, caretaker										P	P	P	C					P(12)	Limited to one per lot, and allowed whenever theuse requires the on-site residence of such person.
Def.	Dormitory		C	P		P											P			
Def.	Home occupation(no more than one outside paid employee)	S	S	S(13)	S	S	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S	S	S(13)	NMC15.415.060
Def.	Home occupation(more than one outside paid employee)	C	C	C(13)	C	C	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C	C	C(13)	NMC15.415.060
300	INSTITUTIONAL AND PUBLIC USES																			
310	**INSTITUTIONAL CARE AND HOUSING**																			
Def.	Family child care home	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)							P	P(13)		Chapter 657AORS
312	Day care	P	P	P	C	P	P	P	P		C	C	C	C	P		P		P(14)	Chapter 657AORS
Def.	Residential care home (5 or fewer people)	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)							P	P(13)		ORS 197.665
Def.	Residential care facility (6 – 15 people)	C	P	P	C	P		C	C								P			ORS 197.665
315	Group care facility(16+ people)	C	C	C		C		C									P			
316	Hospital	C	C	C		C		P	P								P			
Def.	Prison										C	C	C	C						
320	**ASSEMBLY**																			
321	Religious institution, place of worship	P	P	P	P	P	P	P	P	P		P(29)				C	P			
322	Private club, lodge, meeting hall			C	C			P	P	C							P			
330	**SCHOOLS**																			

330	School, primary or secondary	P	P	P		P										C				
331	College	P	P	P		P	P	P	P(15)							C	P			
332	Commercial educational services	C	C	C		C	P	P	P								C			
340	PARKS AND OPEN SPACEs																			
341	Open space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
342	Park	P	P	P	P	P	P	P	P	P				P(16)		P(17)	P			
Def.	Golf course	P	P	P												P(17)				
350	**PUBLIC SERVICES**																			
351	Community services	C	C	C	C	P		P	P	P						C	P			
352	Emergency services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Pound, dog or cat							C	C		C	P	P	C	C					
Def.	Cemetery	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	Chapter 97.46ORS
360	**TRANSPORTATION**																			
Def.	Transportation facilities and improvements	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Transit center							P	P	P	P	P	P							
Def.	Parking facility			P		C	C	P	P(18)	C	P	P	P		P		P			
Def.	Airport, landing field											C	C						P	
Def.	Heliport, helipad	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	
Def.	Marina									C										
	Pilings, piers, docks, and similar in-waterstructures									C										
370	UTILITIES																			
Def.	Basic utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Utility distribution plant or yard											P	P	P						
Def.	Wastewater treatment plant											C	P	C						
Def.	Telecommunication facility incorporated into existing structure/utility pole and no taller than 18 feet above existing structure/utility pole	C	C	C	C	C	S	S	S	S	S	S	S	S	S		S			Chapter15.445 NMC, Article IV
Def.	**Telecommunication facility,** includingradio towers and transmitters, which are 100 feet or less in height, except those incorporated into an existingstructure no taller than 18 feet above that structure.						C	C	C		C	S(19)	S(19)	P	C		C			Chapter15.445 NMC, Article IV
Def.	**Telecommunication facility,** includingradio towers and transmitters, which are over 100 feet						C	C	C		C	C	C	C	C		C			Chapter15.445 NMC, Article IV
400	COMMERCIAL USES																			
410	**COMMERCIAL OFFICES**																			
411	Medical office			C		P	P(20)	P	P(21)								P			
412	Local business office					P(22)	P(20)	P	P(21)											
420	**COMMERCIAL SALES AND RENTALS**																			
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)											NMC5.15.050 et seq.
	Medical marijuana dispensary							P(35)	P(35)											
425	Retail food and beverage production							S	S											Chapter15.445 NMC, Article VIII
430	**EATING AND DRINKING ESTABLISHMENTS**																			
430	Eating and drinking – Alcohol-related							P	P(21)	P										Requires liquor license
430	Eating and drinking – Non-alcohol-related						P(20)	P	P(21)	P	P	P							C(26)	
440	COMMERCIAL SERVICES																			
441	Personal services					P	P(20)	P	P(21)	P										
442	Commercial services						P(20)	P	P(21)											
443	Commercial vehicle service							P	C		P(27)	P			P(28)					
Def.	Kennel, commercial							C	C		C	P	P	C	C					
450	**COMMERCIAL RECREATION**																			

451	Commercial recreation – Indoors							P	P(15)		P(29)	P(29)								
452	Commercial recreation – Outdoors							P				C								
453	Commercial recreation – Motor-vehicle-related											C							C(33)	
460	**COMMERCIAL LODGING**																			
Def.	Vacation rental home	C	C	S	S	S	S(13)	S(13)	S(13)	S(13)										Chapter15.445 NMC, Article VII
Def.	Bed and breakfast(2 or fewer rooms)	C	S	S		S	S	S	S	S										NMC15.445.010
Def.	Bed and breakfast(3 or more rooms)	C	C	C		C	C	S	S	S										NMC15.445.010
Def.	Hotel or motel							P	P(15)	P									C(26)	
Def.	Recreational vehicle park							C		C	C	C	C							NMC15.445.170
500	INDUSTRIAL USES																			
501	Traded sector industry office					P(30)	P(30)	P	P		P	P		P					P(33)	
502	Industrial services							C				P	P	P					P(33)	
503	Wholesale and industry sales							C(31)			P(31)	P	P	P					P(33)	
504	Warehouse, storage, and distribution										P(32)	P	P	P					P(33)	
505	Self-service storage							P			P	P	P	P						
506	Light manufacturing										P	P	P	P					P(33)	
507	Heavy manufacturing											P(34)	P	C						
508	Waste-related												C	C						
600	MISCELLANEOUS USES																			
Def.	Accessory buildingand use incidental to other permitted usesin the zone	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to permitted uses in the zone and not defined or categorized	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to conditional uses in the zone and not defined or categorized	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
	Medical Marijuana Processor										P	P	P	P						
	Medical Marijuana Grow Site	P(36)	P(36)	P(36)	C	C	C	C	C	C	C	C	C	C	C	C	C	C		
	Recreational Marijuana Processor	X	X	X	X	X	X	X	X	X	P(37)	P(37)	P(37)	P(37)	X	X	X	X	X	
	Recreational Marijuana Producer (Indoor)	X	X	X	X	X	X	X	X	X	P	P	P	P	X	X	X	X	X	
	Recreational Marijuana Producer (Outdoor)	X	X	X	X	X	X	X	X	X	C	C	C	C	X	X	X	X	X	

Key:

P: Permitted use

S: Special use – Use requires a special use permit

C: Conditional use – Requires a conditional use permit

X: Prohibited use

(#): See notes for limitations

Notes.

(1) Limited to sites with preexisting agricultural uses, including at time of annexation.

(2) Limited to one per lot as a permitted use. More than one per lot allowed only through a conditional use permit or planned unit development, subject to density limits of NMC 15.405.010(B).

(3) Permitted on individual lots created prior to November 17, 1992. Homes on individual lots created on or after November 17, 1992, will only be permitted through the planned unit development process.

(4) The permitted density shall be stated on the conditional use permit.

(5) The dwelling units must front onto Hancock or Second Street. No more than 30 percent of a single street frontage of a block may be occupied by residential uses. Contiguous residential street frontage must be less than 60 lineal feet. Density and parking standards for allowable dwelling units must be met.

(6) One residence per lot with the addition of a tie-down or hangar for an airplane. At a minimum, a paved tie-down or hangar shall be provided on the property, or the property shall include permanent rights to a private hangar within the subdivision. See Chapter 15.336 NMC.

(7) The homes are not subject to the development standards set forth in NMC 15.445.050 through 15.445.070.

(8) The units must be located on the same lots as another use permitted or conditionally permitted in the C-3 zone and may not occupy the first floor storefront area (the portion of the building closest to the primary street). There shall be no density limitation. Private parking areas or garages are not required for dwelling units located within buildings in existence prior to and including June 30, 1999. Parking shall be provided for all new dwelling units within any building constructed after June 30, 1999, in private parking areas or garages on the basis of one parking space for each dwelling unit.

(9) Permitted on the ground floor, one per lot in conjunction with any other use permitted or conditional use in the C-1 zone. On upper floors, dwelling units are unlimited and one parking space per dwelling unit is required.

(10) Permitted above any permitted use in the C-2 zone. There shall be no density limitation. Parking shall be provided in private parking areas or garages on the basis of one parking space for each dwelling unit.

(11) Must be located above ground floor commercial uses.

(12) One residence of area not more than 40 percent of the area of the hangar floor, up to a maximum of 1,500 square feet, for an airport caretaker or security officer on each separate parcel.

(13) Permitted in existing dwelling units only. New dwelling units may not be created for this use unless the dwelling unit would otherwise be allowed.

(14) Allowed exclusively for employers or employees of businesses located within this district.

(15) Facility over 40,000 square feet gross floor area requires a conditional use permit.

(16) Allowed in areas designated in industrial area plans.
(17) Limited to facilities owned or operated by a public agency.
(18) Parking garages are a conditional use, and must have first floor street frontage of 40 feet or less for ingress or egress. First floor development must be commercial.
(19) A conditional use permit is required if the facility is less than 2,000 feet from the nearest telecommunication facility.
(20) Businesses in the C-1 zone that have hours of operation between 10:00 p.m. and 7:00 a.m. require a conditional use permit.
(21) Drive-up service windows accessory to an existing business on the site with walk-in customer service, such as a drive-up bank window, are allowed only with a conditional use permit. Otherwise, drive-up service windows, except those in service on April 1, 2002, are prohibited. Changes in use will not be allowed.
(22) Retail sales of goods on site not allowed.
(23) Limited to secondhand stores.
(24) Store size is limited to 2,000 square feet gross floor area.
(25) Store size is limited to 5,000 square feet gross floor area.
(26) Use must demonstrate that it is compatible with airport operations.
(27) Limited to service stations.
(28) Limited to card lock fueling only. Retail services are limited to self-vending services.
(29) Permitted provided the structure is designed for easy conversion to industrial use, including not having fixed seating.
(30) Limited to 10,000 square feet maximum floor area.
(31) Allowed indoors only.
(32) Allowed indoors only. Outdoor use requires a conditional use permit.
(33) Must be aviation-related. See Chapter 15.332 NMC.
(34) Limited to expansion or change of existing heavy manufacturing uses.

(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 elementary or secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a). 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 elementary or secondary school or a private or parochial elementary or secondary 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 a.m. and 8:00 p.m.

(36) Allows up to 12 mature plants; indoor operations only.
(37) Indoor use only.

1 Code reviser's note: Section 25 of Ordinance 2763 provides:

SECTION 25: Grace period for previously permitted or conditional uses. Where an applicant demonstrates that a particular use was a permitted or conditional use on a specific property immediately prior to adoption of this ordinance, but that the use is no longer either a permitted or conditional use on that property due to this ordinance, the applicant may establish the use as either a permitted or conditional use, as provided in the prior code, provided the use is legally commenced prior to January 1, 2018.

Exhibit A, Attachment 2

15.305.030 Zoning use table - Use Subdistricts.

600	MISCELLANEOUS USES	R-1/PD	R-1/0.1	R-1/0.4	R-1/6.6	R-1/SP	R-2/PD	R-2/SP	SD/LDR	SD/MMR	R-3/PD	RP/SP	RP/LU	AO	ARO	C-1/SP	C-2/LU	C-2/PD	C-2/SP	C-3/LU	SD/V	SD/NC	SD/H	CC	CF/RF	RF	IO	M-1/SP	SD/E	FHO	II	AIO	H	SC	BI
	Medical Marijuana Processor																											P	P						
	Medical Marijuana Grow Site	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
	Recreational Marijuana Processor	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	X	X	X	X	X	X
	Recreational Marijuana Producer (Indoor)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	X	P	X	X	X	X
	Recreational Marijuana Producer (Outdoor)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	C	C	X	C	X	X	X	X

Key:

P: Permitted use

S: Special use – Use requires a special use permit

C: Conditional use – Requires a conditional use permit

X: Prohibited use

(#): See notes for limitations

Exhibit "B" to Planning Commission Resolution 2016-313

Findings –File DCA-15-003
Recreational Marijuana Producers and Processors

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 January 4, 2016. The Marijuana Subcommittee meet on January 12, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Marijuana Producers and Processors. The Planning Commission, after proper notice, held a public hearing on February 25, 2016. 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 Recreational Marijuana Producer and Processor 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 January 4, 2016. The Marijuana Subcommittee meet on January 12, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Producers and Processors. The Planning Commission, after proper notice, held a public hearing on February 25, 2016. 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 Recreational Marijuana Producers and Processors 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 Recreational Producer or Processor operation is a legal operation under State law. Allowing Recreational Marijuana Producer as a conditional use indoors in certain residential districts and subdistricts; as a permitted use indoors in industrial districts or subdistricts or as a conditional use for outdoor operations; prohibiting Recreational Marijuana Producer in commercial, community facility, institutional and airport districts and subdistricts; and allowing Recreational Marijuana Processor as a permitted use in M-1, M-2, M-3, M-4, and SD/E 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.