

# County mulls marijuana farm zone exclusion

Land use questions hover over marijuana production

By MATEUSZ PERKOWSKI  
Capital Press

An Oregon county is thinking about excluding marijuana from farm zones, raising questions about how the psychoactive crop will be regulated under the state's land use system.

Since voters in the state approved a ballot initiative legalizing recreational marijuana last year, officials in Linn County have been inundated with questions about where they can grow it, said Roger Nyquist, a county commissioner.

"We're even seeing real estate ads advertising properties as turnkey ready for marijuana production," Nyquist said.

County commissioners are concerned about problems resulting from marijuana growing outdoors near homes, which is why they're considering limiting commercial production to light industrial and commercial zones, he said.

"There are security issues if you have millions of dollars worth of crop sitting next to families," he said.

Proponents of legalized marijuana, however, see the proposal as an attempt to circumvent Measure 91, which regulates statewide production, processing and sales.

Using zoning rules to create a "functional ban" on marijuana dispensaries, for example, would be pre-empted by Measure 91, said Leland Berger, an attorney who advises marijuana businesses.

"I am starting to see municipalities who are bigoted against cannabis and utilize land use and zoning laws to avoid state pre-emption," said Berger.

Paul Loney, who is also an attorney who handles marijuana issues, said he's not convinced by Linn County's safety argument and suspects the ordinance is intended to discourage marijuana production.

"There's already medical marijuana grown there outdoors and the sky hasn't fallen," he said.

From Linn County's perspective, keeping marijuana operations within industrial and commercial zones would probably mean the plants will be grown indoors, reducing the likelihood of conflicts with residential areas, Nyquist said.

The proposal, which may be subject to a commission vote by late March, would not apply to cultivating up to four plants per household for personal use as allowed by Measure 91, he said. "We respect the people have spoken."

If the ordinance passes, violations would be treated as a civil matter — not a crime — which would allow the county to cite offenders for growing marijuana outside the approved zones, he said.

Nyquist said the county can restrict marijuana because it's not recognized as a crop by the Oregon Department of Agriculture.

The ordinance aims to prevent people from speculatively investing in rural property with the expectation of growing marijuana before the Oregon Liquor Control Commission creates rules for commercial production in early 2016, he said.

"We're just trying to get ahead of this until the unknowns are cleared up," Nyquist said.

However, state regulators say the county's ability to restrict marijuana production to certain zones is itself uncertain.

The Oregon Department of Agriculture's definition of a crop only applies to statutes related to quarantines, pesticides and similar issues, but not zoning decisions, said Jim Johnson, the agency's land use specialist.

"We don't define what is and is not a crop for purposes of land use," Johnson said.

Oregon land use law does not go into detail about specific

plants that qualify as crops in the context of farm zoning, said Katherine Daniels, farm and forest specialist for the state's Department of Land Conservation and Development.

"Since it's a broad authorization, we would assume that includes all crops, including recreational marijuana," she said.

Landowners can build processing facilities for their crops within farm zones and they're also shielded under Oregon's "right to farm" statute from nuisance lawsuits and ordinances that seek to restrict common farming practices, Daniels said.

Daniels said she's unaware of any other county aside from Linn County that's considering excluding marijuana from farm zones.

"I'm not entirely sure they have the legal authority to do that," she said.

DLCD can comment on the county's decision but cannot actually stop it from being enforced — however, the ordinance could be challenged in court, she said.

"If it's not a farm use, what would it be?" Daniels said.

# East Oregon farmers say wage hike could drive them to Idaho

By SEAN ELLIS  
Capital Press

NYSSA, Ore. — Farming operations in Eastern Oregon say they might have to move their operations to Idaho if Oregon raises its minimum wage by a substantial amount.

Several proposals in the Oregon Legislature would do just that. One House bill would increase the state's \$9.25 an hour minimum wage, the nation's second highest, to \$11.50 next year, \$13.25 in 2017 and \$15 in 2018.

Owyhee Produce General Manager Shay Myers said that type of increase would make it extremely difficult for Eastern Oregon farmers and agribusinesses to compete with their cohorts just across the state line, where the minimum wage is \$7.25.

Myers said increasing the state's minimum wage to \$15 would mean a 62 percent increase in labor costs for the company's onion packing shed and farming operations.

"How do we take a 62 percent reduction in what our earnings are ... and think



Sean Ellis/Capital Press

Onions are sorted at Owyhee Produce in Nyssa, Ore., March 5. Owner Shay Myers said a major increase in Oregon's minimum wage could lead to an exodus of farming operations in Eastern Oregon to Idaho.

that we can remain in business competitively," he said.

If the Oregon minimum wage did increase to \$15, Myers said, one solution would be to further automate his onion packing shed in Nyssa, which would eliminate jobs.

"The other solution is just to go 300 yards to the East and be in Idaho," he said.

Myers said he could finance the entire cost of locating an onion packing facility in Idaho with the labor savings he would realize by moving across the state line.

He said he's not opposed to increasing the federal minimum wage, but raising Oregon's so steeply while Idaho's is at \$7.25 doesn't make sense for Eastern Oregon.

Myer believes a large increase in the state's minimum wage could cause an exodus of farming operations to Idaho.

Kay Riley, manager of Snake River Produce in Nyssa, said asking Eastern Oregon farming operations to compete against significantly lower labor costs in Idaho "would be potentially devastating to us."

The company has already looked at a piece of property in Idaho, he said.

"We'd have to do some pretty serious soul-searching," he said. "They could literally be forcing us ... out of state."

Oregon farmer Paul Skeen said a major increase in the state's minimum wage would drive labor-intensive crops in the area such as vegetables and sweet corn seed to other states, including Idaho.

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