

ORDINANCE NO. 233-15

**AN ORDINANCE AMENDING AND CREATING DEFINITIONS
TO THE IRRIGON DEVELOPMENT CODE FOR THE
CITY OF IRRIGON, OREGON AND DECLARING AN EMERGENCY**

WHEREAS, the City Charter authorizes the City of Irrigon to exercise authority within the city over matters of City concern; and

WHEREAS, the City of Irrigon adopted a Comprehensive Plan and amendments to the Development Code which was acknowledged by the Land Conservation and Development Commission on February 14, 2007; and

WHEREAS, the City did adopt a medical marijuana moratorium on April 22, 2014 as Ordinance 226-14 with a sunset of May 1, 2015; and

WHEREAS, the City plans to amend the City Development Code following a joint task force of Morrow County communities for the purpose of making determinations on medical marijuana dispensaries and medical marijuana grow facilities; and

WHEREAS, the City of Irrigon published proper and agency hearing notices as required by City Development Code and State Law; and

WHEREAS, the City of Irrigon Planning Commission held a public hearing to review the proposal on March 3, 2015; and

WHEREAS, the City of Irrigon Planning Commission considered and heard testimony from the residents of Irrigon, and after deliberation recommended approval and adopt the Final Findings of Fact; and

WHEREAS, testimony, including the proposed Findings of Fact and recommendation by of the City of Irrigon Planning Commission on March 3, 2015 was in conformance with Section 10-4A-5, Type IV Procedure (Legislative), of the City of Irrigon Development Code, and forwarded a recommendation of Approval to the City Council.

WHEREAS, the City of Irrigon City Council held public hearing to consider the recommendation from the Irrigon Planning Commission on March 17, 2015; and

WHEREAS, the City of Irrigon City Council accepted the Planning Commission's final findings of fact and recommendation for adoption of proposed definitions on March 17, 2015.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IRRIGON ORDAINS AS FOLLOWS:

Section 1. Title of Ordinance

This Ordinance shall be known, and may be cited, by the title.

Section 2. Affected Documents

The following items are repealed and are hereby adopted as follows:

1. Exhibit [1] Definitions of the Irrigon Development Code, dated March 17, 2015, as attached.

Section 3. Declaration of Emergency. The City Council declares that an emergency exists in order that no delay in implementing this ordinance.

Section 4. Effective Date

This Ordinance shall take effect on May 1, 2015 after adoption

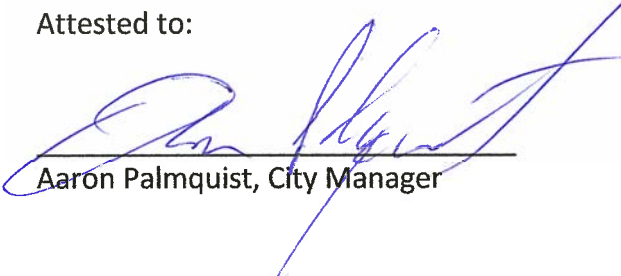
Passed by the Council this 17th day of April, 2015

Approved by:



Sam Heath, Mayor

Attested to:


Aaron Palmquist, City Manager

Final Findings of Fact Development Code Definitions

REQUESTS: The amended request is to add new definitions to Article 10, Section 1A-3 and clarify some of the definitions for improved understanding.

APPLICANT: City of Irrigon
PO Box 428
Irrigon, OR 97844

PROPERTY LOCATION: The proposal is to add new definitions to the Irrigon Municipal Code (IMC) and amend others for improved clarification and understanding. Based on this recommendation property owners within the City of Irrigon would be affected.

I SUMMARY OF APPLICATION AND PROCESS:

Prior to the enactment of the moratorium for Medical Marijuana Dispensaries/Facilities several communities of Morrow County began working together to develop consistent definitions for our respective jurisdictions. These were vetted through multiple discussions and compared with other governmental organizations.

Additionally, cleaning up the Irrigon Code Manual is one of the priorities for the city. Not only were new definitions needed that did not exist but also providing clarification to some of those that already exists within the Code. It should be noted that there are no marijuana or adult businesses seeking to locate here in Irrigon at this time. This process is again implementing marijuana definitions due to the moratorium and cleaning up of the existing code.

New definitions are provided in Exhibit 1 with underline and strikeout for those recommended for deletion from the code. Aside from the basic items that pertain to medical marijuana there are other recommended definitions for incorporation into Irrigon's Development Code that strives to become more compatible with Morrow County Code Definitions. This will greatly assist with properties that lay within the Urban Growth Boundary (UGB). Typically, both jurisdictions work to maintain the same or similar zone delineation and definition use so as not to create disconnects and confusion with property owners.

Staff was instructed to seek out and/or create definitions for "adult business". These have also been added to the recommended definitions for public hearing and Planning Commission deliberation and recommendation to the City Council. Staff initiated proposed definitions to ensure clarity and consistency as well as further definition of an adult business from leadership guidance.

Based on the testimony of those in attendance at the March 3, 2015 Planning Commission public hearing the Planning Commission recommended that the proposed "Definitions" in Exhibit 1 be approved by the City Council and incorporated into the IMC.

II SUMMARY OF APPLICABLE CRITERIA: To approve the Planning Commission and City Council will need to hold public hearings and show that requests meet the necessary criteria according the City of Irrigon's Development Code. Those criteria are presented below in bold print with responses in regular print.

City of Irrigon Development Code

10-4A-5: TYPE IV PROCEDURE (LEGISLATIVE)

A. Pre-application Conference: *A pre-application conference is required for all type IV applications initiated by a party other than the city. The requirements and procedures for a pre-application conference are described in subsection 10-4A-5C of this article.*

Response:

This Type IV procedure was initiated by the City, so this provision does not apply.

B. Application Requirements:

- 1. Application Forms:** *Type IV applications shall be made on forms provided by the city planning official or designee.*
- 2. Submittal Information:** *The application shall contain:*
 - a.** *The information requested on the application form;*
 - b.** *A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);*
 - c.** *The required fee; and*
 - d.** *One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.*

Response:

This Type IV procedure has been initiated by the City, so an application and fee do not apply. This Type IV proposal consists of the following materials:

1. Proposed Development Code Definition Amendments, (Exhibit [1]). The proposed staff report, of which these findings of fact are a part, and the attached exhibits constitute the narrative statement that demonstrates how this proposal satisfies the relevant approval criteria and standards established in Section 10-4A-5(F) below.

C. The request addresses issues concerned with public health and welfare, if any.

Response:

Significant testimony and deliberation centered on this criteria. Residents provided testimony to their concerns that medical marijuana and adult business related items were not welcomed in Irrigon and should not be available to the general public or children and that general nuisances that come from these uses was not desired. During deliberations by the Planning Commission it was determined that these definitions were acceptable, with a few minor language amendments. The Planning Commission felt that they should then move forward to the next level of public hearing before the City Council.

D. Notice Of Hearing:

- 1. Required Hearings:** *A minimum of two (2) hearings, one before the planning commission and one before the city council, are required for all type IV applications, except annexations where only a hearing by the city council is required.*

Response:

This proposal has received a public hearing by the Planning Commission on March 3, 2015.

- 2. Notification Requirements:** *Notice of public hearings for the request shall be given by the city planning official or designee in the following manner:*
 - a.** *At least twenty (20) days, but not more than forty (40) days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with Oregon Revised Statutes 227.186, and mailed to:*
 - (1)** *Each owner whose property would be rezoned in order to implement the ordinance (including owners of property subject to a comprehensive plan amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan amendment).*
 - (2)** *Any affected governmental agency.*
 - (3)** *Any person who requests notice in writing.*
 - (4)** *For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with Oregon Revised Statutes 227.175.*
 - (5)** *Owners of airports shall be notified of a proposed zone change in accordance with Oregon Revised Statutes 227.175.*
 - b.** *At least ten (10) days before the scheduled planning commission public hearing date, and fourteen (14) days before the city council hearing date, public notice shall be published in a newspaper of general circulation in the city.*
 - c.** *The city planning official or designee shall:*
 - (1)** *For each mailing of notice, file an affidavit of mailing in the record as provided by subsection C2a of this section; and*
 - (2)** *For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection C2b of this section.*
 - d.** *The Oregon department of land conservation and development (DLCD) shall be notified in writing of proposed comprehensive plan and development code amendments at least forty five (45) days before the first public hearing at which public testimony or new evidence will be received. The notice to DLCD shall include a DLCD certificate of mailing.*
 - e.** *Notifications for annexation shall follow the provisions of this chapter.*

Response:

This proposal does not involve a zone change, an annexation, or land where airports are located. Notices of the March 3, 2015 Planning Commission hearing and the March 17, 2015 City Council hearing were published in the East Oregonian on February 11, 2015 and February 18, 2015 respectively. Affidavits of notice mailing and publishing were filed with Paula Smootz – Eastern Oregonian on February 11, 2015. Notice to the Department of Land Conservation and Development (DLCD) was sent on January 27, 2015, pursuant to current DLCD rules requiring notice at least 35 days before the first public hearing.

3. Content of Notices: The published notices shall include the following information:

- a. The number and title of the file containing the application, and the address and telephone number of the city planning official or designee's office where additional information about the application can be obtained;**
- b. The proposed site location;**
- c. A description of the proposed site and the proposal in enough detail for people to determine what change is proposed, and the place where all relevant materials and information may be obtained or reviewed;**
- d. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the council and available at city hall (see subsection E of this section); and**

Response:

The published notices included a brief description, dates, time, places, and item requiring such notice. Additional postings were made via the City web page and postings at various city locations. Agencies noticed were; Angela Houck, Department of Land Conservation and Development, Irrigon Rural Fire Protection District, Morrow County School District, Morrow County Health District, Morrow County Planning Department, and ODOT Region 5.

4. CITIZEN INVOLVEMENT (Irrigon Comprehensive Plan) - To develop a citizen involvement program that insures opportunity for citizens to participate in all phases of the planning process:

It Shall Be City Policy:

- To encourage people to attend and participate in planning commission and city council meetings and hearings.**
- To establish advisory committee as necessary to study community problems and make recommendations for their solution.**
- To make technical reports available for public inspection.**

Response:

The map update offered several opportunities to inform and involve the community, including public hearings on March 3, 2015. A separate City Council meeting, held on March 17, 2015 provided the public opportunity to review the proposed Safe School Routes map. Draft of the map and supporting materials were made available via email to

City Councilors, Planning Commissioners, and available at City Hall for public review and/or request.

D. Decision Making Criteria: The recommendation by the planning commission and the decision by the city council shall be based on the following factors:

- 1. Approval of the request is consistent with the statewide planning goals; and***
- 2. Approval of the request is consistent with the comprehensive plan; and***
- 3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.***

Response:

The intent of this proposal is to provide the city with a clearer process and determination clear definitions for prescription within the Irrigon Development Code. The proposal's consistency with Statewide Planning Goals and the City of Irrigon Comprehensive Plan is demonstrated in the findings of fact below.

III RECOMMENDATION OF THE IRRIGON PLANNING COMMISSION:

Based on public testimony and the deliberations of the Planning Commission it is recommended that the City of Irrigon hold their scheduled hearing and consider the following:

- Amend the Irrigon Development Code by adding new definitions identified and modified from the proposal provided by staff. The proposed definitions define adult business, assessor dwelling unit, assessor structure, basement, carport, Code of Federal Regulations, contiguous land, drug stores, frontage, community services, flood hazard area, garage, liquor store, marijuana, medical marijuana, medical marijuana dispensary or facility, medical marijuana grow facility, new construction, nursing home, operator, pharmacy, recreation facility or area, relative, safe school route, skirting, tax lot, and zoning permit..
- Findings in support of this recommendation are outlined above under the review criteria having to do with public safety, health and welfare.

VI DELIBERATION OF THE IRRIGON CITY COUNCIL 3/17/2015:

Based on public testimony and the deliberations the City Council accepted the recommendation of the Planning Commission.

Proposed Development Code Definition Amendments (3-17-15)

The code amendments proposed in Table 1 were developed according to findings and are recommended to better address compliance and consistency with Oregon Revised Statutes (ORS).

Proposed code amendments in Table 1 are presented in adoption ready format. New language that is proposed to be added is underlined and strike-out for recommended deletions. All other language remains in effect. The draft amendments are presented in the order of appearance in the development code.

Table 1: Proposed Amendments to the Irrigon Development Code

Irrigon Development Code
Chapter 1 General Provisions
<p>10-1A-3: DEFINITIONS</p> <p><u>ADULT BUSINESS: Adult business includes, but is not limited to, any and all of the following specific adult businesses: adult bookstore, adult news rack, adult video store or adult retail establishment; adult motion picture theater; and adult live entertainment business. The term "adult business" does not include a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances covered by the definition of "adult business" were permitted or allowed as part of such art exhibits or performances.</u></p> <p>(1) <u>Adult books, video or retail for the significant or substantial barter, display, exchanges, rental or sale of merchandise that is intended for use in connection with specified sexual activities, or that emphasizes matters depicting, describing or relating to specified sexual activities or specified anatomical areas. Significant or substantial is measured by 10% or greater of gross business sales.</u></p> <p>a. <u>Books, magazines, periodicals, pictures, photographs, motion pictures, films, records, audiotapes, videotapes, slides, or other forms of visual or audio representations or other printed matter, if such establishment is not open to the public generally but only to one or more classes of the public, excluding any minor by reason of age, or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.</u></p> <p>b. <u>Sexually oriented toys or novelties.</u></p> <p>(2) <u>Adult movie theater, video centers, and video stores where its regular and substantial business purposes in:</u></p> <p>a. <u>Providing of entertainment where the emphasis is on performances, live or otherwise, that depict, portray, exhibit or display specified anatomical areas or specified sexual activities; or</u></p> <p>b. <u>Providing of services that are intended to provide sexual arousal or excitement or that allow observation of specified sexual activities or specified anatomical areas</u></p>

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ancillary to other pursuits, or allow participation in specified sexual activities ancillary to other pursuits.

c. Providing live adult entertainment that is:

1. Intended to provide sexual stimulation or sexual gratification to the entertainer, an employee or any patrons of the business; or

2. Distinguished by or characterized by an emphasis on matter simulating, describing or relating to specified anatomical areas or the simulation of specified sexual activities; or

3. An establishment which regularly features entertainment of an erotic nature including exotic dancers, strippers, or similar entertainers appearing semi-nude.

ACCESSORY DWELLING UNIT: A second dwelling unit created on a lot with a house, attached house, or manufactured home. The second unit is created auxiliary to, and is always smaller than, the house, attached house, or manufactured home and defined by the use zone or conditional use permit.

ASSESSORY STRUCTURES: A structure of secondary importance or function on a site. In general, the primary use of the site is not carried on in an accessory structure. Accessory structures are detached from the primary structure. Examples of accessory structures include, but are not limited to: garages (defined by the use zone or conditional use permit), decks, fences, arbors, gazebos, heat pumps, and other structures. See also definition of Primary Structure

BASEMENT: A story partly underground. A basement shall be counted as a story in building height measurement when the floor level directly above is more than six (6) feet above the average level of the adjoining ground.

CARPORT: A stationary structure consisting of a roof, its supports, not more than one wall or storage cabinets substituting for a wall, used to shelter motor vehicles, recreational vehicles, or boats and attached to the primary dwelling.

CODE OF FEDERAL REGULATIONS: CFR Schedule I or Schedule II of the substance of classification of controlled substances under federal regulation.

CONTIGUOUS LAND: Parcels of land that abut each other.

DRUG STORE: A store where the primary business is the filling of prescriptions and sale of drugs (see pharmacy), medical devices and supplies, and non-prescription medicines, but where non-medical products may be sold as well. Non-medical products may include cards, candy, and cosmetics.

FRONTAGE: The portion of a property that abuts a public street or right of way.

COMMUNITY SERVICES: Uses of a public (e.g. library, health clinic, etc.), nonprofit (e.g. churches, senior centers, etc.), or charitable nature (e.g. consumer/credit counseling, etc.) generally providing a local service to people of the community. Generally, they provide the service on the site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join at any time (for instance, any senior

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citizen could join a senior center). The use may provide mass shelter or short term housing where tenancy may be arranged for periods of less than one month when operated by a public or nonprofit agency. The use may also provide special counseling, education, or training of a public, nonprofit or charitable nature.

FLOOD HAZARD AREA: Land that is in the 100-year floodplain in a relatively flat area or lowlands adjoining waterways that has been or may be covered by a base flood or currently defined by the federal emergency management agency (FEMA).

GARAGE: A covered structure with two (2) or more walls designed to provide shelter for vehicles, and which is accessory to a use in these structure types: houses, attached houses (e.g. townhouse), duplexes, mobile or manufactured homes, or houseboats. Carports are considered garages. Floor area adjacent to the space designed to provide shelter for vehicles, if not entirely separated from the garage area by floor to ceiling walls, is considered part of the garage. A garage may be attached to or detached (defined by the use zone or conditional use permit) from another structure.

LIQUOR STORE: A store that sells alcohol beverages for consumption elsewhere and is licensed by the Oregon Liquor Control Commission. This may include dining or other establishments that also allow sales for off premises consumption.

MARIJUANA: All parts of the plant of the Cannabis family Moraceae, whether growing or not, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist, or may be from time to time be amended.

MEDICAL MARIJUANA: All parts of the marijuana plants that may be used to treat or alleviate a qualified patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

MEDICAL MARIJUANA DISPENSARY OR FACILITY: A facility that dispenses medical marijuana, meeting the requirements set by the Oregon Health Authority and being registered to do business with the Office of the Secretary of State.

MEDICAL MARIJUANA GROW FACILITY: A facility that grows medical marijuana as allowed under Oregon Revised Statute and as regulated by the Oregon Health Authority.

NEW CONSTRUCTION: Any structure for which the "start of construction" commenced on or after the effective date of this ordinance.

NURSING HOME: Any home, institution, or other structure maintained or operating for the nursing and care of four or more ill or infirm adults not requiring hospital care or hospital facilities.

OPERATOR: The person who is the proprietor of a facility, whether in the capacity of Company Principal, owner, lessee, sub-lessee, mortgagee in possession, license or any other capacity. If the operator is a corporation, the term Operator also includes each and every member of the corporation's Board of Directors whose directorship occurs in a period during which the Facility is in operation. If the Operator is a partnership or limited liability company, the term Operator also includes each and every member thereof whose membership occurs in a period during which the Facility is in operation.

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PHARMACY: A place where drugs and medicines are prepared and dispensed by a licensed pharmacist. A pharmacy may also be a drug store.

RECREATION FACILITY OR AREA: An indoor or outdoor area devoted to facilities and equipment for recreational purposes, including swimming pools, picnic areas, amphitheater, tennis courts, playgrounds, and other similar uses, whether the use of such area is limited to private membership or open to the public on a payment of a fee.

RELATIVE: Any individual related by or through legal and recorded process.

SAFE SCHOOL ROUTES: A designated route(s) that promote(s) bicycle, pedestrian and traffic safety for children and minors to and from and between school sites. Certain type development(s) restricted by local rules or code, state and federal law, and which may contribute to the delinquency and hindrance of public health and safety of minors shall not be cited (allowed).

SKIRTING: A weather resistant material used to enclose the space below the manufactured structure. Such skirting shall be of the same comparable material as the installed siding of dwelling.

TAX LOT: A unit of land assigned by the Department of Revenue for the sole purpose of real estate taxation.

ZONING PERMIT: An authorization issued prior to a building permit, or commencement of a use subject to administrative review, stating that the proposed use is in accordance with the requirements of the corresponding land use zone.