

GROWER: Legality of marijuana odor ordinance in question

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feeble attempt to discourage marijuana use," Roberts stated in an email. "But nothing can be further from the truth."

He said Pendleton has long had an odor ordinance that bans "unreasonable quantities of soot, cinders, noxious acids, fumes or gases to escape, causing harm to another person or to the public or endangering the health, comfort and safety of any person or the public, or permit or cause materials to injure or damage property or business." Marijuana, he stated, fits into that description when growers dry the plant's buds.

Woods said that is when the plant is at its most pungent. He said he snips off the marijuana buds and hangs them to dry in his house, which takes seven or eight days. He uses fans to help with the drying and to push the odor outside. Woods also said he cannot afford filters that would cut down on the smell.

Woods' neighbor, Mike Arbogast, claimed the drying weed stunk up the air outside his home and even seeped into his clothes. Roberts said Woods was not willing to modify his operation to curtail the odor and there were even "threats of lawsuits, violence and other unethical acts were uttered/implicit."

Roberts said that conflict gave birth to the new city law. "So let's be clear, we are not talking about the exhaling of a drag from a marijuana cigarette," he said. "We are talking about concentrated odors, which are constantly vented out of an enclosed drying/growing area. There is no opportunity for the odor to dissipate significantly because of the consistency in which the air/odor is forced."

But Pendleton attorney Will Perkinson said the new law has serious problems, starting with the fact that it places restrictions on medicinal marijuana that conflict with the Oregon Medical Marijuana Act. That raises the legal issue of preemption, he said, meaning the existing state law preempts the local law.



Staff photo by E.J. Harris

Woods grows a variety of strains of marijuana depending on the particular medical needs of his clients.

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— Pendleton Police Chief Stuart Roberts

Pendleton's law also lacks a severability clause, he said, which states if a portion of a law is unconstitutional or illegal, the rest of the law remains in effect. Without that clause, he said, Pendleton's law is valid in its entirety or not at all.

"It ... unreasonably interferes with the lawful production and use of medicinal marijuana," Perkinson said.

Perkinson said he takes Roberts at his word about the purpose of the law, but how an officer on the street or a citizen interprets it is another matter. Is smoke from a joint, for example, a marijuana product?

"I think that's unclear," Perkinson said. "That's an area of ambiguity."

The ordinance also places the weight of proof on the nose of police officers. Perkinson asked how could someone prove the odor did not escape, or an officer did not smell pot? He said these ambiguities and the possibility for wide appli-

cation make it a bad law.

"The city council should just say no to new marijuana laws," he said.

Roberts said police will "try to get the offender to modify or filter the emitting odors in the name of responsibility, respect and fairness. Should they choose not to comply, we will (inform) the offender that they can sign a complaint."

He also said he did not see this as a code or police enforcement issue. Rather, the ordinance allows residents to sign a complaint, which police would then serve.

"At that point," Roberts said, "the offended and offender can have their arguments heard by an independent third party (i.e. municipal judge)." It is unknown what would qualify as evidence in such a court.

Woods is also trying to open a marijuana dispensary on Tutuilla Road, not far from his home, in one of the few places city restrictions would allow a dispensary.

He said he lost his job driving bus for the Confederated Tribes of the Umatilla Indian Reservation after seeking medical marijuana patients on Facebook, then health problems prevented him from driving commercially, so he opted to go into business for himself.

Though he has a location and put up signs advertising the business, he is not in operation. Woods said he is negotiating with vendors and the store might not open for a month.

Other city regulations allow dispensaries to operate in certain zones and not within 1,000 feet of parks, schools or another dispensary. Whoever opens a pot dispensary first on Tutuilla will have a lock on that area.

As long as it doesn't stink, or someone complains that it does.

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FIRE: The X factor will be lightning

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temperatures, according to the Northwest Interagency Coordination Center in Portland. By July and August, Oregon and Washington should see an elevated risk of large, destructive fires based on heat, drought and low snowpack.

Last year, ODF declared fire season on June 11 in the Northeast Oregon District — the third-earliest start to a season since 1977. It could be even earlier this year, Williams said.

"The only thing keeping us from a higher fire danger is the grasses haven't cured yet," he said. "As soon as those get cured out and ready to burn, then we're likely to have a high fire danger."

The Northeast Oregon District is responsible for providing fire protection on about 1.9 million acres of mostly private and some public rangeland in Umatilla, Union, Baker, Wallowa, Grant, Malheur and Morrow counties. Once fire season is declared, landowners will need to obtain burn permits from ODF and face restrictions on activities such as smoking, chainsaws and certain types of ammunition.

The potential for large fires is measured by the energy release component, or ERC, of forest fuels. Foresters calculate ERC based on a number of weather-related factors, such as temperature, humidity, wind speed and moisture. The figure is then reflected as a single number.

A typical ERC for forests this time of year is 35, Williams said. The actual number was already as high as 50 in early May in some areas, before much-needed rains pushed the levels back down to normal.

However, Williams expects conditions to quickly dry up again. He said the district should finish hiring seasonal firefighters by June 12, and begin interagency fire school June 15 at Eastern Oregon University.

Meanwhile, the district has already responded to eight human-caused fires as of Friday, burning about 40 acres.

"With the dry conditions, people need to be safe and responsible, and realize they could have financial responsibility if they start a fire," Williams said.

ODF has spent \$200 million putting out fires over the past two fire seasons. The Northeast Oregon District saw 106 total fires burning 1,037 acres in 2014, compared to the 10-year average of 81 fires and 2,306 acres.

The U.S. Forest Service does not declare a formal fire season like ODF does, though the agency does implement public use restrictions on national forests as needed. Bret Ruby, fire staff officer on the Wallowa-Whitman National Forest, said everything has lined up for a tough fire year.

The X factor, Ruby said, will be lightning. "That's going to tell the tale, if the lightning comes in wet storms or dry storms," he said. "But the fuel conditions will certainly be conducive."

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COUNCIL: Set to adopt \$53.2M budget for 2015-16

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did mention the need for the fee to cover staff time to process criminal background checks.

The council amended the zoning laws to allow medical marijuana dispensaries in certain commercial zones last month after a year-long moratorium expired. But since the city's current business license laws don't allow businesses that are in violation of federal law, city officials have said that the moratorium is effectively still in place until the city changes its laws.

The workshop is scheduled for 6:30 p.m., just before the council's regularly scheduled meeting at 7 p.m. Although the council's regular meeting has no marijuana-related issues on the agenda, it will feature other

long-discussed topics that could see some action.

After years of planning, the city is set to consider a trio of utility master plans that could raise rates for water and sewer and institute fees.

Over the next 10 years, a city consultant estimated Pendleton would need to spend \$56.9 million to replace, maintain and add to the town's water and sewer infrastructure.

In order to pay for the improvements, the firm suggested doubling water rates, raising sewer rates by 57 percent and creating a systems development cost — a fee assessed to new developments.

The stormwater utility, a first for Pendleton, would be used to improve, operate and maintain the city-owned levees and the city's storm-

water drainage system. For the first five years, the firm suggested charging a flat rate of \$7.25 to help cover the \$7.5 million cost of improving the system.

The consultants recommended a portion of these new revenue streams be used to hire 11.5 new city employees.

Although the city plans to adopt the utility master plans at the June 2 council meeting, officials have said any rate hikes or charges would be decided upon at a later date.

The city is also set to adopt a \$53.2 million budget for the 2015-2016 fiscal year.

Highlights include creating a new police officer position and three new paramedic positions. Both meetings will be held at the council chambers in city hall, 500 S.W. Dorion Avenue.

BOUNDARY: New buildings will have larger capacities

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28th Street.

All students living east of Southgate and south of Interstate Highway 84 are within McKay Creek Elementary School boundaries. Children that live west of Southgate and south of Southwest 37th Street will also attend McKay under the proposal.

For district students living east of Pendleton, including those on the Umatilla Indian Reservation, Interstate Highway 84 acts as a clear-cut boundary — children living north of Interstate Highway 84 attend Washington while students living south of the highway go to McKay Creek.

Superintendent Jon Peterson selected the proposed boundary map after a lengthy process.

The district originally formed a committee comprised of parents, principals and a Mid Columbia Bus Co. official and tasked them with considering seven boundary map options.

The committee whittled the options down to two, which were presented to the public through a series of

public meetings in late April and early May.

The parents' input was then turned over to Superintendent Jon Peterson, who used it as a factor in his decision.

The district is redrawing district boundaries as new facilities for Washington and Sherwood Heights are being built.

The new buildings will have larger capacities, allowing the district to consolidate Lincoln Primary School and West Hills Intermediate School. After the new Washington and Sherwood Heights are completed in 2016, Lincoln will be repurposed into the district's central office. West Hills

will become an alternative school and career-technical education center.

Starting next year, all current elementary schools will serve first through fifth grades. The district's kindergarten students will be centrally located at the Pendleton Early Learning Center, formerly Hawthorne Alternative High School.

The proposal will be considered for approval at the Pendleton School Board meeting Monday at 6:00 p.m. The board meeting is at the Intermountain Education Service District Lodgepole Room, 2001 S.W. Nye Ave.

For more information, contact the district office at 541-276-6711.

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