

The City of North Plains

Agenda

**City Council - Work Session Meeting
Thursday, October 1, 2015 @ 7:00 PM
North Plains Senior Center
31450 NW Commercial Street**

Page

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PUBLIC COMMENT:

(Persons wishing to speak on matters not on the agenda may be recognized at this time. Speakers must complete a "Public Comment Registration form" on the information table and return it to the City Recorder. You are not required to give your address when speaking to the City Council, only your name. Presentations are limited to five minutes.)

5. NEW BUSINESS:

- A. A. Discussion and evaluation of concerns and needs regarding local government regulation of Marijuana in Oregon and its effect on North Plains

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[Memo Preparations for Marijuana discussion](#)

[9 6 Marijuana Dispensaries LOC Local Government Regulation of Marijuana - August 2015 \(00484321xB8084\)](#)

[102914 CITY COUNCIL SPECIAL MEETING PACKET](#)

[5 11A Memo Ordinance No. 422 Moratorium of Medical Marijuana facilities](#)

[5 Ordinance No. 422 - Moratorium Medical Marijuana Dispensary-Sunset](#)

[2700-2015 MMJ dispensary license-2nd reading](#)

[Excerpt from FG Staff Report re MMJ Dispensaries 09 14 15](#)

[\(00486820xB8084\)](#)

[Ordinance 800 Zone Overlay for Marijuana Sales-Myrtle Creek-Ontario](#)

6. UNFINISHED BUSINESS:

7. ADJOURNMENT:

North Plains City Council meetings are accessible for disabled individuals. The City will also endeavor to provide services for persons with impaired hearing or vision and other services, if requested, at least 48 hours prior to the meeting. To obtain services, please call City Hall at [\(503\) 647-5555](tel:5036475555)

The following City Council Meetings are scheduled to be held at the North Plains Senior Center, 31450 NW Commercial Street, North Plains, Oregon.

The meetings will be held on the following dates at 7:00 p.m.:

Monday, October 5, 2015 Monday, October 19, 2015 Monday, November 2, 2015



CITY OF NORTH PLAINS

31360 NW Commercial Street, North Plains, Oregon 97133

Date: September 28, 2015
To: Mayor and City Council
From: Public Works Director and Interim City Manager Blake Boyles
Subject: Preparation for City Council Marijuana Workshop

Background: Council has previously discussed this topic numerous times. The placing of a moratorium of Medical Marijuana dispensaries was discussed in April 2014. This led to Ordinance No. 422 which sunset on May 1, 2015. Council discussed setting a marijuana tax in October 2014. This led to the approval of Ordinance No. 423. Copies of these ordinances are included in this packet.

The most recent discussion was at the September 21, 2015 City Council meeting. The consensus of the Council at that meeting was to conduct a workshop to further discuss options and legislative law. Ashley Driscoll, Beery Elsner and Hammond will be present at the October 1, 2015 work session to assist in the discussions.

The League of Oregon Cities (LOC) published a booklet entitled "Local Government Regulations of Marijuana in Oregon" which was revised in August 2015. This booklet was distributed to Council at the September 21, 2015 Council meeting. Please take some time to work through the publication from LOC prior to the meeting. This publication goes through the various types of marijuana facilities and a city's options for regulating each. If you can do so ahead of the meeting and write down any of your questions, Ashley Driscoll will be here to field them and the Council can discuss options at the meeting.

Perhaps by the end of the work session Council will be able to give staff and the Planning Commission direction on where Council would like to see the City's regulations end up. The next step would be to then figure out the necessary amendments to the City code.

Fiscal Impact: There is potential fiscal impact with state marijuana tax revenue sharing. This may be forfeited if the city restricts marijuana dispensaries.

Environmental Issues: None

Recommendation: This item is informational only.



LEAGUE OF OREGON CITIES

**LOCAL GOVERNMENT
REGULATION OF
MARIJUANA IN
OREGON**

**REVISED
AUGUST 2015**



Published by the League of
Oregon Cities

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Introduction and A Word of Caution

The League of Oregon Cities (League) has prepared this guide to assist cities in evaluating local needs and concerns regarding medical and recreational marijuana, so that city councils can find solutions that are in the best interests of their community. The League does not take a position on which choices a city council should make. The League's mission is to protect the home rule authority of cities to make local decisions and to assist city councils in implementing the decisions they make, whatever those decisions might be.

The League published the first edition of this guide in the spring of 2015. Its original focus was medical marijuana. In November 2014, Oregon voters adopted Measure 91, legalizing the growing, distribution, possession and use of marijuana in certain amounts for non-medical personal use. In 2015, the state Legislature made comprehensive reforms to Measure 91 and addressed issues of local control. Specifically, the Legislature adopted the following bills:

- HB 3400 (Or Laws 2015, ch 614), the omnibus bill that amends the Oregon Medical Marijuana Act (OMMA) and the Control and Regulation of Marijuana Act (also known as Measure 91, which the voters passed in November 2014 legalizing recreational marijuana use in Oregon);
- HB 2041 (Or Laws 2015, ch 699), which revises the state tax structure for recreational marijuana;
- SB 460 (Or Laws 2015, ch 784), which authorizes early sales of recreational marijuana by medical marijuana dispensaries; and
- SB 844 (awaiting governor's signature), which creates a marijuana task force, provides for expungement of certain offenses, adds a new qualifying debilitating medical condition, and allows certain hospice and residential facilities to be designated as an additional caregiver.

The law with regard to local government regulation of marijuana is complex because it involves the interplay of state and federal law, and the law continues to evolve. At press time, there were several court cases pending regarding the legal authority of local governments to regulate, up to and including prohibiting, the operation of medical marijuana facilities. The League will continue to update its members as the law in this area changes.

This guide is not a substitute for legal advice. City councils considering taxing, regulating or prohibiting marijuana facilities should not rely solely on this guide or the resources contained within it. Any city council considering any form of regulation of marijuana should consult with its city attorney regarding the advantages, disadvantages, risks and limitations of any given approach. Legal counsel can also assist a city in preparing an ordinance that is consistent with existing ordinances and with a city's charter, and advise on what process is needed to adopt the ordinance.

With those changes, the League has prepared this second edition of the guide, adding sections relating to the regulation of recreational marijuana. This guide begins by providing an overview of the source of local government authority—Oregon’s constitutional home rule provisions. The guide then provides a brief explanation of the status of marijuana under federal law, as well as a summary of Oregon’s marijuana laws, before turning to a discussion of local control and options available for local governments. The guide concludes with sample ordinances to use as a starting point if a city decides it wants to tax, regulate or prohibit marijuana facilities.

The sample ordinance provisions included in this guide are intended to be a starting point, not an ending point, for any jurisdiction considering taxing, regulating or prohibiting marijuana facilities.

Home Rule in Oregon

Any discussion of a city’s options for regulating anything that is also regulated by state law must begin with a discussion of the home rule provisions of the Oregon Constitution from which cities derive their legal authority. Home rule is the power of a local government to set up its own system of governance and gives that local government the authority to adopt local ordinances without having to obtain permission from the state.

The concept of home rule stands in contrast to a corollary principle known as Dillon’s Rule, which holds that municipal governments may engage only in activities expressly allowed by the state because municipal governments derive their authority and existence from the state.¹ Under Dillon’s Rule, if there is a reasonable doubt about whether a power has been conferred to a local government, then the power has not been conferred. Although many states follow Dillon’s Rule, Oregon does not.

Instead, a city government in Oregon derives its home rule authority through the adoption of a home rule charter by the voters of that community pursuant to Article XI, section 2, of the Oregon Constitution, which was added in 1906 by the people’s initiative. Article XI, section 2, provides, in part, that:

“The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation of any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon.”

A home rule charter operates like a state constitution in that it vests all government power in the governing body of a municipality, except as expressly stated in that charter, or preempted by state or federal law. According to the League’s records, all of Oregon’s 242 incorporated cities have adopted home rule charters.

¹ See John F. Dillon, 1 *The Law of Municipal Corporations* § 9b, 93 (2d ed 1873).

The leading court case interpreting Oregon’s home rule amendment is *La Grande/Astoria v. PERB*, 281 Or 137, 148-49, 576 P2d 1204, *aff’d on reh’g*, 284 Or 173, 586 P2d 765 (1978). In that case, the Oregon Supreme Court said that home rule municipalities have authority to enact substantive policies, even in an area also regulated by state statute, as long as the local enactment is not “incompatible” with state law, “either because both cannot operate concurrently or because the Legislature meant its law to be exclusive.” In addition, the court said that where there is a local enactment and state enactment on the same subject, the courts should attempt to harmonize state statutes and local regulations whenever possible.²

In a subsequent case, the Oregon Supreme Court directed courts to presume that the state did not intend to displace a local ordinance in the absence of an apparent and unambiguous intent to do so.³ Along the same lines, a local ordinance can operate concurrently with state law even if the local ordinance imposes greater or different requirements than the state law.⁴

Where the Legislature’s intent to preempt local governments is not express and where the local and state law can operate concurrently, there is no preemption. As such, the Oregon Supreme Court has concluded that generally a negative inference that can be drawn from a statute is insufficient to preempt a local government’s home rule authority.⁵ For example, where legislation “authorizes” a local government to regulate in a particular manner, a court will not read into that legislation that the specific action authorized is to the exclusion of other regulatory alternatives, unless the Legislature makes it clear that the authorized regulatory form is to be the exclusive means of regulating.

Federal Law

Marijuana remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA). Schedule I substances are those for which the federal government has made the following findings:

² Criminal enactments are treated differently. Local criminal ordinances are presumed invalid, and that presumption cannot be overcome if the local enactment prohibits what state criminal law allows or allows what state criminal law prohibits. See *City of Portland v. Dollarhide*, 300 Or 490, 501, 714 P2d 220 (1986). Consequently, the Oregon Supreme Court’s case law is clear that a local government may not recriminalize conduct for which state law provides criminal immunity. See *City of Portland v. Jackson*, 316 Or 143, 147-48, 850 P2d 1093 (1993) (explaining how to determine whether a state law permits what an ordinance prohibits, including where the Legislature expressly permits specified conduct).

³ See, e.g., *State ex rel Haley v. City of Troutdale*, 281 Or 203, 210-11, 576 P2d 1238 (1978) (finding no manifest legislative intent to preempt local provisions that supplemented the state building code with more stringent restrictions).

⁴ See *Rogue Valley Sewer Services v. City of Phoenix*, 357 Or 437, 454-55, ___ P3d ___ (2015); see also *Thunderbird Mobile Club v. City of Wilsonville*, 234 Or App 457, 474, 228 P3d 650, *rev den*, 348 Or 524 (2010) (“A local ordinance is not incompatible with state law simply because it imposes greater requirements than does the state, nor because the ordinance and state law deal with different aspects of the same subject.” (internal quotations omitted)).

⁵ *Rogue Valley Sewer Services*, 357 Or at 453-55 (concluding that explicit authorization for cities to regulate certain utilities did not, by negative implication, create a broad preemption of the field of utility regulation); *Gunderson, LLC v. City of Portland*, 352 Or 648, 662, 290 P3d 803 (2012) (explaining that even if a preemption based on a negative inference is plausible, if it is not the only inference that is plausible, it is “insufficient to constitute the unambiguous expression of preemptive intention” required under home rule cases).

- The drug or other substance has a high potential for abuse;
- The drug or other substance has no currently accepted medical use in treatment in the United States; and
- There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Oregon's laws on medical and recreational marijuana do not, and cannot, provide immunity from federal prosecution. Consequently, state law does not protect marijuana plants from being seized or people from being prosecuted if the federal government chooses to take action under the CSA against those using marijuana in compliance with state law. Similarly, cities cannot provide immunity from federal prosecution.

An Overview of Oregon's Marijuana Laws

Oregon Medical Marijuana Act

Oregon has had a medical marijuana program since 1998, when voters approved Ballot Measure 67, the Oregon Medical Marijuana Act (OMMA) (codified at ORS 475.300 – ORS 475.346). Since that time, the Legislature has amended the OMMA on a number of occasions. Generally, under the OMMA, a person suffering from a qualifying debilitating health condition must get a written statement from a physician that the medical use of marijuana may mitigate the symptoms or effects of that condition. The person may then obtain a medical marijuana card from the Oregon Health Authority, which is the agency charged with regulating medical marijuana. The patient may designate a caregiver and a grower if the patient decides not to grow his or her own marijuana, each of whom may also get a medical marijuana card. Patients, caregivers and growers with medical marijuana cards, who act in compliance with the OMMA, are immune from state criminal prosecution for any criminal offense in which possession, delivery or manufacture of marijuana is an element. Those without medical marijuana cards may also claim immunity from state criminal prosecution if they are in compliance with the OMMA and, within 12 months prior to the arrest at issue, had received a diagnosis of a debilitating medical condition for which a physician had advised medical marijuana could mitigate the symptoms or effects.

The OMMA also provides protection from state criminal prosecution for medical marijuana processors and medical marijuana dispensaries acting in compliance with the law. Although the OMMA did not originally envision dispensaries, in 2013 the Legislature created a system for state-registered facilities to lawfully transfer marijuana between growers and patients or caregivers. In its original form, the dispensary system failed to address many local government concerns, some of which the Legislature addressed in HB 3400 (2015).

HB 3400 amends the OMMA in a number of ways, including limiting the number of plants at a medical marijuana grow site; allowing medical marijuana growers to possess the amount of usable marijuana harvested from their mature plants, within certain limits; allowing medical marijuana growers to apply for a recreational grow license; changing the amount which a patient

may reimburse his or her grower; adding a new registration category for medical marijuana processors; adding testing, labeling, inspection and reporting requirements; and changing and adding limitations on where dispensaries and processors can locate.

Recreational Marijuana

In November 2014, Oregon voters approved Ballot Measure 91, which decriminalized the personal growing and use of certain amounts of recreational marijuana by persons 21 years of age or older. Measure 91 also designated the Oregon Liquor Control Commission (OLCC) as the agency charged with licensing and regulating the growing, processing and sale of recreational marijuana. In particular, the OLCC was directed to administer a license program for producers, processors, wholesalers and retailers, and under that program, a person may hold more than one type of license.

HB 3400 preserves the general structure of Measure 91, but also makes important changes, including: allowing for personal making, processing or storing of up to 16 ounces of homemade marijuana concentrates; adding a requirement that those who work for recreational marijuana retailers hold a handlers permit; directing the OLCC to develop and maintain a seed-to-sale tracking system; directing the OLCC to adopt restrictions on the size of recreational marijuana grows; adding testing, labeling, inspection and reporting requirements for licensees; and changing and adding certain land use standards as they relate to marijuana.

Taxation of Recreational Marijuana

Originally under Measure 91, the state tax on recreational marijuana would have been imposed on growers at a rate of \$35 per ounce of marijuana flowers, \$10 per ounce of marijuana leaves, and \$5 per immature marijuana plant. Under HB 2041 (2015), the Legislature revised the state tax structure to impose a 17 percent tax on the retail sale of marijuana, to be collected by marijuana retailers. Early sales of recreational marijuana from medical marijuana dispensaries, discussed below, will be taxed at a higher rate. Starting January 4, 2016, early sales of recreational marijuana from medical marijuana dispensaries will be taxed at a rate of 25 percent.

As was the case under Measure 91, 10 percent of the state tax will be transferred to cities to “assist local law enforcement in performing its duties” under Measure 91.⁶ That 10 percent will be distributed using different metrics before and after July 1, 2017. Before July 1, 2017, tax revenues will be distributed proportionately to all Oregon cities based on their population. After July 1, 2017, those revenues will be distributed proportionately based on the number of licenses issued for premises located in each city. Fifty percent of revenues will be distributed based on the number of production, processor and wholesale licenses issued in the city, and the other 50 percent will be distributed based on the number of retail licenses issued in the city. However,

⁶ The remaining tax revenues will be distributed as follows: 40 percent to the Common School Fund; 20 percent to the Mental Health Alcoholism and Drug Services Account; 15 percent to the State Police Account; and 10 percent to counties.

under HB 2041, if a city adopts an ordinance prohibiting the establishment of any registered or licensed marijuana activities, the city will not be eligible to receive state marijuana tax revenues.

HB 3400 preempts local governments from imposing more than a 3 percent tax on the production, processing or sale of recreational marijuana by a retail licensee.

Early Sales of Recreational Marijuana

As of July 1, 2015, people 21 years of age and older may possess limited amounts of recreational marijuana under state law. However, the OLCC does not expect to issue licenses for the retail sale of recreational marijuana until sometime in 2016. To allow the OLCC time to implement its licensing system, while also providing an avenue for people to purchase recreational marijuana in compliance with state law, the Legislature authorized medical marijuana dispensaries to sell limited quantities of recreational marijuana.

In particular, starting October 1, 2015, medical marijuana dispensaries will be able to sell the following to a person who is 21 or older and presents proof of age:

- One quarter of one ounce of dried marijuana leaves and flowers per person per day;
- Four marijuana plants that are not flowering; and
- Marijuana seeds.

Sales of recreational marijuana from medical dispensaries currently are set to end on December 31, 2016. At that time, recreational retail facilities likely will be operating. In the meantime, cities can opt out of early sales by ordinance.

Local Government Options for Regulation of Marijuana

Any city wanting to regulate or prohibit marijuana activities should work closely with its legal counsel to survey existing state law and local code, develop a means to implement and enforce any new ordinances, and then craft the necessary amendments to the city's code to accomplish the council's intent.

As set out in HB 3400 and under their home rule authority, cities have a number of options for regulating marijuana activities. Whether to regulate is a local choice. What follows is an overview of the options available to cities. However, before embarking on any form of regulation, cities should begin by examining the seven types of marijuana activities authorized by state statute and the restrictions state law (including administrative regulations adopted by the OLCC and OHA) places on each type of activity to determine whether a gap exists between what state law allows and what the community desires to further restrict.

Registration and Licenses

Under HB 3400, there are seven marijuana activities that require registration or a license from the state. This guide focuses on regulation of those activities. Although some cities may be interested in regulating individual conduct involving personal growing, possession, and use of marijuana, those regulations are beyond the scope of this guide.

Oregon’s Seven Regulated Marijuana Activities

Marijuana Type	Grow	Make Products	Wholesale	Transfer to User
Medical <i>OHA Registration</i>	Marijuana Grow Site: Location for planting, cultivating, growing, trimming, or harvesting marijuana or drying marijuana leaves or flowers <i>Register under ORS 475.304</i>	Marijuana Processing Site: Location for compounding or converting marijuana into medical products, concentrates or extracts <i>Register under section 85 of HB 3400</i>	None	Medical Marijuana Dispensary: Transfer usable marijuana, immature marijuana plants, seed, and medical products, concentrates and extracts to patients and caregivers <i>Register under ORS 475.314</i>
Recreational <i>OLCC License</i>	Producers: Manufacture, plant, cultivate, grow, harvest <i>Obtain license under section 12 of HB 3400</i>	Processors: Process, compound or convert marijuana into products, concentrates or extracts, but does not include packaging or labeling <i>Obtain license under section 14 of HB 3400</i>	Wholesalers: Purchase marijuana items for resale to a person other than a consumer <i>Obtain license under section 15 of HB 3400</i>	Retailers: Sell marijuana items to a consumer <i>Obtain license under section 16 of HB 3400</i> *Certain employees must obtain an OLCC handlers permit under section 19 of HB 3400

State Restrictions on the Location of Medical and Recreational Marijuana Activities

Before regulating or prohibiting state-registered or licensed marijuana activities, cities should examine the restrictions in state law. It is important to know about any state restrictions that create a regulatory “floor.” In other words, although the courts generally have upheld a city’s authority to impose more stringent restrictions than those described in state law, a city likely cannot impose restrictions that are more lenient than those described in state law. So, for

example, where state law requires a 1,000-foot buffer between medical marijuana dispensaries, a city could not allow dispensaries to locate within 500 feet of each other. Moreover, some cities may determine that state regulation of marijuana activities is sufficient and that local regulation is therefore unnecessary.

For those cities interested in prohibiting any of the marijuana activities listed above, it is important to examine the state restrictions because, particularly in smaller communities, those restrictions effectively may preclude a person from becoming registered with or licensed by the state to engage in marijuana activities.

Medical Grow Sites and Recreational Producers

HB 3400 does not restrict where medical marijuana grow sites or recreational marijuana producers can locate. However, it does place more stringent limitations on the number of plants that a medical marijuana grower can grow in residential zones and directs the OLCC to adopt rules restricting the size of recreational marijuana grow canopies.

Generally, a medical marijuana grow site may have up to 12 mature plants if it is located in a residential zone, and up to 48 mature plants if it is located in any other zone. However, there are exceptions for certain existing grow sites. If all growers at a site had registered with the state by January 1, 2015, the grow site is limited to the number of plants that were at the grow site as of December 31, 2015, not to exceed 24 mature plants per grow site in a residential zone and 96 mature plants per grow site in all other zones. A grower loses the right to claim those exceptions, however, if the grower's registration is suspended or revoked.

Medical Processing Sites and Recreational Processors

Processors that make marijuana extracts may not be located in an area zoned for residential use.

Medical Marijuana Dispensaries

Prior to HB 3400, state law provided that dispensaries had to be located in areas zoned for commercial, industrial, mixed use or agricultural land. Some dispensary owners argued that, as a result, local governments had to allow dispensaries to locate in those zones. The Legislature has now revised that provision to remove the list of allowable zones and replace it with a restriction: dispensaries may not be located in residential zones.

Prior to HB 3400, dispensaries could not locate within 1,000 feet of a public or private elementary, secondary or career school attended primarily by minors. The Legislature has now revised that restriction so that a dispensary may not locate within 1,000 feet of 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).⁷ As a practical matter, that means that dispensaries cannot locate within 1,000 feet of most public and private elementary, middle and high schools. However, if a school is established within 1,000 feet of an existing dispensary, the dispensary may remain where it is unless the OHA revokes its registration.

In addition, the Legislature retained the requirement that dispensaries may not be located at the same address as a grow site and may not be located within 1,000 feet of another dispensary.

Recreational Wholesalers and Retailers

Wholesale and retail licensees may not locate in an area that is zoned exclusively for residential use. The same requirements that apply to medical marijuana dispensaries regarding their proximity to schools apply to retail licensees. As a practical matter, a retail licensee may not locate within 1,000 feet of most public and private elementary, middle and high schools. However, if a school is established within 1,000 feet of an existing retail licensee, the licensee may remain where it is unless the OLCC revokes its license.

Local Tax

The OMMA was silent on local authority to tax, meaning that local governments retained their home rule authority to tax medical marijuana. Measure 91, on the other hand, attempted to preempt local government authority to tax recreational marijuana, though there were significant questions regarding the effect and scope of that purported preemption.

Under HB 3400, the Legislature has vested authority to “impose a tax or fee on the production, processing or sale of marijuana items” solely in the Legislative Assembly, except as provided by law. The Legislature has also provided that a city may not “adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items,” except as provided by law. HB 3400 goes on to provide that cities may adopt an ordinance, which must be referred to the voters, imposing a tax or fee of up to 3 percent on the sale of marijuana items by a retail licensee. The ordinance must be referred to the voters in a statewide general election, meaning an election in November of an even-numbered year. However, if a city has adopted an ordinance

⁷ ORS 339.020 provides, “Except as provided in ORS 339.030:

- (1) Every person having control of a child between the ages of 7 and 18 years who has not completed the 12th grade is required to send the child to, and maintain the child in, regular attendance at a public full-time school during the entire school term.
- (2) If a person has control of a child five or six years of age and has enrolled the child in a public school, the person is required to send the child to, and maintain the child in, regular attendance at the public school while the child is enrolled in the public school.”

ORS 339.030(1)(a) provides, “In the following cases, children may not be required to attend public full-time schools: (a) Children being taught in a private or parochial school in the courses of study usually taught in grades 1 through 12 in the public schools and in attendance for a period equivalent to that required of children attending public schools in the 1994-1995 school year.”

prohibiting the establishment of any recreational marijuana licensees or any medical marijuana registrants in the city, the city may not impose a local tax under this provision of the legislation.

Although HB 3400 provides that cities may impose a tax on sales by retail licensees, it remains unclear whether a city can tax medical marijuana. In particular, cities should consult their attorney on whether the authority to impose a tax or fee on “the production, processing or sale of marijuana items,” vested solely in the Legislature except as provided in HB 3400, includes the authority to tax medical marijuana.

For those cities that enacted taxes on medical or recreational marijuana prior to the Legislature’s adoption of HB 3400, the status of those taxes remains an open question. Arguably, cities that had “adopt[ed] or enact[ed]” taxes prior to the effective date of HB 3400 are grandfathered in under the law. However, the issue is not free from doubt, and cities that decide to collect on pre-HB 3400 taxes should be prepared to defend their ability to do so against legal challenge. Consequently, cities that plan to continue to collect taxes imposed prior to the passage of HB 3400 should work closely with their city attorney to discuss the implications and risks of that approach.

Ban on Early Sales

Starting October 1, 2015, medical marijuana dispensaries may begin selling limited quantities of recreational marijuana. Cities may adopt an ordinance prohibiting those early sales without referring the ordinance to voters and likely without tax implications. Although a city adopting an ordinance “prohibiting the establishment” of certain marijuana activities is not eligible to receive state marijuana tax revenues, an ordinance prohibiting early sales would merely limit the activities at an existing medical marijuana dispensary. As a result, cities would likely remain eligible to receive state tax revenues.

However, cities likely cannot impose a local tax on early sales. Under HB 3400, cities may not adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items, except as provided in that legislation. HB 3400 further stipulates that cities may refer an ordinance to voters imposing a tax of up to 3 percent on sales by a person that holds a retail license issued by the OLCC. Because early sales of recreational marijuana will be made by medical marijuana dispensaries, and not by a retail licensee, a city likely is preempted from imposing a tax on early sales of recreational marijuana. However, cities interested in imposing a local tax on early sales should consult their city attorney.

Ban on State-Registered and Licensed Activities

Under HB 3400, cities may prohibit within the city the operation of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana processors and medical marijuana dispensaries. HB 3400 is silent on whether a city can ban medical marijuana growers from operating in the city. However, HB 3400 does not indicate that the bill’s process for banning marijuana activities is the exclusive means to do so. Cities considering banning

medical marijuana grow sites should talk to their city attorney about whether they can do so under either home rule, federal preemption or both legal theories.

The method for imposing the ban under HB 3400 will depend on when the city imposes the ban and whether the city is located in a county that voted against Measure 91 by 55 percent or more.

Before December 24, 2015, cities located in counties that voted against Measure 91 by 55 percent or more (Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler Counties) can enact a ban through council adoption of an ordinance prohibiting any of the six activities listed above. After that time, and for cities not located in those counties, the city council may adopt an ordinance banning any of the six activities listed above, but that ordinance must be referred to the voters at a statewide general election, meaning an election in November of an even-numbered year. Medical marijuana dispensaries and medical marijuana processors that have registered with the state by the time their city adopts a prohibition ordinance are not subject to the ban if they have successfully completed a city or county land use application process.

Under either procedure, as soon as the city council adopts the ordinance, it must submit it to the Oregon Health Authority (OHA) for medical bans and the Oregon Liquor Control Commission (OLCC) for recreational bans, and those agencies will stop registering and licensing the banned facilities. In other words, for cities using the referral process, the council's adoption of an ordinance acts as a moratorium on new facilities until the election occurs.

For cities using the referral process, it is also important to note that once the elections official files the referral with the county election office, the ballot measure is certified to the ballot. At that point, the restrictions on public employees engaging in political activity will apply. Consequently, cities should consult the Secretary of State and their city attorney to ensure that public employees are complying with state elections law in their communications about the pending measure.

In determining whether to prohibit any of the marijuana activities registered or licensed by the state, cities may want to consider the tax implications. Cities that enact a prohibition on any marijuana activity likely will not be eligible to receive state marijuana tax revenues or impose a local tax, even if the city bans only certain activities and allows others.

It is also important to note that HB 3400 does not provide an avenue for cities to ban the personal use and growing of marijuana. As a result, cities interested in enacting such a ban should consult with their city attorney to discuss whether the city can do so under either home rule, federal preemption or both legal theories.

Business License Ordinance

Although HB 3400 provides an avenue for cities to ban certain marijuana activities, nothing in the legislation makes that the exclusive means for prohibiting marijuana activities. As a result, some cities may not need to go through the procedures outlined in HB 3400 to ban marijuana

activities because they may already have laws in place that create an effective ban. However, cities relying on other avenues to ban should be prepared to defend their authority to do so.

A number of cities have imposed a ban through a local business license ordinance that provides that it is unlawful for any person to operate a business within the city without a business license, and further provides that the city will not issue a business license to any person operating a business that violates local, state or federal law. Indeed, cities that have a business license ordinance in place should review their existing codes to determine if such wording already exists. Additionally, whether adopting a new business license program or amending an existing one to provide that the city will not issue a business license to any person operating a business that violates local, state or federal law, a city should work with its legal counsel to ensure that its business license ordinance includes an enforcement mechanism to address a situation in which a person is operating a business without a business license.

In addition, cities that decide to enforce a business license ordinance instead of adopting a ban under HB 3400 should consult their city attorney regarding *City of Cave Junction v. State of Oregon* (Josephine County Circuit Court Case #14CV0588; Court of Appeals Case #A158118) and *Providing All Patients Access v. City of Cave Junction* (Josephine County Circuit Court Case #14CV1246, Court of Appeals Case #A160044). At issue in those cases is whether the city of Cave Junction may enforce its business license ordinance, which prohibits issuance of a business license to a business operating in violation of local, state or federal law, to effectively prohibit medical marijuana dispensaries from operating. Two trial courts in Oregon have upheld the city's business license ordinance against challenges that it has been preempted by the OMMA (prior to its amendment by HB 3400). Both of those cases currently are on appeal before the Oregon Court of Appeals.

Development Code

Cities that desire to impose a prohibition on marijuana operations could also include in their development codes a provision stating that the city will not issue a development permit to any person operating a business that violates local, state or federal law. If not already defined, or if defined narrowly, the city will want to amend its code to provide that a development permit includes any permit needed to develop, improve or occupy land including, but not limited to, public works permits, building permits or occupancy permits.

Land Use Code

As noted above, state law places restrictions on where certain marijuana activities can locate, including prohibiting certain processors, dispensaries and retail establishments from locating in residential zones. In addition, under HB 3400, a land use compatibility statement is required as part of the OLCC's licensing process for all recreational licensees. In particular, before issuing a producer, processor, wholesaler or retailer license, the OLCC must request a statement from the city that the requested license is for a location where the proposed use of the land is a permitted or conditional use. If the proposed use is prohibited in the zone, the OLCC may not issue a license. A city has 21 days to act on the OLCC's request, but when that 21 days begins varies.

If the land use is allowed as an outright permitted use, the city has 21 days from receipt of the request; if the land use is a conditional use, the city has 21 days from the final local permit approval. The city's response to the OLCC is not a land use decision. In addition to those state requirements, cities can impose their own more stringent land use requirements and restrictions.

Moreover, cities that desire to prohibit marijuana facilities altogether might also do so through amendments to their land use codes. Before considering this option, cities should work with their legal counsel to first determine if the wording of their zoning codes already prohibits marijuana operations, and if not, to identify the appropriate land use procedures and the amount of time it would take to comply with them. If the wording in a city's zoning codes does not prohibit marijuana operations, the city has different options. One option is to add wording such as "an allowed use is one that does not violate local, state or federal law" to the city's zoning code. Cities that adopt a prohibition that references federal law would then rely on existing mechanisms in their ordinances for addressing zoning violations.⁸

Time, Place and Manner Regulations

HB 3400 provides that local governments may impose reasonable regulations on the time, place and manner of operation of marijuana facilities. The League believes that, under the home rule provisions of the Oregon Constitution, local governments do not need legislative authorization to impose time, place and manner restrictions, and that the Legislature's decision to expressly confirm local authority to impose certain restrictions does not foreclose cities from imposing other restrictions not described in state law.

HB 3400 provides that cities may regulate marijuana facilities by imposing reasonable restrictions on:

- The hours of operation of recreational marijuana retailers and medical marijuana grow sites, processing sites and dispensaries;
- The location of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana grow sites, processing sites and dispensaries, except that a city may not impose more than a 1,000-foot buffer between recreational marijuana retailers;
- The manner of operation of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana processors and dispensaries; and

⁸ Under existing law, the League believes it is clear that a city may enforce civil regulations of general applicability (such as zoning codes, business licenses and the like) through the imposition of civil penalties. Although a city likely cannot directly recriminalize conduct allowed under state criminal law, it is a different legal question whether a city may impose criminal penalties for violating a requirement of general applicability when the conduct at issue is otherwise immune from prosecution under state law (i.e. whether a city may impose criminal penalties for operation of a medical marijuana dispensary in violation of a city's land use code). *Cf. State v. Babson*, 355 Or 383, 326 P3d 559 (2014) (explaining that generally applicable, facially neutral law, such as a rule prohibiting use of public property during certain hours, may be valid even if it burdens expressive conduct otherwise protected under Article I, section 8, of the Oregon Constitution). Consequently, a city should work closely with its city attorney before imposing criminal penalties against a person operating a medical marijuana facility in violation of a local civil code, such as a zoning, business license or development code.

- The public's access to the premises of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana grow sites, processing sites and dispensaries.

The law also provides that time, place and manner regulations imposed on recreational licenses must be consistent with city and county comprehensive plans, zoning ordinances, and public health and safety laws, which would be true of any ordinance imposed by a city.

Although the law does not provide for regulation of the hours of operation for recreational producers, processors or wholesalers, or for regulation of the manner of operation of medical marijuana grow sites, the League believes that cities could regulate those aspects of operation under their home rule authority. However, a city considering regulating those activities should consult with their legal counsel on the risks of litigation and the likelihood of prevailing.

What regulations a city ultimately adopts will depend on community wants and needs, as well as on the rules adopted by the OHA and the OLCC. HB 3400 authorizes, and in some cases requires, those agencies to adopt rules implementing the law, and those rules may address many of the issues concerning local governments. As a result, although cities may want to begin considering the types of regulations that they want to impose, cities should be aware that local needs may change with experience and as new administrative rules go into effect.

Appendix A

Early Sales Opt Out

APPENDIX A

Early Sales Opt Out

As of July 1, 2015, people aged 21 and older may possess certain amounts of recreational marijuana under Oregon law. However, the Oregon Liquor Control Commission, which is the state agency charged with licensing the retail sale of recreational marijuana, does not expect to begin licensing retail stores until sometime in 2016. To address the gap between the date when people can possess recreational marijuana under Oregon law and the date when people will be able to purchase recreational marijuana from a retail store, the Legislature enacted Senate Bill 460, which allows for limited sales of recreational marijuana from medical marijuana dispensaries starting October 1, 2015. Under SB 460, cities can adopt an ordinance prohibiting those limited recreational sales. Although not required by the statute, the League recommends the city submit its early sales opt out ordinance to Oregon Health Authority so that they may aid in any enforcement of the ban.

AN ORDINANCE OF THE CITY OF {NAME} DECLARING A BAN ON THE SALE OF RECREATIONAL MARIJUANA BY MEDICAL MARIJUANA DISPENSARIES, AND DECLARING AN EMERGENCY

Whereas, the Oregon Medical Marijuana Act created a system for the transfer of medical marijuana between growers and patients and caregivers through medical marijuana dispensaries;

Whereas, the voters adopted Measure 91 in November 2014, which provides criminal immunity for people aged 21 or older who possess certain amounts of marijuana and directs the Oregon Liquor Control Commission to license the retail sale of marijuana;

Whereas, the Oregon Liquor Control Commission has not yet licensed the retail sale of recreational marijuana;

Whereas, the Legislature enacted Senate Bill 460 (2015) to allow medical marijuana dispensaries to sell limited marijuana retail product starting October 1, 2015;

Whereas, Senate Bill 460 (2015) provides that a city may adopt ordinances prohibiting the sale of limited marijuana retail product from medical marijuana dispensaries;

Whereas, the City Council wants to prohibit the sale of marijuana retail products from medical marijuana dispensaries in the city to protect and benefit the public health, safety and welfare of existing and future residents and businesses in the city;

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF {NAME} ORDAINS AS FOLLOWS:

BAN DECLARED. The City of {Name} hereby prohibits the sale of limited marijuana retail product in any area subject to the jurisdiction of City of {Name} as described in section 2 of Senate Bill 460 (2015).

DURATION OF BAN. The ban imposed by this ordinance will be effective until December 31, 2016, or until the Legislature ends sales of limited marijuana retail product by medical marijuana dispensaries, whichever comes later.

ENFORCEMENT. {Cities need to think about how to enforce a ban, with mechanisms such as revocation or suspension of a business license, revocation of a marijuana activities registration, injunction, or civil penalty. Cities that consider imposing a criminal penalty should work closely with their city attorney to assess their ability to do so under SB 460 and HB 3400.}

EMERGENCY. 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 on {date/passage}.

This document is not a substitute for legal advice. City councils considering prohibiting or taxing any marijuana facilities should not rely solely on this sample. Any city council considering any form of regulation of marijuana should consult with its city attorney regarding the advantages, disadvantages, risks and limitations of any given approach.

Legal counsel can also assist a city in preparing an ordinance that is consistent with local procedures, existing ordinances and a city's charter, and advise on what process is needed to adopt the ordinance.

The sample provided is intended to be a starting point, not an ending point, for any jurisdiction considering prohibiting or taxing marijuana.

Appendix B

Council Opt Out

APPENDIX B

Council Opt Out

Note: This option is available only for certain cities and only until December 24, 2015.

Under HB 3400, cities may prohibit within the city the establishment of recreational marijuana producers, processors, wholesalers and retailers, as well as medical marijuana processors and medical marijuana dispensaries. Medical marijuana dispensaries are grandfathered and are able to operate despite a ban if they: (1) have applied to be registered by July 1, 2015 or were registered prior to the date on which the ordinance is adopted, and (2) successfully completed the land use application process (if applicable). Medical marijuana processors are grandfathered and are able to operate despite a ban if they: (1) were registered under ORS 475.300 to 475.346 and were processing usable marijuana on or before July 1, 2015 or (2) are registered under section 85 of HB 3400 prior to the date on which the ordinance is adopted by the governing body, and (3) have successfully completed a local land use application process (if applicable).

HB 3400 is silent on whether a city can ban medical marijuana growers from operating, consequently, this model does not address the banning of medical marijuana growers. Cities interested in banning medical marijuana growers should consult with their city attorney about whether they could do so under the city's home rule authority and/or federal legal theories.

Cities located in counties that voted against Measure 91 by 55 percent or more (Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler Counties) can enact a ban through council adoption of an ordinance prohibiting any of the six activities listed above. However, the city council must do so prior to December 24, 2015. After that date a ban can only be effectuated using the referral process set out in Appendix C.

After adopting a prohibition ordinance, the council must submit the ordinance to the Oregon Health Authority (if banning medical marijuana businesses) and/or the Oregon Liquor Control Commission (if banning recreational marijuana businesses) and those agencies will then stop registering and licensing the prohibited businesses. Each agency has a form for submitting the ordinances.

Cities that adopt an ordinance prohibiting the establishment of medical or recreational marijuana businesses are not eligible to receive a distribution of state marijuana tax revenues or to impose a local tax under section 34a of HB 3400.

AN ORDINANCE OF THE CITY OF {NAME} DECLARING A BAN ON {MEDICAL MARIJUANA PROCESSING SITES, MEDICAL MARIJUANA DISPENSARIES, RECREATIONAL MARIJUANA PRODUCERS, RECREATIONAL MARIJUANA PROCESSORS, RECREATIONAL MARIJUANA WHOLESALERS, AND/OR RECREATIONAL MARIJUANA RETAILERS} AND DECLARING AN EMERGENCY

Whereas, the Oregon Medical Marijuana Act, as amended by House Bill 3400 (2015) provides that the Oregon Health Authority will register medical marijuana processing sites and medical marijuana dispensaries;

Whereas, Measure 91, which the voters adopted in November 2014, directs the Oregon Liquor Control Commission to license the production, processing, wholesale, and retail sale of recreational marijuana;

Whereas, section 133 of HB 3400 provides that a qualifying city may prohibit, within its jurisdiction, the establishment of certain state-registered and state-licensed marijuana businesses by adopting an ordinance within 180 days of the effective date of HB 3400;⁹

Whereas, {City} is a “qualifying city” as defined in section 133 of House Bill 3400 (2015) because {City} is located in a county in which not less than 55 percent of the votes cast in the county on Measure 91 in November 2014 were against the measure;

Whereas, the City Council wants to prohibit the operation of {type of marijuana activity} in the city to protect and benefit the public health, safety and welfare of existing and future residents and businesses;

Whereas, the City Council believes that the public benefits from prohibiting the operation of {type of marijuana activity} in the city outweigh the benefit the city would receive from state or local tax revenues;

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF {NAME} ORDAINS AS FOLLOWS:

DEFINITIONS.

Marijuana means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

Marijuana processing site means an entity registered with the Oregon Health Authority to process marijuana.

Marijuana processor means an entity licensed by the Oregon Liquor Control Commission to process marijuana.

Marijuana producer means an entity licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.

Marijuana retailer means an entity licensed by the Oregon Liquor Control Commission to sell marijuana items to a consumer in this state.

Marijuana wholesaler means an entity licensed by the Oregon Liquor Control Commission to purchase items in this state for resale to a person other than a consumer.

⁹ Those counties include the following: Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa and Wheeler.

Medical marijuana dispensary means an entity registered with the Oregon Health Authority to transfer marijuana.

BAN DECLARED. As provided in section 133 of House Bill 3400 (2015), the City of {Name} hereby prohibits the establishment of the following in the area subject to the jurisdiction of the city {select desired options from the list below}:

- (a) Marijuana processing sites;
- (b) Medical marijuana dispensaries;
- (c) Marijuana producers;
- (d) Marijuana processors;
- (e) Marijuana wholesalers;
- (f) Marijuana retailers.

EXCEPTION. The prohibition set out in this ordinance does not apply to a marijuana processing site or medical marijuana dispensary that meets the conditions set out in subsections 6 or 7 of section 133, section 136, or section 137 of House Bill 3400 (2015).

EMERGENCY. 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 on {date/passage}.

This document is not a substitute for legal advice. City councils considering prohibiting or taxing any marijuana facilities should not rely solely on this sample. Any city council considering any form of regulation of marijuana should consult with its city attorney regarding the advantages, disadvantages, risks and limitations of any given approach.

Legal counsel can also assist a city in preparing an ordinance that is consistent with local procedures, existing ordinances and a city's charter, and advise on what process is needed to adopt the ordinance.

The sample provided is intended to be a starting point, not an ending point, for any jurisdiction considering prohibiting or taxing marijuana.

Appendix C

Opt Out by Voter Referral

APPENDIX C

Opt Out by Voter Referral

Cities that are not in a county that voted no on Measure 91 by 55 percent or more, or cities that desire to ban certain marijuana activities after December 24, 2015, may do so only by referral at a statewide general election, meaning an election in November of an even-numbered year. Cities should consult the Secretary of State's referral manual and work with the city recorder or similar official to determine the procedures necessary to refer an ordinance to the voters.

Once adopted, the city must submit the ordinance to the Oregon Health Authority (if banning medical marijuana businesses) and/or the Oregon Liquor Control Commission (if banning recreational marijuana businesses), and those agencies will then stop registering and licensing the prohibited businesses until the next statewide general election. In other words, for cities using the referral process, the council's adoption of an ordinance acts as a moratorium on new facilities until the election. Each agency has a form for submitting the ordinances.

Medical marijuana dispensaries are grandfathered and are able to operate despite a ban if they: (1) have applied to be registered by July 1, 2015 or were registered prior to the date on which the ordinance is adopted by the city council, and (2) successfully completed the land use application process (if applicable). Medical marijuana processors are grandfathered and are able to operate despite a ban if they: (1) were registered under ORS 475.300 to 475.346 and were processing usable marijuana on or before July 1, 2015 or (2) are registered under section 85 of HB 3400 prior to the date on which the ordinance is adopted by the governing body, and (3) have successfully completed a local land use application process (if applicable).

Cities that adopt an ordinance prohibiting the establishment of medical or recreational marijuana businesses are not eligible to receive a distribution of state marijuana tax revenues or to impose a local tax under section 34a of HB 3400.

In addition, it is important to note that once the elections official files the referral with the county election office, the ballot measure is certified to the ballot. At that point, the restrictions on public employees engaging in political activity will apply. Consequently, cities should consult the Secretary of State's manual *Restrictions on Political Campaigning by Public Employees* and their city attorney to ensure that public employees are complying with state elections law in their communications about the pending measure.

AN ORDINANCE OF THE CITY OF {NAME} DECLARING A BAN ON {MEDICAL MARIJUANA PROCESSING SITES, MEDICAL MARIJUANA DISPENSARIES, RECREATIONAL MARIJUANA PRODUCERS, RECREATIONAL MARIJUANA PROCESSORS, RECREATIONAL MARIJUANA WHOLESALERS, AND/OR RECREATIONAL MARIJUANA RETAILERS}; REFERRING ORDINANCE; AND DECLARING AN EMERGENCY

Whereas, the Oregon Medical Marijuana Act, as amended by House Bill 3400 (2015) provides that the Oregon Health Authority will register medical marijuana processing sites and medical marijuana dispensaries;

Whereas, Measure 91, which the voters adopted in November 2014, directs the Oregon Liquor Control Commission to license the production, processing, wholesale, and retail sale of recreational marijuana;

Whereas, section 134 of HB 3400 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city;

Whereas, the city council wants to refer the question of whether to prohibit {recreational marijuana producers, processors, wholesalers, and/or retailers, as well as medical marijuana processors and/or medical marijuana dispensaries} to the voters of {City};

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF {NAME} ORDAINS AS FOLLOWS:

DEFINITIONS.

Marijuana means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

Marijuana processing site means an entity registered with the Oregon Health Authority to process marijuana.

Marijuana processor means an entity licensed by the Oregon Liquor Control Commission to process marijuana.

Marijuana producer means an entity licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.

Marijuana retailer means an entity licensed by the Oregon Liquor Control Commission to sell marijuana items to a consumer in this state.

Marijuana wholesaler means an entity licensed by the Oregon Liquor Control Commission to purchase items in this state for resale to a person other than a consumer.

Medical marijuana dispensary means an entity registered with the Oregon Health Authority to transfer marijuana.

BAN DECLARED. As described in section 134 of House Bill 3400 (2015), the City of {Name} hereby prohibits the establishment {and operation}¹⁰ of the following in the area subject to the jurisdiction of the city {select desired options from the list below}:

- (a) Marijuana processing sites;

¹⁰ Include this wording if (1) there are existing recreational licensees operating within the city and (2) the city does not wish to grandfather in those activities.

- (b) Medical marijuana dispensaries;
- (c) Marijuana producers;
- (d) Marijuana processors;
- (e) Marijuana wholesalers;
- (f) Marijuana retailers.

EXCEPTION. The prohibition set out in this ordinance does not apply to a marijuana processing site or medical marijuana dispensary that meets the conditions set out in subsections 6 or 7 of section 134, section 136, or section 137 of House Bill 3400 (2015).

REFERRAL. This ordinance shall be referred to the electors of the city of {name} at the next statewide general election on {date – Tuesday, November 8, 2016 is the next statewide general election}.

EMERGENCY. 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 on {date/passage}.

A RESOLUTION APPROVING REFERAL TO THE ELECTORS OF THE CITY OF {NAME}
THE QUESTION OF BANNING {MEDICAL MARIJUANA PROCESSING SITES,
MEDICAL MARIJUANA DISPENSARIES, RECREATIONAL MARIJUANA PRODUCERS,
RECREATIONAL MARIJUANA PROCESSORS, RECREATIONAL MARIJUANA
WHOLESALEERS, AND/OR RECREATIONAL MARIJUANA RETAILERS} WITHIN THE
CITY¹¹

Whereas, section 134 of HB 3400 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city;

Whereas, the CITY OF {NAME} city council adopted Ordinance {number}, which prohibits the establishment of {list of marijuana activities} in the area subject to the jurisdiction of the city;

NOW, THEREFORE, THE CITY OF {NAME} RESOLVES AS FOLLOWS:

MEASURE. A measure election is hereby called for the purpose of submitting to the electors of the CITY OF {NAME} a measure prohibiting the establishment of certain marijuana activities in the area subject to the jurisdiction of the city, a copy of which is attached hereto as “Exhibit 1,” and incorporated herein by reference.¹²

ELECTION CONDUCTED BY MAIL. The measure election shall be held in the CITY OF {NAME} on {date – November 8, 2016 for the next general election}. As required by ORS

¹¹ Some cities approve the ballot title, question, summary, and explanatory statement by adopting an ordinance, rather than by adopting a separate resolution.

¹² Exhibit 1 should include the question and summary.

254.465, the measure election shall be conducted by mail by the County Clerk of {county name} County, according to the procedures adopted by the Oregon Secretary of State.

DELEGATION. The CITY OF {NAME} authorizes the {City Manager, City Administrator, City Recorder, or other appropriate city official} or the {City Manager, City Administrator, City Recorder, or other appropriate city official} designee, to act on behalf of the city and to take such further action as is necessary to carry out the intent and purposes set forth herein, in compliance with the applicable provisions of law.

PREPARATION OF BALLOT TITLE. The City Attorney is hereby directed to prepare the ballot title for the measure, and deposit the ballot title with the {city elections officer} within the times set forth by law.¹³

NOTICE OF BALLOT TITLE AND RIGHT TO APPEAL. Upon receiving the ballot title for this measure, the {city elections officer} shall publish in the next available edition of a newspaper of general circulation in the city a notice of receipt of the ballot title, including notice that an elector may file a petition for review of the ballot title.

EXPLANATORY STATEMENT. The explanatory statement for the measure, which is attached hereto as “Exhibit 2,” and incorporated herein by reference, is hereby approved.

FILING WITH COUNTY ELECTIONS OFFICE. The {city elections officer} shall deliver the Notice of Measure Election to the county clerk for {name of county} County for inclusion on the ballot for the {date} election.¹⁴

EFFECTIVE DATE. This resolution is effective upon adoption.

As noted, the ballot title, question, summary, and explanatory statement may be approved by the council through ordinance or resolution.

BALLOT TITLE

A caption which reasonably identifies the subject of the measure
10 word limit under ORS 250.035(1)(a)

Prohibits certain marijuana registrants {and/or} licensees in {city}

QUESTION

A question which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure

¹³ Alternatively, the council may prepare the ballot title and attach it to the resolution for approval. In that case, this section might say, “The ballot title for the measure set forth as Exhibit {number} to this resolution is hereby adopted.” A city’s local rules may dictate who will prepare the ballot title.

¹⁴ The Notice of Measure Election is a form provided by the Oregon Secretary of State where cities provide the ballot title, question, summary, and explanatory statement. The form can be found on the Secretary of State’s website at www.sos.oregon.gov.

20 word limit under ORS 250.035(1)(b)

Shall {city} prohibit {medical marijuana processors, medical marijuana dispensaries, recreational marijuana producers, processors, wholesalers, and retailers} in {city}?

SUMMARY

A concise and impartial statement summarizing the measure and its major effect

175 word limit under ORS 250.035(1)(c)

**Note: This summary may need to be modified depending on which activities a city proposes to ban and whether it will grandfather in existing retail activities. By law, certain medical marijuana businesses can continue operating.*

State law allows operation of registered medical marijuana processors, medical marijuana dispensaries and licensed recreational marijuana producers, processors, wholesalers, and retailers. State law provides that a city council may adopt an ordinance to be referred to the voters to prohibit the establishment of any of those registered or licensed activities.

Approval of this measure would prohibit the establishment {and operation}¹⁵ of {medical marijuana processors, medical marijuana dispensaries, recreational marijuana producers, processors, wholesalers, and retailers} within the area subject to the jurisdiction of the city {provided that state law allows for continued operation of medical marijuana processors and medical marijuana dispensaries already registered – or in some cases, that have applied to be registered – and that have successfully completed a local land use application process}.

If this measure is approved, the city will be ineligible to receive distributions of state marijuana tax revenues and will be unable to impose a local tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated.

EXPLANATORY STATEMENT

An impartial, simple and understandable statement explaining the measure and its effect for use in the county voters' pamphlet

500 word limit under ORS 251.345 and OAR 165-022-0040(3)

Approval of this measure would prohibit the establishment {and operation}¹⁶ of certain marijuana activities within the city.

The Oregon Medical Marijuana Act, as amended by the Legislature in 2015, provides that the Oregon Health Authority will register medical marijuana processors and medical marijuana

¹⁵ Include this wording if (1) there are existing recreational licensees operating within the city and (2) the city does not wish to grandfather in those activities.

¹⁶ Include this wording if (1) there are existing recreational licensees operating within the city and (2) the city does not wish to grandfather in those activities.

dispensaries. Medical marijuana processors compound or convert marijuana into concentrates, extracts, edible products, and other products intended for human consumption and use. Medical marijuana dispensaries facilitate the transfer of marijuana and marijuana products between patients, caregivers, processors, and growers. Measure 91, approved by Oregon voters in 2014 and by the Legislature in 2015, provides that the Oregon Liquor Control Commission will license recreational marijuana producers (those who manufacture, plant, cultivate, grow or harvest marijuana), processors, wholesalers, and retailers.

A city council may adopt an ordinance prohibiting the establishment of any of those entities within the city, but the council must refer the ordinance to the voters at a statewide general election. The CITY OF {NAME} city council has adopted an ordinance prohibiting the establishment of {list of marijuana activities to be banned} within the city and, as a result, has referred this measure to the voters.

If approved, this measure would prohibit {medical marijuana processors, medical marijuana dispensaries, and/or recreational marijuana producers, processors, wholesalers, and/or retailers} within the city. Medical marijuana processors and medical marijuana dispensaries that were registered with the state before the city council adopted the ordinance, and medical marijuana dispensaries that had applied to be registered on or before July 1, 2015, can continue operating in the city even if this measure is approved, if those entities have successfully completed a local land use application process.

Approval of this measure has revenue impacts. Currently, ten percent of state marijuana tax revenues will be distributed to cities to assist local law enforcement in performing their duties under Measure 91. If approved, this measure would make the city ineligible to receive distributions of state marijuana tax revenues.

Currently, under the 2015 legislation, a city may impose up to a three percent tax on the sale of marijuana items by a marijuana retailer in the city. However, a city that adopts an ordinance prohibiting the establishment of medical marijuana processors, medical marijuana dispensaries, or recreational marijuana producers, processors, wholesalers, or retailers may not impose a local tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. Approval of this measure would therefore prevent a city from imposing a local tax on those activities.

This document is not a substitute for legal advice. City councils considering prohibiting or taxing any marijuana facilities should not rely solely on this sample. Any city council considering any form of regulation of marijuana should consult with its city attorney regarding the advantages, disadvantages, risks and limitations of any given approach.

Legal counsel can also assist a city in preparing an ordinance that is consistent with local procedures, existing ordinances and a city's charter, and advise on what process is needed to adopt the ordinance. The sample provided is intended to be a starting point, not an ending point, for any jurisdiction considering prohibiting or taxing marijuana.

Appendix D

Local Tax by Voter Referral

APPENDIX D

Local Tax by Voter Referral

Under HB 3400, cities may impose up to a 3 percent tax on sales of marijuana items made by those with recreational retail licenses by referring an ordinance to the voters at a statewide general election, meaning an election in November of an even-numbered year.¹⁷

However, sections 133 and 134 of HB 3400, which provide a mechanism for prohibiting the establishment of certain marijuana businesses, state that a city that adopts a prohibition under those sections may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. As a result, if a city refers a local tax ordinance to the voters at the same election that it refers a prohibition ordinance to the voters, the city will want to consult its attorney regarding the effect of those two ordinances. The sample below includes wording for cities that put both ordinances on that same ballot. However, a city planning to refer both measures to the ballot should work closely with its city attorney on preparing those ordinances and referral documents.

As with any revenue raising measure, it's important that the budget committee approve any proposed taxes as part of its approval of the budget. See the Department of Revenue "Tax Election Ballot Measures" manual for more information.

In addition, it is important to note that once the elections official files the referral with the county election office, the ballot measure is certified to the ballot. At that point, the restrictions on public employees engaging in political activity will apply. Consequently, cities should consult the Secretary of State's manual *Restrictions on Political Campaigning by Public Employees* and their city attorney to ensure that public employees are complying with state elections law in their communications about the pending measure.

AN ORDINANCE OF THE CITY OF {NAME} IMPOSING A {UP TO THREE} PERCENT TAX {OR FEE} ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING ORDINANCE¹⁸

Whereas, section 34a of House Bill 3400 (2015) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

¹⁷ Cities that imposed marijuana taxes prior to the effective date of HB 3400 (2015) should talk to their city attorney about the status of those taxes.

¹⁸ No emergency clause is included in this ordinance because a city may not include an emergency clause in an ordinance regarding taxation. See *Advance Resorts v. City of Wheeler*, 141 Or App 166, 178, 917 P2d 61, *rev den*, 324 Or 322 (1996) (holding that a city may not include an emergency clause in an ordinance regarding taxation).

Whereas, the city council wants to impose a tax {or fee} on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF {NAME} ORDAINS AS FOLLOWS:

DEFINITIONS.

Marijuana item has the meaning given that term in Oregon Laws 2015, chapter 614, section 1.

Marijuana retailer means a person who sells marijuana items to a consumer in this state.

Retail sale price means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

TAX IMPOSED. As described in section 34a of House Bill 3400 (2015), the City of {Name} hereby imposes a tax {or fee} of {up to three} percent on the retail sale price of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city.

COLLECTION. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.¹⁹

REFERRAL. This ordinance shall be referred to the electors of {city} at the next statewide general election on {date – Tuesday, November 8, 2016 is the next statewide general election}.

A RESOLUTION APPROVING REFERAL TO THE ELECTORS OF THE CITY OF {NAME} THE QUESTION OF IMPOSING A {UP TO THREE} PERCENT TAX {OR FEE} ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER WITHIN THE CITY²⁰

Whereas, section 34a of House Bill 3400 (2015) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

Whereas, the city of {name} city council adopted Ordinance {number}, which imposes a tax of {up to three} percent on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

NOW, THEREFORE, THE CITY OF {NAME} RESOLVES AS FOLLOWS:

MEASURE. A measure election is hereby called for the purpose of submitting to the electors of the city of {name} a measure imposing a {up to three} percent tax on the sale of marijuana items

¹⁹ Cities may want to include information about where, how, and when the tax must be remitted.

²⁰ Some cities approve the ballot title, question, summary, and explanatory statement by adopting an ordinance, rather than by adopting a separate resolution.

by a marijuana retailer in the area subject to the jurisdiction of the city, a copy of which is attached hereto as “Exhibit 1,” and incorporated herein by reference.²¹

ELECTION CONDUCTED BY MAIL. The measure election shall be held in the city of {name} on {date – November 8, 2016 for the next general election}. As required by ORS 254.465, the measure election shall be conducted by mail by the County Clerk of {county name} County, according to the procedures adopted by the Oregon Secretary of State.

DELEGATION. The city of {name} authorizes the City Manager, or the City Manager’s designee, to act on behalf of the city and to take such further action as is necessary to carry out the intent and purposes set forth herein, in compliance with the applicable provisions of law.

PREPARATION OF BALLOT TITLE. The City Attorney is hereby directed to prepare the ballot title for the measure, and deposit the ballot title with the {city elections officer} within the times set forth by law.²²

NOTICE OF BALLOT TITLE AND RIGHT TO APPEAL. Upon receiving the ballot title for this measure, the {city elections officer} shall publish in the next available edition of a newspaper of general circulation in the city a notice of receipt of the ballot title, including notice that an elector may file a petition for review of the ballot title.

EXPLANATORY STATEMENT. The explanatory statement for the measure, which is attached hereto as “Exhibit 2,” and incorporated herein by reference, is hereby approved.

FILING WITH COUNTY ELECTIONS OFFICE. The {city elections officer} shall deliver the Notice of Measure Election to the county clerk for {name of county} County for inclusion on the ballot for the {date} election.²³

EFFECTIVE DATE. This resolution is effective upon adoption.

BALLOT TITLE

A caption which reasonably identifies the subject of the measure
10 word limit under ORS 250.035(1)(a)

Imposes city tax on marijuana retailer’s sale of marijuana items

²¹ Exhibit 1 should include the question and summary.

²² Alternatively, the council may prepare the ballot title and attach it to the resolution for approval. In that case, this section might say, “The ballot title for the measure set forth as Exhibit {number} to this resolution is hereby adopted.” A city’s local rules may dictate who will prepare the ballot title.

²³ The Notice of Measure Election is a form provided by the Oregon Secretary of State where cities provide the ballot title, question, summary, and explanatory statement. The form can be found on the Secretary of State’s website at www.sos.oregon.gov.

QUESTION

A question which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure

20 word limit under ORS 250.035(1)(b)

Shall City of {name} impose a {up to three percent} tax on the sale in the City of {city} of marijuana items by a marijuana retailer?

SUMMARY

A concise and impartial statement summarizing the measure and its major effect

175 word limit under ORS 250.035(1)(c)

Under state law, a city council may adopt an ordinance to be referred to the voters of the city imposing up to a three percent tax or fee on the sale of marijuana items in the city by a licensed marijuana retailer.

Approval of this measure would impose a {up to three} percent tax on the sale of marijuana items in the city by a licensed marijuana retailer. The tax would be collected at the point of sale and remitted by the marijuana retailer.

{Under state law, a city that adopts an ordinance that prohibits the establishment in the area subject to the jurisdiction of the city of a medical marijuana processor, medical marijuana dispensary, or recreational marijuana producer, processor, wholesaler, or retailer may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. This measure would become operative only if the measure proposing to prohibit the establishment of any of those marijuana entities does not pass by a majority of votes.}²⁴

EXPLANATORY STATEMENT

An impartial, simple and understandable statement explaining the measure and its effect for use in the county voters' pamphlet

500 word limit under ORS 251.345 and OAR 165-022-0040(3)

Approval of this measure would impose a {up to three} percent tax on the sale of marijuana items by a marijuana retailer within the city. If approved, the revenues from this tax are estimated to be \$_____. There are no restrictions on how the city may use the revenues generated by this tax. {However, this measure will become operative only if the ballot measure prohibiting the establishment of certain marijuana registrants and licensees fails.}

²⁴ Cities that desire to provide voters with the most options may wish to put both a measure banning certain activities and a tax measure before the voters at the same time. Cities that elect to do so should include this wording explaining the effect of the vote.

Under Measure 91, adopted by Oregon voters in November 2014 and amended by the Legislature in 2015, the Oregon Liquor Control Commission must license the retail sale of recreational marijuana. The 2015 Legislation provides that a city council may adopt an ordinance imposing up to a three percent tax on the sale of marijuana items (which include marijuana concentrates, extracts, edibles, and other products intended for human consumption and use) by retail licensees in the city, but the council must refer that ordinance to the voters at a statewide general election. The City of {name} city council has adopted an ordinance imposing a {up to three} percent tax on the sale of marijuana items by a retail licensee in the city, and, as a result, has referred this measure to the voters.

{However, this measure will become operative only if the ballot measure prohibiting the establishment of certain marijuana registrants and licensees fails. Under state law, a city that adopts an ordinance that prohibits the establishment in the area subject to the jurisdiction of the city of a medical marijuana processor, medical marijuana dispensary, or recreational marijuana producer, processor, wholesaler, or retailer may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. As a result, if the voters pass a prohibition ordinance, this tax measure will not become operative, even if it also receives a majority of votes.}

This document is not a substitute for legal advice. City councils considering prohibiting or taxing any marijuana facilities should not rely solely on this sample. Any city council considering any form of regulation of marijuana should consult with its city attorney regarding the advantages, disadvantages, risks and limitations of any given approach.

Legal counsel can also assist a city in preparing an ordinance that is consistent with local procedures, existing ordinances and a city's charter, and advise on what process is needed to adopt the ordinance.

The sample provided is intended to be a starting point, not an ending point, for any jurisdiction considering prohibiting or taxing marijuana.

AGENDA
SPECIAL MEETING
CITY OF NORTH PLAINS, CITY COUNCIL MEETING
North Plains City Hall
31360 NW Commercial Street
Wednesday, October 29, 2014 – 6:00 P.M.

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL**

4. **ORDINANCES:**

FIRST READING:

A. Introduction and first reading of Ordinance No. 423— An Ordinance of the City Council of the City of North Plains, Oregon, Establishing a Tax on the Sale of Marijuana and Marijuana-Infused Products in the City of North Plains and Adding a New North Plains Municipal Code Subchapter 2.30.

SECOND READING:

None Scheduled

5. **ADJOURNMENT:**

North Plains City Council meetings are accessible for disabled individuals. The City will also endeavor to provide services for persons with impaired hearing or vision and other services, if requested, at least 48 hours prior to the meeting. To obtain services, please call City Hall at (503) 647-5555

The following City Council Meetings are scheduled to be held at the North Plains Senior Center, 31450 NW Commercial Street, North Plains, Oregon.

The meetings will be held on the following dates at 7:00 p.m.:

Monday, November 3, 2014 Monday, November 17, 2014 Monday, December 1, 2014



CITY OF NORTH PLAINS

31360 NW Commercial Street, North Plains, Oregon 97133

Date: October 29, 2014
To: Mayor and City Council
From: City Manager Martha DeBry
Subject: Marijuana Tax

Request: Council review and consider an ordinance for a marijuana tax.

Fiscal Impact: Many agencies in Oregon have adopted taxes on marijuana sold at legal dispensaries (A list of agencies is included in the packet.) The thought is that a tax enacted prior to the November election will not be subject to Proposition 91, which specifically prohibit taxes on marijuana sales.

Some agencies in Oregon has not pursued a tax. In part if approved by voters Proposition 91 will be a mandate not to tax marijuana. There are also concerns that it is unclear what taxing authority a city can exercise over marijuana which remains illegal under federal law.

A copy of the ordinance from Hillsboro has been modified for Council's consideration if it wishes to pursue a tax. Since taxes cannot be approved with an emergency ordinance, it will be necessary to schedule the second reading prior to the November 4 election. A Council meeting is scheduled for November 3. A copy of the Hillsboro staff report is also included in Council's packet for information.

Fiscal Impact: There is no immediate fiscal impact associated with this ordinance, as there are no marijuana dispensaries in the community. Should a dispensary be located here in the future it would be subject to the tax if adopted.

Environmental Issues: None

Recommendation: Council determine if it would like to impose a marijuana tax and Council should move to read Ordinance No. 423 by title only for the first time.

Recreational Marijuana Taxation Comparison for Oregon Cities

City	Percentage	Notes
Ashland	20%	
Central Point	10%	option to change to 25%
Coquille	10%	
Dundee	10%	
Fairview	40%	
Falls City	10%	
Forest Grove	10%	
Gresham	TBD	
Happy Valley	10%	
Hillsboro	10%	
Independence	10%	
Keizer	10%	
La Grande	25%	
Medford	18%	
Milwaukie	10%	
Nehalem	10%	
Newberg	10%	
North Bend	TBD	
Oakridge	10%	
Oregon City	10%	
Portland	10%	
Redmond	15%	
Roseburg	10%	
Sandy	20%	
Scappoose	20%	
Shady Cove	10%	
Sherwood	10%	
Springfield	TBD	
St Helens	20%	
Tigard	10%	
Troutdale	10%	
Wilsonville	10%	

Red - Ordinance has not yet been formally adopted but is expected to.



MEMORANDUM

To: Mayor and City Council

From: Andrew Bartlett, Management Analyst, City Manager's Office

Date: September 4, 2014

Subject: Ordinance Establishing Tax on Marijuana and Marijuana Infused Products

Requested City Council Action:

Staff requests City Council review and consideration of an ordinance which would impose a gross receipts tax on the retail sale medical marijuana and recreational marijuana (if legalized by voters in November). The ordinance proposes a gross receipts tax rate of 0% on the sale of medical marijuana and 10% on the sale of recreational marijuana.

Background:

In 1999, Oregon voters passed an initiative legalizing medical marijuana. The Oregon Medical Marijuana Program allows registered cardholders to legally consume marijuana for medical purposes. The law originally allowed cardholders to grow their own marijuana or obtain it from other registered growers. To make medical marijuana available to cardholders a number of medical marijuana dispensaries have opened across the state, in recent years.

To address some of the concerns about the dispensaries, the 2013 Oregon Legislature passed HB 3460 which established uniform registration and licensing procedures for the dispensaries. Additionally in 2014, the Oregon Legislature passed SB 1531 which authorized local governments to enact measures related to medical dispensaries regulating: reasonable time, place, and manner regulations.

In 2012, Washington and Colorado voters legalized the recreational use of marijuana. In Oregon, Measure 91 which allows for the legal use of marijuana will be on the November 4, 2014 ballot.

Currently, no law in Oregon prohibits a local government from taxing marijuana. There are a few cities in Oregon that have passed taxes on the sale of marijuana. The two that staff looked at and borrowed language from are Ashland and Gold Hill. The ordinance presented to Council follows Ashland's model by placing a gross receipts tax on the retail sale of marijuana. As

mentioned above, the rate of the gross receipts tax would be 0% on the sale of medical marijuana and 10% in the sale of recreational marijuana (if legalized).

It is important to note, that as stated above there is nothing in Oregon law that prohibits a City from taxing marijuana, but Measure 91 does contain language that would prohibit local governments from taxing marijuana if the measure passes. The initiative contains the following language:

SECTION 42. State has exclusive right to tax marijuana. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.

At this time it is not legally clear whether such a tax would be preempted by the state measure that prohibits a local government from taxing marijuana. The initiative's language can be alternatively read to mean that no local government can tax marijuana "after" the measure's effective date (so a grandfathering in) or that no local government can tax marijuana "at any time" following the effective date. Therefore, if the city does impose a tax, this issue will most likely get litigated if the state does not clarify the issue.

Because Measure 91's language could allow a local tax on marijuana to be grandfathered in staff has been asked to present Council with the option to adopt an ordinance that would establish a gross receipts tax on the sale of marijuana.

Cost:

Taxing the sale of marijuana (if legalized) would be a new revenue source for the City of Hillsboro. At this time it is unknown how much revenue the City could receive from a tax on the sale of marijuana products given that there are currently no retail outlets of marijuana in the City.

Additionally, there could be costs associated with the collection and auditing of the tax on marijuana products. These costs are also unknown at this time but Staff anticipates that any costs related to the collection of a tax would be covered by the tax itself.

Recommendation:

Due to the upcoming election which could potentially allow for the legalization of recreational marijuana, staff recommends City Council consideration of an ordinance which would impose a gross receipts tax on the retail sale of medical marijuana and recreational marijuana (if legalized by voters in November). The ordinance proposes a gross receipts tax rate of 0% on the sale of medical marijuana and 10% on the sale of recreational marijuana.



OREGON JUDICIAL DEPARTMENT
Josephine County Court

October 16, 2014

FILED OCT 16 2014
JOSEPHINE COUNTY COURTS
BY _____

Mr. Ryan Kirchoff
Attorney at Law
130 NW D Street
Grants Pass, OR 97526

Mr. Rob Bovett
Attorney at Law
Association of Oregon Counties
1201 Court Street NE STE 300
Salem, OR 97301

Mr. Pat Kelly
Attorney at Law
717 NW 5th Street
Grants Pass, OR 97526

Mr. Sean O'Day
Attorney at Law
League of Oregon Cities
1201 Court St NE STE 200
Salem, OR 97301

Ms. Carla Scott
Deputy Attorney General
Oregon Dept. of Justice
1515 SW 5th Ave
Portland, OR 97201

RE: City of Cave Junction vs. State of Oregon; Josephine County Case No. 14CV0588

Dear Counsel:

What follows is the Court's letter opinion with respect to the reciprocal Motions for Summary Judgment pending in this case.

The benchmark case in the area of local preemption is La Grande/Astoria vs. PERB, 281 Or 137, wherein the Court wrote: "...as we have noted, local government authority may be preempted in either of two ways: 1) it may be preempted expressly, 2) or it may be preempted implicitly by virtue of the fact that it cannot operate concurrently with state or federal law".

The Court will address each type of preemption in order:

I. Express preemption

As Intervener's note in their memorandum, there are many Oregon laws that contain language of express preemption. Another example is ORS 417.045, which involves another drug, to wit:

"471.045 Liquor laws supersede and repeal inconsistent charters and ordinances. The Liquor Control Act, designed to operate uniformly throughout the state, shall be paramount and superior to and shall fully replace and supersede any and all municipal charter enactments or local ordinances inconsistent with it. Such charters and ordinances hereby are repealed."

Because of this language there has never been room for any government entity, other than the Oregon Liquor Control Commission, to regulate alcohol.

In this case, there are no such words of express preemption.

II. Implied preemption

In discussing implied preemption, all the parties base their arguments on several Oregon cases, which the Court will discuss.

In La Grande/Astoria vs. PERB, 281 Or 137, the general rule state on page 148, as follows: "It is reasonable to interpret local enactments, if possible, to be intended to function consistently with state laws, and equally reasonable to assume that the legislature does not mean to displace local civil or administrative regulations of local conditions by a statewide law unless that intention is apparent."

In Haley vs. City of Troutdale, 281 Or 203, the city enacted an ordinance requiring "double-wall" construction in certain instances, despite Oregon's building code that allowed "single-wall" construction. On page 210, the state building code contains the following preemptive-sounding language: "The state building code shall be applicable and uniform throughout this state, and in all municipalities therein, and no municipality shall enact or enforce any ordinance, rule or regulation in conflict therewith."

Despite that language, the city's code requiring double-wall construction was not preempted by the state building code. The court found the statute ambiguous as to local preemption. On page 211, they wrote "certainly that intention is not unambiguously expressed. Until it is, we conclude that local requirements compatible with compliance of the state's standards are not preempted by ORS 456.750 et seq."

In AT&T Communications vs City of Eugene, 177 Or App 379, the city attempted to impose registration and licensing fees on AT&T, despite a myriad of state regulations that limited local

municipalities power to tax such utilities. Eugene's fees were not preempted, the court wrote on page 389: "A local law will be considered preempted if it is 'incompatible' with legislative policy, that is to say, if local and state or federal law cannot operate concurrently or if the state legislature or congress intended to preempt the local enactment." It was important to the court that Eugene's home rule charter conferred all authority to the city, not specifically denied by the state or federal constitution. Notably, the empowerment clause in the Eugene and Cave Junction city charters are almost identical. Eugene's home rule charter was enacted in 1976, and the court indicated a different result would follow, as it did in Eugene Theater et al. vs. Eugene, 194 OR 603 (1952), if Eugene had still been operating as a general law municipality.

In Oregon Restaurant Association vs. City of Corvallis, 166 Or App 506, the Oregon Indoor Clean Air Act prohibited smoking in all public places except areas designated according to the rules of the Oregon Health Division. The city's ordinance went beyond that, prohibiting smoking in all enclosed public places. On page 510, the court wrote:

"...in this case there is no conflict between the City's ordinance and the state law. The Act prohibits smoking in certain locations; it does not contain the slightest hint that the legislature intended to create a positive right to smoke in all public places where it did not expressly forbid smoking. Nothing in the Act is inconsistent with a local jurisdiction's decision to impose greater limits on public smoking. Because the Act and the ordinance are not inconsistent, there is no issue of preemption."

In Thunderbird Mobile Club LLC vs. City of Wilsonville, 234 Or App 457, the conflict was between Oregon's landlord tenant law, which provided a basic framework within which a mobile home park owner could cease operation, and the city of Wilsonville's much more onerous and expensive method of ceasing operation. Again, the state law appeared preemptive in its language but the court did not consider it so. Rather, on 471, it was noted: "Within the area of civil regulation, then, a chartered city can enact substantive policies in an area also regulated by state statute unless the local regulation is 'incompatible' with state law either in the sense of being 'clearly' preempted by express state law or because both [state law and local law] cannot operate concurrently."

Therefore, the issue in this case is whether or the City of Cave Junction, a home rule municipality, has the power to prohibit medical marijuana dispensaries despite HB3460 and Senate Bill 1531. As earlier indicated, there is nothing in either law that clearly preempts local regulation. The remaining question is whether or not these laws cannot operate concurrently, if a particular home rule municipality, such as the city of Cave Junction, is allowed to prohibit medical marijuana dispensaries.

The defendant's cite the language contained within Senate Bill 1531 as expressing "a clear intent to preempt local laws that would effectively ban outright OMMA – compliant dispensaries." State's Motion, page 7, line 21.

If that is so, it is certainly tepid language when compared with that found in AT&T Communications, supra (“the public utility commission shall have authority to determine the manner, and extent of the regulation of telecommunication services within the state of Oregon”); or, Thunderbird Mobile Club, supra (“This chapter applies, to regulates, determines rights, obligations and remedies under a rental agreement wherever made, for a dwelling unit located within this state”); or Haley, supra (“The state building code shall be applicable and uniform throughout this state and in all municipalities therein and no municipalities shall enact or enforce any ordinance, rules, or regulation in conflict therewith”), all of which were found not to be preemptive of local regulation.

Even though tepid, defendant claims that the following language in SB1531 removes a municipalities’ power to prohibit a medical marijuana dispensary:

1. Cross Reference to ORS 633.738

For the reasons stated in the Intervener’s brief, the Court does not believe ORS 633.738 has any application to medical marijuana.

2. The One Year Moratorium

The Court can certainly understand the state’s argument that a one year moratorium implies that, after that period, medical marijuana dispensaries must be allowed. The question for the Court is not to discern implication which is somewhat like attempting to read tea leaves; but to determine if this provision is incompatible with an outright ban. The use of the word “may” is instructive; instead of some other verbiage such as “may only”; or “is limited to”. It leaves open the question as to whether or not the City of Cave Junction may elect not to enact a moratorium (as they’ve done); and simply ban medical marijuana dispensaries; or, in the alternative, if the city enacted a moratorium, but during that period of time thought about the issue, and more importantly observed other medical marijuana dispensaries in practice and then decided to ban dispensaries or to refuse to issue a business license. The Court does not find that incompatible with the law as it is written.

3. Regulation of Time, Place, and Manner

This section does not strongly mitigate toward a particular interpretation. Again the word “may” is used. It is compatible with a reading that if a city elects to go forward with a medical marijuana dispensary they cannot do it in a grudging manner and attempt to restrict it out of existence.

The Court understands the state's argument that the language in these new laws express the legislature's intent to: ..."provide reliable access to safe medical marijuana in a consistent manner throughout Oregon." State's Reply Brief, page 2, line 22 - 24.

However, this Court does not believe that some jurisdiction's election not to allow a medical marijuana dispensary is incompatible with that intent.

Following the state's logic, a local jurisdiction would never be able to prohibit, or even deny a business license, to a dispensary even for very legitimate reasons such as: their municipality is very small and doesn't even have a district described in ORS 475.314 (3)(a) within which to locate a dispensary; or the municipality is a bedroom community located near another city which has licensed several medical marijuana dispensaries.

Finally, the Court does not believe that the legislature's intent for widespread dispensaries, necessarily equates to greater access to medical marijuana than to traditional health care. In fact in ORS 475.300 where a legislative intent was expressed concerning medical marijuana it is stated: "...marijuana should be treated like other medicine." Other medicine, and other health care, are not found in every Oregon city and town. For example, if a resident of Fossil desires to fill a prescription, he/she must drive at least 20 miles to Condon because there is no pharmacy in Fossil. If that same person wanted to consult with a medical doctor, they would have to drive at least an additional 40 miles to Heppner; and if they were referred to a specialist, probably another 150 miles to Portland. This Court's first child was born after a 90 mile drive from our home to a hospital in the Dalles. Yet few Oregonians would say that they don't have general access to traditional pharmaceuticals, and physicians throughout Oregon. The resident of Fossil would understand that if he/she wanted immediate and quick access to traditional health care they might have to move to Portland (which no resident of Fossil would agree to).

In Zotolla vs. Three Rivers School District, Josephine County case number 12CV0045 and 11CV1240, this Court was confronted with a similar, but not the same issue. In that case, the legislature had recently enacted ORS 339.370-339.400. Well prior to its enactment, plaintiff was disciplined for conduct which the new law required to be reported to a subsequent prospective employer. The new law did not contain a retroactivity clause; but the defendant struggled mightily to imply one. This Court concluded its opinion by citing State ex rel Juv. Dept. vs Nicholls, 192 Or App 604, on page 610, wherein the Court of Appeals wrote:

"...the lack of an expressed retroactivity clause is itself important, because such clauses are commonplace and easy to draft in concept as well as practice."

The Court went on to indicate that the lack of such a clause:

"...therefore strongly suggests that the legislature either did not intend the statute to be retroactive or did not consider the matter." Page 611.

City of Cave Junction vs. State of Oregon
Josephine County Case No. 14CV0588
October 16, 2014
Page 6

The same is true with the issue of preemption. Because the new legislation SB1531 and HB3460, are not inconsistent with a city ban; or more likely a refusal to grant a business license; such local action is not preempted. The Oregon legislature will meet in several months. If they desire preemption, they can tell us then.

Summary judgment is granted in favor of Interveners and against plaintiff and defendants. Mr. Bovett or Mr. O'Day should draw up a consistent order. Because of the Court's ruling on this issue, the Court will not address the secondary issue as to whether or not the federal controlled substances act preempts this Oregon Legislation

Very truly yours,



Pat Wolke
Circuit Court Judge

PW:ah

Margaret Reh

From: Martha DeBry
Sent: Friday, October 17, 2014 11:20 AM
To: Margaret Reh
Subject: FW: ISSUE UPDATE...Circuit Court Decision in the Cave Junction Case (Medical Marijuana Dispensaries Local Control)
Attachments: CaveJunction-Opinion.pdf

Kindest regards,

Martha DeBry
City Manager
North Plains, OR

From: Bill Snyder
Sent: Friday, October 17, 2014 9:55 AM
To: Martha DeBry
Subject: FW: ISSUE UPDATE...Circuit Court Decision in the Cave Junction Case (Medical Marijuana Dispensaries Local Control)

Martha,

This might be good for the council to know about. I find this really interesting.

William Snyder
Chief of Police
North Plains Police Department
31360 NW Commercial Street
North Plains, OR 97133
Ph# (503) 647-5555

From: Kevin Campbell [<mailto:kevin@victorygrp.com>]
Sent: Thursday, October 16, 2014 6:57 PM
To: 'OregonPoliceChiefs@comcast.net'
Subject: ISSUE UPDATE...Circuit Court Decision in the Cave Junction Case (Medical Marijuana Dispensaries Local Control)



oacp@news

Issue Briefing

To: All OACP Members

Re: ISSUE UPDATE...Circuit Court Decision in the Cave Junction Case

(Medical Marijuana Dispensaries...Local Control)

Earlier today, Josephine County Circuit Court Judge Pat Wolke issued a decision in the case of the City of Cave Junction v. State of Oregon. The case posed two questions with regard to the right of local governments to opt out of medical marijuana dispensaries. The two questions in the case included:

1. Does state law preempt local control; and
2. If so, does federal law preempt that.

In the decision (see attached), the court sided with the League of Oregon Cities and Associated Oregon Counties by determining that state law in this case does not preempt local control. As a result, the court didn't rule on the second question.

The State of Oregon is expected to appeal the decision...stay tuned!



Kevin Campbell

Executive Director
Oregon Association Chiefs of Police
1191 Capitol Street NE
Salem, OR 97303
503-315-1411 (work)
503-580-9485 (cell)
503-315-1416 (fax)
kevin@victorygrp.com

ORDINANCE NO. 423

AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF NORTH PLAINS AND ADDING A NEW NORTH PLAINS MUNICIPAL CODE SUBCHAPTER 2.30.

WHEREAS, Chapter II “Powers,” Section 5 of the North Plains City Charter provides:

Powers. The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers.

WHEREAS, the City desires to tax the sale or transfer of marijuana and marijuana-infused products within the City.

NOW, THEREFORE, THE CITY OF NORTH PLAINS ORDAINS AS FOLLOWS:

Section 1. A new Subchapter 2.30 Marijuana and Marijuana-Infused Products Tax establishing a tax on the sale of marijuana and marijuana-infused products is hereby added to Chapter 2 “Finance” of the North Plains Municipal Code as follows:

2.30.010 Purpose

For the purposes of NPMC 2.30, every person who sells marijuana, medical marijuana or marijuana-infused products in the city is exercising a taxable privilege. The purpose of NPMC 2.30 is to impose a tax upon the retail sale of marijuana, medical marijuana and marijuana- infused products.

2.30.020 Definitions

When not clearly otherwise indicated by the context, the following words and phrases as used in NPMC 2.30 have the following meanings:

DIRECTOR means the city manager or his/her designee.

GROSS TAXABLE SALES means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by NPMC 2.30.

MARIJUANA means 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 from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

OREGON MEDICAL MARIJUANA PROGRAM means the office within the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.

PERSON means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the state and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

PURCHASE OR SALE means the retail acquisition or furnishing for consideration by any person of marijuana within the city and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.

REGISTRY IDENTIFICATION CARDHOLDER means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

RETAIL SALE means the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.

SELLER means any person who is required to be licensed or has been licensed by the state to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.

TAX means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under NPMC 2.30.

TAXPAYER means any person obligated to account to the director for taxes collected or to be collected, or from whom a tax is due, under the terms of NPMC 2.30.

2.30.030 Levy of tax

A. Every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in NPMC 2.30 is subject to and must pay a tax for exercising that privilege.

B. The amount of tax levied is as follows:

1. Zero percent of the gross sale amount paid to the seller of marijuana and marijuana-infused products by a person who is a registry identification cardholder.
2. Ten percent of the gross sale amount paid to the seller of marijuana and marijuana infused products by persons who are

purchasing marijuana and marijuana-infused products but are not doing so under the provisions of the Oregon Medical Marijuana Program.

2.30.040 Deductions

The following deductions are allowed against sales received by the seller providing marijuana:

- A. Refunds of sales actually returned to any purchaser;
- B. Any adjustments in sales that amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

2.30.050 Seller responsible for payment of tax

A. Every seller must, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the director, on forms provided by the city, specifying the total sales subject to NPMC 2.30 and the amount of tax collected under NPMC 2.30. The seller may request or the director may establish shorter reporting periods for any seller if the seller or director deems it necessary in order to ensure collection of the tax. The director may require further information in the return relevant to payment of the tax. A return is not considered filed until it is actually received by the director.

B. At the time the return is filed, the seller must remit to the director the full amount of the tax collected. Payments received by the director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the city. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.

C. The city will apply non-designated payments in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax.

D. If the director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the city in a particular tax or factual situation, the director may order such a change. The director may establish shorter reporting periods for any seller if the director deems it necessary in order to ensure collection of the tax. The director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest will be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. Sellers must hold in trust all taxes collected pursuant to NPMC 2.30 for the city's account until the seller makes payment to the director. A separate trust bank account is not required in order to comply with this provision.

E. Every seller required to remit the tax imposed by NPMC 2.30 is

entitled to retain five percent of all taxes due to the city to defray the costs of bookkeeping and remittance.

F. Every seller must keep and preserve in an accounting format established by the director records of all sales made by the seller and such other books or accounts as the director may require. Every seller must keep and preserve for a period of three years all such books, invoices and other records. The director has the right to inspect all such records at all reasonable times.

2.30.060 Penalties and interest

A. Any seller who fails to remit any portion of any tax imposed by NPMC 2.30 within the time required must pay a penalty of 10 percent of the amount of the tax, in addition to the amount of the tax.

B. If any seller fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, the seller must pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.

C. If the director determines that the nonpayment of any remittance due under NPMC 2.30 is due to fraud, a penalty of 25 percent of the amount of the tax will be added thereto in addition to the penalties stated in NPMC 2.30.060A and NPMC 2.30.060B.

D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by NPMC 2.30 must pay interest at the rate one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Every penalty imposed, and any interest as accrues under the provisions of NPMC 2.30.060, becomes a part of the tax required to be paid.

F. All sums collected pursuant to the penalty provisions in NPMC 2.30.060A and NPMC 2.30.060C will be distributed to the city's general fund.

G. Penalties for certain late tax payments may be waived or reduced pursuant to policies and processes adopted by the finance department. However, the finance department is not required to create a penalty waiver or reduction policy. If the finance department does not create a policy for waivers or reductions, no waivers or reductions are allowed.

2.30.070 Failure to report and remit tax – determination of tax by director

A. If any seller fails to make any report of the tax required by NPMC 2.30 within the time provided in NPMC 2.30, the director will proceed to obtain facts and information on which to base the estimate of tax due. As soon as the director procures such facts and information upon which to base the assessment of any tax imposed by NPMC 2.30 and payable by any seller, the director will determine and assess against such seller the tax, interest and penalties provided for by NPMC 2.30.

B. If the director makes a determination as outlined in NPMC 2.30.070A, the director must give notice to the seller of the amount assessed. The notice must be personally served on the seller or deposited in the United States mail, postage prepaid, addressed to the seller at the last known place of address.

C. The seller may appeal the determination as provided in NPMC 2.30.080. If no appeal is timely filed, the director's determination is final and the amount assessed is immediately due and payable.

2.30.080 Appeal

A. Any seller aggrieved by any decision of the director with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the decision to the manager.

B. The seller must file the appeal within 30 days of the city's serving or mailing of the determination of tax due. The seller must file using forms provided by the city.

C. Upon receipt of the appeal form, the manager will schedule a hearing to occur within 20 business days. The manager will give the seller notice of the time and date for the hearing no less than seven days before the hearing date. At the hearing the manager will hear and consider any records and evidence presented bearing upon the director's determination of amount due and make findings affirming, reversing or modifying the determination. The director and the appellant may both provide written and oral testimony during the hearing. The findings of the manager are final and conclusive. The city will serve the findings upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice.

2.30.090 Refunds

A. The city may refund to the seller any tax, interest or penalty amount under any of the following circumstances:

1. the seller has overpaid the correct amount of tax, interest or penalty; or
2. the seller has paid more than once for the correct amount owed; or
3. the city has erroneously collected or received any tax, interest or penalties.

B. The city may not issue a refund under NPMC 2.30.090 unless the seller provides to the director a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the director. The seller must file the claim within one year from the date of the alleged incorrect payment to be eligible for a refund.

C. The director has 20 calendar days from the date of the claim's receipt to review the claim and make a written determination as to its validity. After making

the determination, the director will notify the claimant in writing of the determination by mailing notice to the claimant at the address provided on the claim form.

D. If the director determines the claim is valid, the claimant may either claim a refund or take as credit against taxes collected and remitted the amount that was overpaid, paid more than once, or erroneously received or collected by the city. The claimant must notify the director of the claimant's choice no later than 15 days following the date the director mailed the determination and the claimant must do so in a manner prescribed by the director.

E. If the claimant does not notify the director of the claimant's choice within the 15 day period and the claimant is still in business, the city will grant a credit against the tax liability for the next reporting period. If the claimant is no longer in business, the city will mail a refund check to claimant at the address provided in the claim form.

F. The city will not pay a refund unless the claimant establishes by written records the right to a refund and the director acknowledges the claim's validity.

2.30.100 Actions to collect

Any tax required to be paid by any seller under the provisions of NPMC 2.30 is a debt owed by the seller to the city. Any tax collected by a seller that has not been paid to the city is a debt owed by the seller to the city. Any person owing money to the city under the provisions of NPMC 2.30 is liable to an action brought in the name of the City of North Plains for the recovery of the amount owing. In lieu of filing an action for the recovery, the city, when taxes due are more than 30 days delinquent, may submit any outstanding tax to a collection agency. So long as the city has complied with the provisions set forth in ORS 697.105, if the city turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of \$50 or 50 percent of the outstanding tax, penalties and interest owing.

2.30.110 Violation infractions

A. All violations of NPMC 2.30 are punishable as set forth in NPMC 1.08. It is a violation of NPMC 2.30 for any seller or other person to:

- 1) Fail or refuse to comply as required herein;
- 2) Fail or refuse to furnish any return required to be made;
- 3) Fail or refuse to permit inspection of records;
- 4) Fail or refuse to furnish a supplemental return or other data required by the director;
- 5) Render a false or fraudulent return or claim; or
- 6) Fail, refuse or neglect to remit the tax to the city by the due date.

B. The remedies provided by NPMC 2.30 are not exclusive and do not prevent the city from exercising any other remedy available under the law.

C. The remedies provided by this section do not prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

2.30.120 Confidentiality

Except as otherwise required by law, it is unlawful for the city, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the city under the terms of NPMC 2.30. Nothing in NPMC 2.30.120 prohibits any of the following:

A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or

B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or

C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the director or an appeal from the director for amount due the city under NPMC 2.30; or

D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or

E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or when the tax exceeds \$5,000. The council expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

2.30.130 Audit of books, records or persons

The city may examine or may cause to be examined by an agent or representative designated by the city for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due. All books, invoices, accounts and other records must be made available within the city limits and be open at any time during regular business hours for examination by the director or an authorized agent of the director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the director may immediately seek a subpoena from the municipal court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

2.30.140 Forms and regulations

A. The director is authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the marijuana tax and to provide for:

1. A form of report on sales and purchases to be supplied to all vendors;
2. The records that sellers providing marijuana and marijuana-infused products must keep concerning the tax imposed by NPMC 2.30.

Section 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause does not affect the validity of the remaining sections, subsections, paragraphs and clauses.

Section 3. Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, remain valid and in full force and effect for purposes of all cases filed or commenced during the times this ordinance or portions thereof were operative. This section simply clarifies the existing situation that nothing in this ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

Section 4. This ordinance shall be effective from and after 30 days following its adoption by the Council and approval by the Mayor.

INTRODUCED on the 20th day of October, 2014, **AND ADOPTED** this 3rd day of November, 2014.

CITY OF NORTH PLAINS, OREGON

By: _____
David Hatcher, Mayor

ATTEST:

By: _____
Margaret Reh, City Recorder



CITY OF NORTH PLAINS

31360 NW Commercial Street, North Plains, Oregon 97133

Date: April 17, 2014

To: City Council

From: Martha DeBry, City Manager

Subject: Second Reading and Adoption of Ordinance No. 422 Temporarily Prohibiting the Location of Medical Marijuana Facilities within the City of North Plains

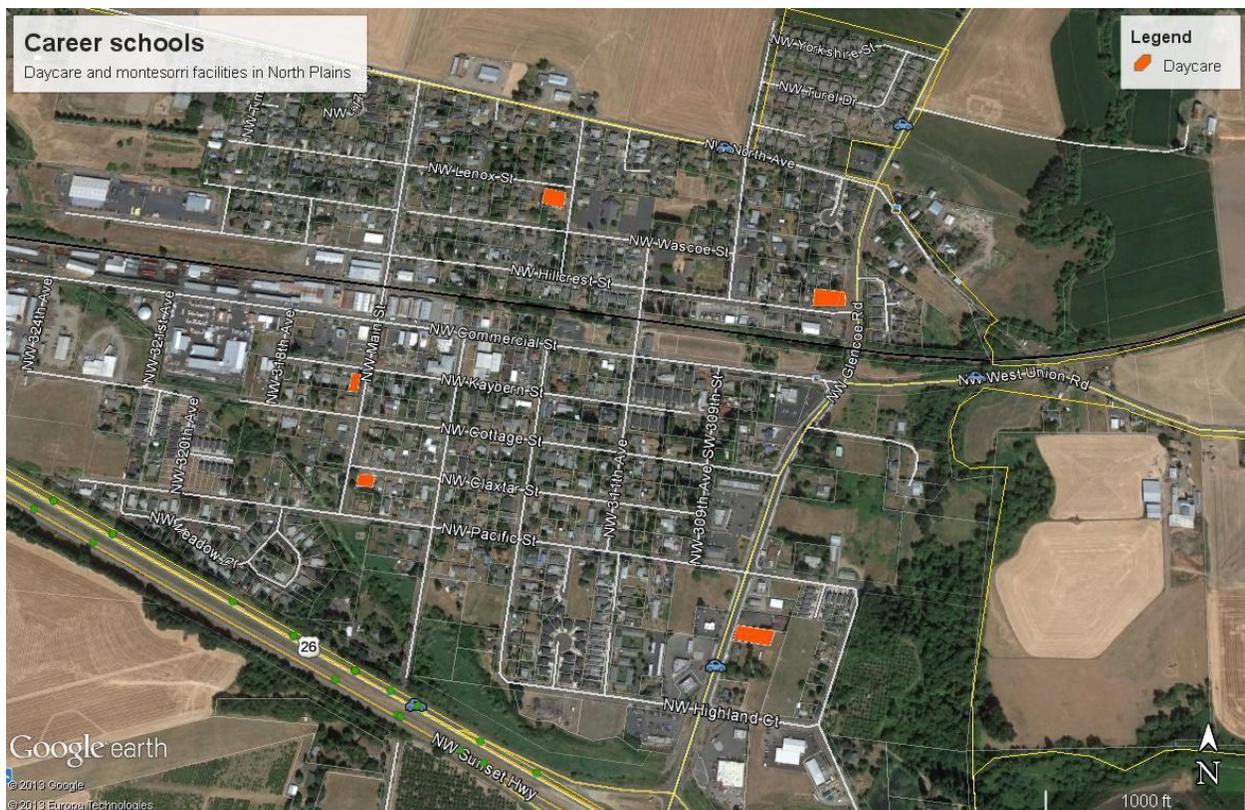
Request: Council to consider and adopt Ordinance No. 422 – An Ordinance of the City Council of the City of North Plains, Oregon, temporarily prohibiting the location of medical marijuana facilities within the City of North Plains. First reading by title only took place on 04/07/14.

Background: State law recently enacted allows medical marijuana facilities to be located in areas zoned as for commercial, industrial or mixed use. Key provisions in State law are:

- No dispensary may open or operate within 1,000 feet of a primary or secondary school
- No dispensary may open or operate within 1,000 feet of another dispensary. *Applications for competing locations will be processed on a first-come, first-served basis*
- Dispensaries must be located only in areas zoned commercial, industrial or agriculture.
- All medical marijuana distributed through dispensaries must be tested for pesticides, mold and mildew, and may not be distributed if contaminants are found
- There must be a strong security system in place
- All product brought into and dispensed from the facility must be accounted for
- The Oregon Health Authority will visit and inspect each dispensary and audit its financial records at least once a year

For North Plains, the 1,000 feet of a primary school extends to the west and north of Main and Hillcrest, and west and north of 318th and Commercial.

The law also prohibits location within 1,000 feet of schools classified as “Career – private, proprietary, professional, technical, business or other schools of instruction, organizations or persons offering any instruction or training for the purpose or purported purpose of instruction, training or preparing persons for any profession at a physical location attended primarily by minors.” If the City can define pre-schools or Montessori schools as career school then technically no place on Commercial Street and most of Glencoe are prohibited from hosting dispensaries. The remaining locations where dispensaries can be located are industrial areas to the west of 318th/320th and south of Commercial or north of West Union.



Many local agencies are struggling with interpreting this new rule, and incorporating it into existing zoning ordinances. At present it is not an outright permitted use within the City, but would have to be considered as a conditional use. Twenty one (21) Oregon Cities (including Cave Junction, Clatskanie, Culver, Dallas, Fairview, Falls City, Grants Pass, Gresham, Harrisburg, Hermiston, John Day, Madras, Medford, Redmond, Sandy, Scappoose, Stayton, Toledo, Wilsonville, Winston and Wood Village) have implemented rules that effectively ban medical marijuana dispensaries, and another fourteen (14) have implemented moratoriums including Baker City, Beaverton, Coos Bay, Cornelius,

Dayton, Florence, Gladstone, Hillsboro, Milwaukie, North Bend, Phoenix, Tualatin, Tigard and Sherwood.

Under Senate Bill 1531 local governments have until May 1, 2014 to enact a moratorium, which must expire by May 1, 2015.

The City of Hillsboro recently adopted an ordinance similar to the draft Ordinance included in the Council packet. This version provides a moratorium for 240 days versus 120 days. If adopted, the North Plains ordinance would need to be updated in the future.

In February, Washington County Law Enforcement Council, on which Police Chief Bill Snyder serves as Vice Chair, provided the following announcement:

"It is the position of the Washington County Law Enforcement Council (LEC) to oppose the establishment of Medical Marijuana Dispensaries within the city and county limits of Washington County. The possession, distribution, and manufacture of marijuana, although permissible under provisions of the Oregon Medical Marijuana Program (OMMP) and related statutes and rules, are a violation of Federal Law.

While the member agencies of LEC will consistently and fairly enforce established laws and ordinances of our communities, we believe the proliferation of marijuana use and availability outside the scope of the OMMP is a serious public health concern and has negative implications for the welfare of our community. We believe expanding the availability of marijuana, even under the auspices of the OMMP, will harm the general welfare of our community because of the significant potential to increase marijuana use among our youth, place a higher burden on emergency room care, drug treatment and other health care systems, increase marijuana-related exposure cases, and increase illegal interstate drug trafficking. Marijuana impairment doubles the risk of deadly traffic crashes and is a major causal factor in high school dropouts.

We believe medical marijuana dispensaries will have additional potential negative secondary effects on the community. These secondary effects include, but are not limited to the following: criminal activity, loitering, increased traffic, noise, litter, and a loss of trade for other businesses located nearby by interference. Local government control of land use and organized development helps promote local community values.

The member agencies of LEC have an ethical duty and statutory obligation to ensure the safety of our communities. Medical marijuana dispensaries are harmful to the surrounding community and its residents and constitute a public nuisance contrary to our community values which support Washington County as a safe place to live, work, and raise a family."

Mayor Hatcher suggested that this issue be presented to Council for consideration, as Washington County communities share a tradition of adopting rules that are supportive of each other. With six (6) cities already imposing moratoriums, it would be prudent for North Plains to align its policies with the neighboring agencies. The larger cities of Hillsboro, Tualatin and Sherwood are taking a lead in vetting policies and ordinances. Staff recommends that Council discuss its approach to the medical marijuana issue. Beaverton has already adopted both an ordinance and moratorium.

Helpful links that explain the State law in more detail are below:

State Statute: http://www.oregon.gov/osp/des/docs/med_mj_patient_info.pdf

Rules for dispensaries: <http://www.oregon.gov/oha/mmj/Pages/rules.aspx>

Dispensary registration:

http://www.oregonlive.com/politics/index.ssf/2014/03/medical_marijuana_in_oregon_nu.html

Status of regulations in other communities:

http://www.oregonlive.com/politics/index.ssf/2014/03/medical_marijuana_in_oregon_wh.html

Fiscal Impact: The ordinance will not have any direct fiscal impact on the City. At this time there are no dispensaries, or any requests to locate dispensaries in town. The City also has no special permits or taxes associated with marijuana dispensary.

Environmental Issues: NA

Recommendation: Council read Ordinance No. 422 temporarily prohibiting the location of medical marijuana facilities within the City of North Plains by title only for the second time and adopt the ordinance.

Sample Motion: I move to read Ordinance No. 422 by title only for the second time.

Mayor to read title: Ordinance No. 422: On Ordinance of the City of North Plains, Oregon, Temporarily Prohibiting the Location of Medical Marijuana Facilities within the City of North Plains.

Sample Motion: I move to adopt Ordinance No. 422

ORDINANCE NO. 422

AN ORDINANCE OF THE CITY OF NORTH PLAINS, OREGON, TEMPORARILY PROHIBITING THE LOCATION OF MEDICAL MARIJUANA FACILITIES WITHIN THE CITY OF NORTH PLAINS

WHEREAS, in the 2013 Special Session, the Oregon Legislature approved House Bill 3460 which creates a medical marijuana registration system and allows for medical marijuana facilities to be located in areas zoned for commercial, industrial, or mixed use; and

WHEREAS, House Bill 3460 also includes further specific restrictions on the location of medical marijuana facilities related to proximity to schools attended by minors and to other medical marijuana facilities; and

WHEREAS, this use and these restrictions are not currently included in North Plains Municipal Code; and

WHEREAS, the Planning Commission will shortly begin the process of amending the zoning ordinances to add zoning regulations for medical marijuana facilities, a process expected to take up to eight months, and

WHEREAS, the North Plains City Council believes that siting medical marijuana facilities within the City absent zoning regulations endangers the health, peace, and welfare of the City of North Plains.

NOW, THEREFORE, THE CITY OF NORTH PLAINS ORDAINS AS FOLLOWS:

Section 1. Effective with the adoption of this ordinance, no person shall site a medical marijuana facility (as described in House Bill 3460 of the 2013 Oregon Special Legislative Session) within the city limits of North Plains.

Section 2. The prohibition on siting of medical marijuana facilities shall be in effect until May 1, 2015 or the effective date of an adopted amendment to the Municipal Code establishing zoning regulations for such facilities, whichever occurs first.

Section 3. The City Manager is charged with enforcement of this temporary prohibition.

INTRODUCED on the 7th day of April 2014, **AND ADOPTED**
this 21st day of April 2014.

CITY OF NORTH PLAINS, OREGON

By: 

David Hatcher, Mayor

ATTEST:

By: 

Margaret L. Reh, Deputy City Recorder

ORDINANCE NO. 2700-2015

AN ORDINANCE ADDING CHAPTER 22 OF TITLE 3 TO THE ONTARIO CITY CODE TO ESTABLISH A BUSINESS LICENSE FOR MEDICAL MARIJUANA FACILITIES, AND DECLARING AN EMERGENCY

- WHEREAS,** Enrolled Oregon Senate Bill 1531 (2013) authorizes Oregon cities to impose reasonable restrictions on the operation and location of medical marijuana facilities, sometimes known as dispensaries;
- WHEREAS,** Under Oregon law, local governments may regulate the operation and location of certain types of businesses within their jurisdiction except when such action is specifically preempted by state law; and
- WHEREAS,** Although the State of Oregon has passed legislation authorizing medical marijuana facilities and providing criminal immunity under state law, the operation of those facilities remains illegal under federal law; and
- WHEREAS,** The City Council has home rule authority to decide whether, and under what conditions, certain commercial conduct should be regulated within the City and subject to the general and police powers of the City, except when local action has been clearly and unambiguously preempted by state statute; and
- WHEREAS,** The City's licensing and regulatory system should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other license or regulatory requirement imposed by any other provisions of City ordinance or local, regional, state or federal law; and
- WHEREAS,** The City Council wants to regulate the operation of medical marijuana facilities in the City in ways that protect and benefit the public health, safety and welfare of existing and future residents and businesses in the City; and
- WHEREAS,** The City Council finds that the presence of medical marijuana facilities within the City of Ontario may potentially result in adverse social and economic impacts, increased crime incidents, and physical deterioration in the general areas of such businesses; and that regulations applicable to such facilities are necessary to protect minors and to preserve the character, safety and stability of residential areas that are in proximity to such commercial businesses; and
- WHEREAS,** The Oregon Health Authority has issued permits to several businesses to operate medical marijuana facilities within the City, and it being necessary for the health, safety and welfare of the residents of the City, an emergency is hereby declared to authorize this Ordinance to take effect immediately upon passage; and
- WHEREAS,** Notwithstanding the emergency passage of this ordinance, the City Council intends that Ordinance 2699-2015, which becomes effective on May 1, 2015, and which extends the City's moratorium on medical marijuana facilities until August 1, 2015, prohibits the issuance of any licenses under this Ordinance 2700-2015 until the expiration of the

moratorium.

NOW THEREFORE, The Common Council For The City Of Ontario Ordains As Follows:

Section 1. The following Chapter 22 is hereby added Title 3 of the Ontario City Code and is entitled “Mandatory Business Licenses for Medical Marijuana Facilities”:

CHAPTER 22 MANDATORY BUSINESS LICENSES FOR MEDICAL MARIJUANA FACILITIES

3-22-1 DEFINITIONS

1. City Manager means the City Manager or the designee of the City Manager authorized to handle any matters arising under this Chapter on the City Manager’s behalf.

2. Marijuana or medical marijuana means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. As used in this Chapter, “marijuana” or “medical marijuana” refers to marijuana dried, produced, processed, kept, stored, delivered, transferred, dispensed or otherwise provided for the exclusive benefit of and use by a person to mitigate the symptoms or effects of a person’s debilitating medical condition as defined in ORS 475.302.

3. Medical marijuana facility means a facility designed, intended or used for purposes of delivering, dispensing, or transferring marijuana to Oregon medical marijuana registry identification card holders pursuant to ORS 475.300-475.346. The facility includes all premises, buildings, curtilage or other structures used to accomplish the storage, distribution and dissemination of marijuana.

4. Operator means a person who owns, operates or otherwise has legal responsibility for a facility and who meets the qualifications established by the Oregon Health Authority and has been approved by the Oregon Health Authority to operate a medical marijuana facility.

5. Principal means members, partners or corporate officers, and all stockholders holding more than 10 percent of the voting stock for any applicant who is not a natural person.

6. Registration identification card means a document issued by the Oregon Health Authority that identifies a person authorized to engage in the medical use of marijuana, and the person’s designated caregiver, if any.

3-22-2 LOCAL LICENSE REQUIRED

Medical marijuana facilities must possess a valid license issued under this Chapter to operate within the City. The license required by this Chapter facilitates the registration and the City’s oversight of a medical marijuana facility. The license required by this Chapter should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other regulatory or license requirement imposed by any other provision of City ordinance or local, regional, state or federal law.

3-22-3 STATE REGISTRATION REQUIRED

To be eligible to apply for a license under this Chapter, medical marijuana facilities must be registered with the Oregon Health Authority and authorized by state law to operate.

3-22-4 LICENSE APPLICATION

(A) Contents of Applications. Applications for new and renewed licenses must be submitted to the City Manager on forms provided by the City. A separate application must be submitted for each proposed facility. The initial or renewal application must include the following information:

1. Certification that the proposed facility is registered at that location as a medical marijuana facility with the Oregon Health Authority pursuant to ORS 475.314.
2. The applicant's name, residence address, and date of birth, with photo identification such as a driver's license or other government-issued identification.
3. The names and residence addresses of:
 - a. Any person or legal entity that has an ownership interest in the facility, including all principals of the applicant;
 - b. Any person or legal entity with a financial interest that has loaned or given money or real or personal property to the applicant, or principal of the applicant, for use by the proposed facility within the preceding year;
 - c. Any person or legal entity that has leased real property to the applicant for use by the facility and any person who manages that property; and
 - d. Any person who is anticipated at the time of the application to be an employee or volunteer at the proposed facility.
4. The business name.
5. The address and telephone number of the proposed facility.
6. The mailing address for correspondence about the license.
7. A detailed description of the type, nature and extent of the business.
8. The proposed days and hours of operation.
9. A detailed description of the proposed accounting and inventory system of the facility.
10. Certification that the facility has met all applicable requirements of the City development code and sign code.
11. Certification that all applicable taxes and fees have been paid.

12. A complete application for a criminal background check for the applicant, and all principals, persons with a financial interest, employees, and volunteers of the proposed medical marijuana facility.

13. The names of at least three natural persons who can give an informed account of the business and moral character of the applicant and principals.

14. The signature, under penalty of perjury, of the applicant, if a natural person, or otherwise the signature of an authorized agent of the applicant, if the applicant is other than a natural person.

15. Other information deemed necessary by the City Manager to complete review of the application.

(B) Information Shall be Kept Current. All information provided in an initial or renewal application must be kept current at all times, including after a license is issued. Each licensee shall notify the City Manager in writing within ten business days of any change in the information provided to obtain the license.

3-22-5 LICENSE DETERMINATION

(A) Determination. Within 25 days after receiving a complete application and application fee for a medical marijuana facility license, the City Manager will issue the license if the City Manager finds that the facility is registered as a medical marijuana facility with the Oregon Health Authority pursuant to ORS 475.314 and that all other requirements under this Chapter have been met.

(B) Denial. In addition to denial for failure to meet the requirements of this Chapter, the City Manager may deny a license if:

1. The applicant made an untrue, misleading, or incomplete statement on, or in connection with, the application for the license or a previous application for a license;
2. Notwithstanding the federal Controlled Substances Act, the applicant fails to meet all requirements of local, state, and federal laws and regulations, including, but not limited to, other permitting or licensing requirements and land use regulations; or
3. The applicant, principals, employees, volunteers, or persons with a financial interest in the facility have been convicted of a felony for the manufacture or delivery of a Schedule I or Schedule II controlled substance.

(C) An applicant may appeal the City Manager's denial of a license in accordance with Section 3-22-13(B). Any aggrieved person may appeal the City Manager's issuance of a license in accordance with Section 3-22-13(B).

3-22-6 APPLICATION FEE

An initial license application and a renewal application must be accompanied by a nonrefundable application fee in the base amount of \$1,200 for a facility with five or fewer employees and volunteers. For facilities with more than five employees and volunteers, the fee

shall be the base fee plus \$220 for each additional employee or volunteer. The City Council may revise the fee amount from time to time by resolution of the Council.

3-22-7 DISPLAY OF LICENSE

The license issued under this Chapter must be prominently displayed at all times in an easily visible location inside the facility.

3-22-8 TERMINATION OF LICENSE

(A) Termination. A license terminates automatically one year from the date of issuance, unless a license renewal application has been approved.

(B) Renewal. A license may be renewed for additional annual terms as provided by this Chapter.

(C) Renewal Application. Renewal applications shall be submitted, with the required application fee, to the City Manager not less than 30 days prior to the expiration date of the existing license.

(D) Termination Due to Change in Law. A license terminates automatically if federal or state statutes, regulations or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the facility under this ordinance.

(E) Surrender. A licensee may surrender a medical marijuana facility license by delivering written notice to the City that the licensee thereby surrenders the license. A licensee's surrender of a license under this section does not affect the licensee's civil or criminal liability for acts the licensee committed before surrendering the license.

3-22-9 TRANSFERABILITY

Licenses issued under this Chapter shall not be transferred to any other person. The City Manager may waive this restriction and authorize a transfer if it is to a limited liability company, corporation or partnership in which the names of principals have been included in the most recent license application for the facility and the City has already completed criminal background checks on those principals.

3-22-10 INDEMNIFICATION

(A) Waiver. By accepting a medical marijuana facility license issued under this Chapter, the licensee waives and releases the City, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of a facility owner or operator, principal, person or legal entity with a financial interest in the facility, person or entity that has leased real property to the facility, employee, volunteer, client or customer for a violation of federal, state or local laws and regulations.

(B) Indemnification. By accepting a medical marijuana facility license issued under this Chapter, the licensee(s), jointly and severally if there is more than one, agree to indemnify and hold harmless the City, its officers, elected officials, employees, volunteers, and agents, insurers, and self-insurance pool against all liability, claims, and demands on account of any injury, loss, or

damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the medical marijuana facility that is the subject of the license.

3-2-11 STANDARDS OF OPERATION

(A) Registration and Compliance with Oregon Health Authority Rules. The facility's registration as a medical marijuana facility under ORS 475.314 must be in good standing with the Oregon Health Authority, and the facility must comply with all applicable laws and regulations administered by the Oregon Health Authority for facilities.

(B) Compliance with Other Laws. The facility must comply with all applicable laws and regulations, including, but not limited to, the building and fire codes.

(C) Registry Identification Card Required. All persons allowed within the facility, except employees of the City performing their official duties, must have a valid registry identification card and be in compliance with rules adopted by the Oregon Health Authority.

(D) Sales in Facility. Sales or any other transfers of marijuana on the facility premises must occur inside the facility building and must be conducted only between the facility and individuals with registry identification cards.

(E) On-Site Use. Marijuana and tobacco products must not be smoked, ingested, consumed or otherwise used on the premises of a medical marijuana facility.

(F) On-Site Manufacturing. Manufacturing or production of any extracts, oils, resins or similar derivatives of marijuana is prohibited at a facility. Use of open flames or gases in the preparation of any products is prohibited at a facility.

(G) Outdoor Storage. Outdoor storage of merchandise, raw materials or other material associated with the facility is prohibited.

(H) Secure Disposal. The facility must provide for secure disposal of marijuana remnants or byproducts; marijuana remnants or by-products shall not be placed within the facility's exterior refuse containers.

(I) Home Occupation. A facility may not be operated as a home occupation.

(J) Screening from Public. All transactions shall occur within the interior of the facility, out of the view of the public. All doorways, windows and other openings shall be located, covered or screened in such a manner to prevent a view into the interior from any exterior public or semipublic area. Walk-through windows, drive-through windows or other outside delivery systems are prohibited.

(K) Objectionable Odors. The facility must use an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the facility to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.

- (L) Permanent Structure. The facility shall be located in a permanent building, not in a trailer, cargo container or motor vehicle.
- (M) Blight. The facility shall have an exterior consistent with other buildings on abutting lots in the neighborhood so as not to cause blight.
- (N) Security Devices. A facility must install and maintain all security devices required by the Oregon Health Authority.
- (O) Lighting. A facility must maintain adequate outdoor lighting over each exterior exit.
- (P) Hours of Operation. No facility shall have operating hours earlier than 10 a.m. or later than 7 p.m. of the same day.
- (Q) Payment of Marijuana Tax. Unless waived by the City, the operator of the facility shall comply with the provisions of Chapter 21 of Title 3 of the City Code regarding payment of a tax on marijuana.

3-2-12 LOCATION OF FACILITY

- (A) Zone Location. A medical marijuana facility shall be located only within the C-2 land use zone described Title 10A, Chapter 29 of the City Code.
- (B) Location Restrictions. A medical marijuana facility is prohibited in the following locations, regardless of zone, with distances measured from the closest points of the respective lot lines:
 1. within 1,000 feet of a public or private elementary or secondary school, or a career school;
 2. within 1,000 feet of a non-commercial facility used primarily for the care, education or recreation of minors, such as a Head Start school or a Boys and Girls Club, but not including child care facilities that are neither registered or certified by the State;
 3. within 1,000 feet of a public park, public playground, public recreation center or public facility;
 4. within 1,000 feet of another medical marijuana facility;
 5. within 200 feet of all residential zones, including those designated in Chapter 11 (RS-50), Chapter 13 (RD-40), Chapter 17 (RM-10), Chapter 19 (R-MH), Chapter 23 (TRO) and Chapter 52 (UGA-R) of Title 10A;
 6. within 1,000 feet of a certified or registered child care facility licensed by the State of Oregon;
 7. on the same tax lot as a smoking club or marijuana grow site; or
 8. any combination of the above.

(C) Changes in Distances. If a medical marijuana facility complies with the distance restrictions set forth in Section 3-2-12(B) at the time of its initial license application, subsequent changes in use of other structures in the area (the establishment of a new school or child care facility, for example) shall not cause a medical marijuana facility to become noncompliant with Section 3-2-12(B).

3-22-13 ENFORCEMENT AND PENALTIES

(A) Revocation or Suspension of License. The City Manager may deny, suspend or revoke a license issued under this Chapter for failure to comply with this Chapter, for submitting falsified information to the City or the Oregon Health Authority, or for noncompliance with any other City ordinances or state law.

(B) Appeal of Issuance, Denial, Revocation or Suspension. Any person aggrieved by the City Manager's issuance, denial, suspension or revocation of a license may appeal it to the City Council by delivering a written notice of appeal to the City Manager within 30 days of the date of the denial, suspension or revocation. The appeal shall be heard by the City Council in a public meeting scheduled within 60 days of the date that the notice of appeal is delivered to the City Manager. The appellant shall be given at least a five day notice of the public meeting, and shall be entitled to appear and be heard. The City Council's decision on the appeal shall be final.

(C) Civil Penalty. In addition to the other remedies provided in this section, any person or entity, including any person who acts as the agent of, or otherwise assists, a person or entity who fails to comply with the requirements of this Chapter or the terms of a license issued under this Chapter, who undertakes an activity regulated by this Chapter without first obtaining a license, who fails to comply with a cease and desist order issued pursuant to this Chapter, or who fails to comply with state law commits an unclassified civil violation which shall be processed according to the procedures established in Chapter 4 "General Penalty" of Title 1 of this Code.

(C) Public Nuisance. Any premises, house, building, structure or place of any kind where medical marijuana is grown, processed, manufactured, sold, bartered, distributed or given away in violation of state law or this Chapter, or any place where medical marijuana is kept or possessed for sale, barter, distribution or gift in violation of state law or this Chapter, is a public nuisance. The City may institute an action in circuit court in the name of the City to abate, and to temporarily and permanently enjoin, such nuisance. The court has the right to make temporary and final orders as in other injunction proceedings. The City shall not be required to give bond in such an action.

(D) Remedies not Exclusive. The remedies provided in this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this Chapter prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under City ordinance or state law.

Section 2. Severability. The sections, subsections, paragraphs, and clauses of this Ordinance are severable. The invalidity of one section, subsection, paragraph, or clause does not affect the validity of the remaining sections, subsections, paragraphs, and clauses.

Section 3. An emergency having been declared, this ordinance shall take effect immediately upon passage.

PASSED AND ADOPTED by the Common Council of the City of Ontario this ____ day of _____,

2015, by the following vote:

AYES:

NAYS:

ABSENT:

APPROVED by the Mayor this ____ day of _____, 2015.

ATTEST:

Ron Verini, Mayor

Tori Barnett, MMC, City Recorder

Excerpt from staff report to Forest Grove City Council work session, September 14, 2015.

To date, the City's regulations directly apply to medical marijuana dispensaries. Dispensaries were addressed by the adoption of Ordinance Number 2015-02 (Development Code) and Ordinance Number 2015-03 (City Code). These codes established locational and operational requirements for medical marijuana dispensaries. Combining city and state requirements, medical marijuana dispensaries can be located in the Community Commercial zone district located beyond 1000 feet from a public or private primary or secondary school and 1000 feet from another dispensary.

Current regulations in the Development Code (DC Section 10.8.1100) on medical marijuana dispensaries (besides location) include:

- Compliance with state requirements;
- Hours of closure to the public between 10 pm and 8 am;
- Entrances and off-street parking areas be well lit and not visually obscured from public view and rights-of-way;
- Facility located in a permanent building with no outdoor storage of merchandise, raw materials or other materials associated with the facility;
- Site or building exterior must comply with City design standards with security bars or grates prohibited unless integrated into the design;
- No drive-up use; and
- Provide secure disposal or render impotent marijuana remnants or by-products.

Operational requirements under the City code (Section 7.850 et. seq.) include:

- Compliance with state law;
- Obtaining a business license;
- Hours of closure between 10 pm and 8 am;
- All products and paraphernalia be enclosed in an opaque bag or container upon exiting the facility; and
- Provide secure disposal or render impotent marijuana remnants or by-products.

**CITY OF MYRTLE CREEK
OREGON
ORDINANCE NO. 800**

AN ORDINANCE AMENDING THE MYRTLE CREEK MUNICIPAL CODE CHAPTER 18.45, C-1 (CENTRAL BUSINESS DISTRICT); CHAPTER 18.50, C-2 (NEIGHBORHOOD COMMERCIAL); CHAPTER 18.55, C-3 (GENERAL COMMERCIAL); AND CHAPTER 18.10 – DEFINITIONS, BY CHANGING THE ZONING CLASSIFICATION IN THE COMMERCIAL ZONES FOR THE REGULATION OF MARIJUANA DISPENSARIES AND RETAIL SALES AND PROVIDING A DEFINITION

WHEREAS, the passage of HB 3460 in 2013 (Medical Marijuana Dispensaries) and Measure 91 (Recreational Marijuana Use) in 2014, the City of Myrtle Creek is left to determine how to appropriately zone a medical marijuana dispensary or marijuana retail store within the city; and

WHEREAS, Oregon Revised Statute (ORS) 475.314, regulates the distance of medical marijuana dispensaries from real property comprising of public or private elementary, secondary or career school attended primarily by minors. In addition, it also requires dispensaries maintain a distance of 1000 feet from another medical marijuana facility; and

WHEREAS, the Marijuana Dispensary and Marijuana Retail Store commercial use is consistent with Chapter 14 of the Myrtle Creek Comprehensive Plan, which contains the land use and urbanization policies of the plan, because it provides for a commercial use to occur within the appropriate commercial zones; and

WHEREAS, the Myrtle Creek Planning Commission adopted certain Findings of Fact regarding the matter based upon the Findings of Fact presented to the Planning Commission at their meeting held on February 24, 2015 and the testimony and evidence provided during the public hearing on the issue; and

WHEREAS, the Planning Commission subsequently forwarded to the City Council a recommendation that the proposed zone change and definition be adopted by the City Council; and

WHEREAS, the City Council conducted a public hearing on the proposed Zoning District Change and Definition on March 17, 2015, and provided an opportunity for public participation in the matter and hereby adopts the proposed amendment;

NOW, THEREFORE THE CITY OF MYRTLE CREEK ORDAINS AS FOLLOWS:

Section 1. Amendment of Official Zoning Map.

The official zoning map for the City of Myrtle Creek, as originally adopted by Ordinance No. 508, is hereby amended to provide for the addition of Medical Marijuana Dispensary or Marijuana Retail Store as a permitted use and structure in the C-1 (Central Business District), C-2 (Neighborhood Commercial) and C-3 (General Commercial) zone classifications and providing for a definition.

Section 2. Amendment of Myrtle Creek Municipal Code, Chapter 18.

The City of Myrtle Creek Municipal Code is hereby amended to the extent described as follows:

Chapter 18.45

C-1 Central Business District

18.45.030 Permitted uses and structures.

The following uses and structures and similar uses and structures are permitted outright, provided the use is conducted wholly within an enclosed building (other than parking areas) and there is no noise, odors, smoke, vibration or other deleterious influences detectable beyond the property line:

(1) Retail Sales.

- (a) Agricultural supply store.
- (b) Appliance sales and service (household and small appliance).
- (c) Automobile supply and parts store.
- (d) Bakery, provided the principal operation is for retail sales on the premises.
- (e) Bicycle sales and repair shop.
- (f) Book, stationery and business supply store.
- (g) Clothing store.
- (h) Contractors' sales and repair shop (such as plumbing, heating, electrical and glass).
- (i) Convenience store or market.
- (j) Department, variety, dry goods or notions store.
- (k) Florist.
- (l) Food and drug store, meat market (retail).
- (m) Furniture store.
- (n) Garden supply, nursery or greenhouse, provided the principal operation is for retail sales on the premises (no outside storage or display permitted).
- (o) Hardware and building supply (no outside storage or display permitted).
- (p) Interior decorating shop (such as floor covering, wallpaper and drapery sales).
- (q) Jewelry or gift store.

- (r) Musical instrument, record or tape sales.
- (s) Pet store, including supplies and grooming.
- (t) Secondhand goods store/pawn shop (no outside storage or display permitted).
- (u) Shoe store or shoe repair.
- (v) Sign shop (painting and sales).
- (w) Sporting equipment sales.
- (x) Toy or hobby sales.
- (y) Wholesale office and showroom with merchandise on the premises limited to small parts and samples.

(z) Medical Marijuana Dispensary or Marijuana Retail Store, subject to the following standards:

(1) Location shall not be within 1000 feet of the property of another marijuana dispensary or marijuana retail sale store, school or pre-school, 500 feet from any Community Service zone or 200 feet from any property zoned Residential.

(2) Any and all Marijuana Dispensaries must be registered with the Oregon Health Authority under ORS 475.314 and comply with all OHA rules.

(3) Any and all other Marijuana Retail Stores must be licensed with the Oregon Liquor Control Commission and consistent with the laws promulgated by the 2014 passage of Measure 91.

Chapter 18.50

C-2 Neighborhood Commercial

18.50.030 Permitted uses and structures.

The following uses and structures and similar uses and structures are permitted outright, provided the use is conducted wholly within an enclosed building (other than parking areas) and there is no noise, odors, smoke, vibration or other deleterious influences detectable beyond the property line:

(1) Retail Sales.

- (a) Automobile supply and parts store.
- (b) Bakery, provided the principal operation is for retail sales on the premises.
- (c) Bicycle sales and repair shop.
- (d) Book, stationery and business supply store.
- (e) Convenience store or market.
- (f) Florist.
- (g) Food and drug store, meat market (retail).
- (h) Interior decorating shop (such as floor covering, wallpaper and drapery sales).
- (i) Jewelry or gift store.
- (j) Musical instrument, record or tape sales.
- (k) Pet store, including supplies and grooming.
- (l) Shoe store or shoe repair.
- (m) Sporting equipment sales.
- (n) Toy or hobby sales.
- (o) Wholesale office and showroom with merchandise on the premises limited to small parts and samples.
- (p) Medical Marijuana Dispensary or Marijuana Retail Store, subject to the following standards:**

(1) Location shall not be within 1000 feet of the property of another marijuana dispensary or marijuana retail sale store, school or pre-school, 500 feet from any Community Service zone or 200 feet from any property zoned Residential.

(2) Any and all Marijuana Dispensaries must be registered with the Oregon Health Authority under ORS 475.314 and comply with all OHA rules.

(3) Any and all other Marijuana Retail Stores must be licensed with the Oregon Liquor Control Commission and consistent with the laws promulgated by the 2014 passage of Measure 91.

Chapter 18.55

C-3 General Commercial

18.55.030 Permitted uses and structures.

The following uses and structures and similar uses and structures are permitted outright, provided there is no noise, odors, smoke, vibration or other deleterious influences detectable beyond the property line.

(1) Retail Sales.

(a) Agricultural supply store.

(b) Appliance (household and small appliance). Appliance sales and service, provided outside storage areas are fenced and screened.

(c) Auction house (excluding livestock and vehicles), provided outside storage areas are fenced and screened (exterior display areas are prohibited).

(d) Automobile sales lots (including sales or rental of boats, recreational vehicles, travel trailers, light duty trucks and similar vehicles, whether new or used).

(e) Automobile supply and parts store.

(f) Bakery, provided the principal operation is for retail sales on the premises.

(g) Bicycle sales and repair shop.

- (h) Book, stationery and business supply store.
- (i) Clothing store.
- (j) Contractors' sales and repair shop (such as plumbing, heating, electrical and glass, provided outside storage areas are fenced and screened).
- (k) Convenience store or market.
- (l) Department, variety, dry goods or notions store.
- (m) Florist.
- (n) Food and drug store, meat market (retail).
- (o) Furniture store.
- (p) Garden supply, nursery or greenhouse, provided the principal operation is for retail sales on the premises and provided outside storage areas are screened.
- (q) Hardware and building supply, provided outside storage areas are fenced and screened.
- (r) Interior decorating shop (such as floor covering, wallpaper and drapery sales).
- (s) Jewelry or gift store.
- (t) Musical instrument, record or tape sales.
- (u) Pet store, including supplies and grooming.
- (v) Secondhand goods store/pawn shop, provided outside storage areas are fenced and screened (exterior display areas are prohibited).
- (w) Shoe store or shoe repair.
- (x) Sign shop (painting and sales), provided outside storage areas are fenced and screened.
- (y) Sporting equipment sales.
- (z) Toy or hobby sales.

(aa) Wholesale office and showroom with merchandise on the premises limited to small parts and samples.

(bb) Medical Marijuana Dispensary or Marijuana Retail Store, subject to the following standards:

(1) Location shall not be within 1000 feet of the property of another marijuana dispensary or marijuana retail sale store, school or pre-school, 500 feet from any Community Service zone or 200 feet from any property zoned Residential.

(2) Any and all Marijuana Dispensaries must be registered with the Oregon Health Authority under ORS 475.314 and comply with all OHA rules.

(3) Any and all other Marijuana Retail Stores must be licensed with the Oregon Liquor Control Commission and consistent with the laws promulgated by the 2014 passage of Measure 91.

18.10.030 Definitions.

When used in this title, the following terms shall have the meanings herein ascribed to them:

“Medical Marijuana Dispensary” means any facility or operation designed, intended or used for purposes of delivering, dispensing, or transferring marijuana to Oregon Medical Marijuana Registry Identification Card holders pursuant to ORS 475.300 - 475.346.

“Marijuana Retail Store” means any facility or operation designed, intended or used for purposes of selling marijuana items to a consumer.

PASSED BY CITY COUNCIL UPON ITS FIRST READING this 17th day of March, 2015.

APPROVED BY CITY COUNCIL UPON ITS SECOND READING this 7th day of April, 2015.

APPROVED BY THE MAYOR this 7th day of April, 2015.

Ken Brouillard, Mayor

ATTEST:

Carolyn D. Shields, CMC
City Recorder