

# The City of North Plains

## Agenda

**PLANNING COMMISSION - REGULAR Session Meeting**  
**Wednesday, October 14, 2015 @ 7:00 PM**  
**North Plains Senior Center**  
**31450 NW Commercial Street**

Page

1. CALL TO ORDER
2. FLAG SALUTE
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 Planning Commission, only your name. Presentations are limited to five minutes.)*
5. APPROVAL OF MINUTES:  
Review and approval of September 9, 2015, Regular Session Minutes
  - A.  [090915 RS Planning Commission Minutes](#) 3 - 5
6. PUBLIC HEARING
  - A. None Scheduled
7. NEW BUSINESS:
  - A. Discussion of Code regulations regarding Marijuana Dispensaries in North Plains and discussion of Legislation regarding Marijuana facilities 6 - 45
    - [Memo Ordinance No 426 Temporary Ban on Marijuana facilities](#)
    - [Marijuana Dispensaries LOC Local Government Regulation of Marijuana - August 2015 \(00484321xB8084\)](#)
    - [Ordinance No 426 North Plains GEN MJ Regs HB 3400 ordinance temporary prohibiting MJ facilities \(00487573xB8084\)](#)
  - B. Review of the Grant Application Submitted to DLCD for a Technical Assistant Grant 46 - 61
    - [Memo Grant Application to DLCD for Technical Assistance Grant.pdf](#)
    - [DLCD Grant Application North Plains TA App Final \(2\)](#)
  - C. Preview from Cogan Owens Greene and discussion of Envision North Plains Implementation beginning with Residential Design. 62 - 64
    - [Memo Envision North Plains Implementation Preview](#)
    - [Vision Implementation Strategy 100715](#)
    - [Final Vision Statement and Goals 100715](#)
  - D. Update from subcommittee on status of code changes and design review.

8. UNFINISHED BUSINESS
9. PLANNING COMMISSION COMMENTS
10. STAFF COMMENTS
11. ADJOURNMENT

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**The following Planning Commission 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.:**

Thursday, November 12, 2015   Wednesday, December 9, 2015   Wednesday, January 13, 2016

**CITY OF NORTH PLAINS PLANNING COMMISSION.  
REGULAR SESSION MINUTES  
September 9, 2015, 7:00 P.M.  
North Plains Senior Center  
31450 NW Commercial Street**

1. Chairperson King called the meeting to order at 7:00 p.m.
2. The pledge of allegiance was led by Chairperson King.

**3. ROLL CALL**

Members: Chair Stewart King, Garth Eimers, James Fage, Larry Gonzales,  
Lonnie Knodel, Doug Nunnenkamp  
Excused: Vice Chair Heather LaBonte  
Ex-Officio: City Councilor Scott Whitehead  
Staff: Public Works Director/Interim City Manager Blake Boyles; City  
Recorder Margaret Reh

**4. PUBLIC COMMENTS**

None were forthcoming.

**5. APPROVAL OF MINUTES**

- A. Approval of the August 12, 2015, Regular Session Minutes.

Motion by Eimers. Second by Nunnenkamp to approve the August 12, 2015, Regular Session Minutes as written. Motion was approved unanimously.

**6. PUBLIC HEARING**

None Scheduled

**7. NEW BUSINESS**

None Scheduled

**8. UNFINISHED BUSINESS**

- A. Revisit and discuss code changes and design review.

The Commission reviewed the info in the Agenda Packet. Of note was the letter from Anne Debbaut, DLCD, addressing the Planning Commission's suggested code changes of increasing the minimum lot size for single-family detached dwellings in the R-2.5 zone from 2,500 square feet to 4,000 square feet and an increase in the minimum lot size for attached dwellings. DLCD responded that the City has not provided adequate evidence that the proposed changes meet statewide planning goals for housing and that the City would need to address this before adopting these code changes. The city will need to complete a housing needs analysis and a buildable lands inventory. Mayor Hatcher and Blake Boyles directed Cogan Owens Greene to apply for a grant for funding the housing needs analysis. Heather Austin was directed to put together a Request for Proposals for an economic opportunities analysis. This will be discussed further at the joint work session the Planning Commission and City Council are holding to review the progress of the Comprehensive Plan. Discussion ensued.

The Commission continued their discussion regarding the process of capturing the various changes and revisions that have been made to the code over the past months. A number of drafts have been composed and there are different revisions of these drafts. At this point in time it is not clear which drafts are the most current and if all the suggested changes have been captured. Included in the agenda packet was a copy of the various code chapters that have been worked on. The Commission discussed their options on moving forward with these documents.

All the Commissioners should have had a chance to review the documents. King asked the Commissioners to submit any input of a revision that they are aware of that did not get recorded.

Motion by Gonzales. Second by Eimers to create subcommittee to review all code revisions the Commission has been working on plus any new info they have recently received. This will come back to the Commission for final review before sending on to City Council. Motion was unanimously approved.

The subcommittee will consist of Commissioners Eimers, LaBonte and King. This subcommittee will go over the documents one by one. Their objective to come up with a new clean copy with all the changes that the committee can recall. They will fine tune it with the latest codes revisions and suggestions that have been submitted and modified in public hearing. They will add any new info they have recently received. They will come back with a clean copy for the Planning Commission to approve.

The Commission wants direction as to the next steps. Can these changes be address by an addendum or a memo to City Council along with their recommendations for the code changes, or does the process need to begin again with a public hearing? Do the changes need to be redlined for submission to DLCDC or do they require a clean copy?

The Commission will compile a set of questions and get a working direction of where they are going. They will present these questions at the joint session.

A short discussion ensued regarding the attachments in the agenda packet regarding design guidelines. Also mentioned were the curb cut and flare options that could help address the problems we are seeing with parking. Eimers would like to pursue this after the vision process of the Comprehensive Plan is solidified.

Discussion ensued regarding raising the height standard to 45-46 feet in some areas of the zoning. Further research needs to be done before moving forward with this.

Garth would like to see a process be put in place in regards to keeping track of changes. He would like to have the process defined and a mechanism in place for keeping track of revisions. He would like to see a flow chart developed to keep track of where things are in the process.

The Commission also discussed the lack of getting answers to questions asked. Knodel

stated that questions can be asked at a meeting and then a whole month later they still don't have any answers. This makes it difficult to have any forward progress.

**9. COMMISSIONER COMMENTS**

There will be a joint session with the Planning Commission and City Council to further review the Comprehensive Plan progress at Jessie Mays September 14, 2015.

**10. STAFF COMMENTS**

Boyles hosted a tour of, the City of North Plains on August 27, 2015 for the Portland Metro Regional Solutions team. Anne Debbaut of DLCD was a member of the team, as well as representatives from the Governor's Office, Department of State Lands, Department of Transportation, Department of Environmental Quality, Department of Energy and Business Oregon. This group could bring support to the City via technical support, funding sources or process assistance.

Staff informed the Commission that we have new Agenda Management Software that will be going live on the September 21 City Council meeting. Staff will also be using the software for Planning Commission and Parks Board. This is a browser driven management system; also will also work well with the Commissioner iPads. There is a free app called AgendaNotes which the Commission can download that provides the ability for annotating documents on their screen.

**11. ADJOURNMENT.**

Chairperson King adjourned the meeting at 7:47 p.m. The next scheduled regular session of the Planning Commission is Wednesday, October 14, 2015, which is currently scheduled to be held at the North Plains Senior Center.

Submitted by:

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Margaret L. Reh, City Recorder

Date Minutes Approved: \_\_\_\_\_



## CITY OF NORTH PLAINS

31360 NW Commercial Street, North Plains, Oregon 97133

Date: October 14, 2015  
To: Planning Commission  
From: Public Works Director and City Manager Blake Boyles  
Subject: Discussion of Code regulations regarding Marijuana Dispensaries in North Plains and discussion of Legislation regarding Marijuana facilities

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**Request:** Planning Commission will discuss the direction of possible code changes and regulations they would like to see imposed for the location of marijuana facilities.

The state has not finalized regulations yet for recreational marijuana facilities. Council is in the process of issuing an ordinance which will temporarily place a ban on marijuana facilities in North Plains. This ban will expire in August 2016.

Included in the Commission packet is a copy of Ordinance No. 426 which was drafted by Ashley Driscoll of Beery Elsner and Hammond. It addressed the measures discussed during the work shop the Council held on October 1, 2015.

**Background:** The North Plains City 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.

Council conducted a workshop on 10/01/2015 to further discuss options and legislative law. Ashley Driscoll, Beery Elsner and Hammond was present at the work session and assisted 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 is included in the Commission's agenda packet. This publication goes through the various types of marijuana facilities and a city's options for regulating each.

**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 at this time.



LEAGUE OF OREGON CITIES

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**LOCAL GOVERNMENT  
REGULATION OF  
MARIJUANA IN  
OREGON**

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**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.<sup>1</sup> 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.

<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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:

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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)).

<sup>5</sup> *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.<sup>6</sup> 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,

<sup>6</sup> 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>	<b>Marijuana Grow Site:</b> Location for planting, cultivating, growing, trimming, or harvesting marijuana or drying marijuana leaves or flowers <i>Register under ORS 475.304</i>	<b>Marijuana Processing Site:</b> Location for compounding or converting marijuana into medical products, concentrates or extracts <i>Register under section 85 of HB 3400</i>	None	<b>Medical Marijuana Dispensary:</b> 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>	<b>Producers:</b> Manufacture, plant, cultivate, grow, harvest <i>Obtain license under section 12 of HB 3400</i>	<b>Processors:</b> 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>	<b>Wholesalers:</b> Purchase marijuana items for resale to a person other than a consumer <i>Obtain license under section 15 of HB 3400</i>	<b>Retailers:</b> 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).<sup>7</sup> 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

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<sup>7</sup> 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.<sup>8</sup>

### **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

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<sup>8</sup> 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.

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#### 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.

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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;<sup>9</sup>

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.

<sup>9</sup> 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.

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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}<sup>10</sup> of the following in the area subject to the jurisdiction of the city {select desired options from the list below}:

- (a) Marijuana processing sites;

<sup>10</sup> 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}.

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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 WHOLESALERS, AND/OR RECREATIONAL MARIJUANA RETAILERS} WITHIN THE CITY<sup>11</sup>

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.<sup>12</sup>

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

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

<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup>

EFFECTIVE DATE. This resolution is effective upon adoption.

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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

<sup>13</sup> 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.

<sup>14</sup> 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](http://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}<sup>15</sup> 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}<sup>16</sup> 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

<sup>15</sup> 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.

<sup>16</sup> 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.<sup>17</sup>

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 ORDINANCE<sup>18</sup>

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;

<sup>17</sup> 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.

<sup>18</sup> 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.<sup>19</sup>

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 CITY<sup>20</sup>

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

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

<sup>20</sup> 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.<sup>21</sup>

**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.<sup>22</sup>

**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.<sup>23</sup>

**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

<sup>21</sup> Exhibit 1 should include the question and summary.

<sup>22</sup> 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.

<sup>23</sup> 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](http://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.}<sup>24</sup>

\*\*\*\*\*

## 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.}

<sup>24</sup> 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.

**ORDINANCE NO. 426**

**AN ORDINANCE OF THE CITY OF NORTH PLAINS, OREGON ADDING CHAPTER 6.30 TO TITLE SIX OF THE NORTH PLAINS MUNICIPAL CODE TEMPORARILY PROHIBITING THE ESTABLISHMENT OF MARIJUANA FACILITIES WITHIN THE CITY.**

**WHEREAS**, House Bill 3460 (2013) requires medical marijuana dispensaries to register with the Oregon Health Authority and establishes rules for the State of Oregon's regulation of medical marijuana dispensaries;

**WHEREAS**, Senate Bill 1531 (2014) placed additional restrictions on medical marijuana dispensaries and expressly permitted cities to impose a temporary moratorium on the operation of registered medical marijuana facilities within city limits;

**WHEREAS**, Ballot Measure 91, which Oregon voters approved in November 2014, permits the manufacturing, distribution, sale, possession and use of recreational marijuana in Oregon;

**WHEREAS**, House Bill 3400 (2015) expressly permits local jurisdictions to prohibit the establishment of marijuana facilities within their jurisdictional limits and the City of North Plains desires to impose such limits pursuant to this authority;

**WHEREAS**, House Bill 3400 (2015) expressly permits local jurisdictions to adopt reasonable zoning and other regulations on all marijuana facilities, including medical marijuana grow sites;

**WHEREAS**, the city believes House Bill 3400 is not the only source of authority for the city to prohibit the establishment of marijuana facilities;

**WHEREAS**, the city desires to temporarily prohibit marijuana facilities while the city considers and adopts proper zoning and other regulations for marijuana facilities; and

**WHEREAS**, the city finds that the public health, safety and general welfare of the city, its residents and its visitors necessitates and requires the adoption of this ordinance prohibiting the establishment and operation of marijuana facilities within city limits.

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

**Section 1.** Chapter 6.30 – Prohibition on Marijuana Facilities – is added to Title Six of the North Plains Municipal Code to read as follows:

**Chapter 5.34 – Prohibition on Marijuana Facilities.**

A. Prohibition. No person, business or entity may establish a marijuana facility within city limits. The establishment, maintenance, or operation of a marijuana facility by a person, business or any other entity within the city in violation of this chapter is declared to be a public nuisance.

B. Definitions. For the purposes of this chapter and in accordance with HB 3400, a “marijuana facility” includes:

1. Marijuana processing sites registered with the Oregon Health Authority;
2. Medical marijuana dispensaries registered with the Oregon Health Authority;
3. Marijuana producers licensed by the Oregon Liquor Control Commission;
4. Marijuana processors licensed by the Oregon Liquor Control Commission;
5. Marijuana wholesalers licensed by the Oregon Liquor Control Commission; and
6. Marijuana retailers licensed by the Oregon Liquor Control Commission.

C. Violations and Enforcement.

1. The establishment, maintenance or operation of a marijuana facility by a person, business or any other entity within the city in violation of the requirements of this chapter will be subject to any and all enforcement remedies available to the city under law and/or the North Plains Municipal Code including but not limited to enforcement pursuant to Chapter 1.01 of the North Plains Municipal Code and/or the filing of an appropriate action and pursuit of an appropriate remedy in a court of competent jurisdiction.
2. The city may abate a nuisance under Chapter 4.10 of the North Plains Municipal Code or it may pursue any other remedies available to it, including but not limited to an action seeking declaratory relief and/or injunctive relief.
3. If the city brings an action in either law or equity in any of the courts of this state (including the U.S. District Court for the District of Oregon) other than its municipal court for the enforcement of this Chapter, the city shall be entitled to the award of its reasonable attorney fees in the event it is the prevailing party.

**Section 2.** In accordance with HB 3400, staff is directed to provide a copy of this ordinance to the Oregon Health Authority and to the Oregon

Liquor Control Commission in a form and manner that those entities may require.

**Section 3.** This ordinance will expire on August 1, 2016, or when the city adopts zoning and other regulations for marijuana facilities, whichever comes first.

**INTRODUCED** on the 5th day of October 2015, **AND ADOPTED** this 19th day of October 2015.

**CITY OF NORTH PLAINS, OREGON**

By: \_\_\_\_\_  
David Hatcher, Mayor

ATTEST:

By: \_\_\_\_\_  
Margaret L. Reh, City Recorder



## CITY OF NORTH PLAINS

31360 NW Commercial Street, North Plains, Oregon 97133

Date: October 14, 2015  
To: Planning Commission  
From: Public Works Director and Interim City Manager Blake Boyles  
Subject: Review of the Grant Application Submitted to DLCD for a Technical Assistant Grant

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**Request:** In conversations with the Department of Land Conservation and Development (DLCD) and Cogan Owens Greene, it was determined that the City could apply for a technical assistant grant to assist in the next phases of the Comprehensive Plan. Steve Faust of Cogan Owens Greene completed the application for the City of North Plains. A copy of the grant application is included in your packet.

The City of North Plains is requesting grant funding to retain a contract planner and technical consultants to prepare a buildable lands inventory (BLI), housing needs analysis (HNA) and economic opportunities analysis (EOA) to take advantage of and respond to growth pressure in the North Plains/Western Washington County region. This work will bring the City into compliance with Statewide Goals 9 and 10. The HNA and EOA will result in updates to Chapter 9 (Economic Development) and Chapter 10 (Housing) of the North Plains Comprehensive Plan, including goals and implementation policies as well as relevant community development codes. The goal of this effort is to plan for, guide and manage future housing and employment related growth.

**Background:** The City of North Plains needs to update its Buildable Lands Inventory (BLI), Housing Needs Analysis (HNA) and Economic Opportunities Analysis (EOA) to guide future housing and economic growth. The City will develop cohesive housing and economic strategies to support the 2015 North Plains Vision, update the Comprehensive Plan with specific policies and recommend implementation measures.

**Fiscal Impact:** This requested amount of this grant is \$40,000.

**Environmental Issues:** There are no environmental issues involved.

**Recommendation:** This item is informational only.



## Department of Land Conservation and Development

**Application Date:** September 30, 2015

**Applicant:** The City of North Plains

**Address:** 31360 NW Commercial Street

**City:** North Plains

**Zip:** 97133

**Phone:** 503-389-1397

**Contact name and title:** Blake Boyles, City Manager

**Contact e-mail:** blake@northplains.org

**Grant request amount:** \$40,000

**Local Contribution (recommended but not required):** \$30,000

### **Project Title:**

1. Buildable Lands Inventory (BLI)
2. Housing Needs Analysis (HNA)
3. Economic Opportunities Analysis (EOA)

### **Project Summary:**

The City of North Plains needs to update its BLI, HNA and EOA to guide future housing and economic growth. The City will develop cohesive housing and economic strategies to support the 2015 North Plains Vision, update the Comprehensive Plan with specific policies and recommend implementation measures.

### **Project Description & Work Program**

#### **A. Goals and Objectives.**

The City of North Plains is requesting grant funding to retain a contract planner and technical consultants to prepare a buildable lands inventory (BLI), housing needs analysis (HNA) and economic opportunities analysis (EOA) to take advantage of and respond to growth pressure in the North Plains/Western Washington County region. This work will bring the City into compliance with Statewide Goals 9 and 10. The HNA and EOA will result in updates to Chapter 9 (Economic Development) and Chapter 10 (Housing) of the North Plains Comprehensive Plan, including goals and implementation

policies as well as relevant community development codes. The goal of this effort is to plan for, guide and manage future housing and employment related growth. This would be a one-biennium project.

The citizens and elected officials of North Plains look to growth and prosperity while maintaining the city's small town character. To this end, the City has embarked upon a comprehensive land use planning process designed to:

- Address the statewide planning goals of the Land Conservation and Development Commission;
- Encourage orderly and coordinated urban growth and provide urban level services in an efficient and economic manner;
- Enhance community livability and encourage economic expansion; and
- Preserve the community's character and natural resources for future generations.

North Plains has seen increasing interest from the development community in recent years for industrial, commercial and residential uses. Throughout 2015, the City has engaged community members in creating the 2015 North Plains Vision. With the visioning process nearly complete, the City would like to move forward with measures to implement the vision. More analysis is needed to update and modernize North Plains' comprehensive plan, land use ordinances and development codes to guide growth in the near and long-term future.

The City issued just 3, 54 and 53 building permits from 2012 to 2014. So far this year, the City has issued 92 building permits. The number of occupied single family residences has increased from 654 in August 2010 to 786 in August 2015. The City needs current data to ensure sufficient buildable land is designated to satisfy projected housing needs by type and density.

The City has initiated several efforts to guide the EOA and HNA process:

- Mayor David Hatcher and City Manager, Blake Boyles, conducted a tour of North Plains for members of the Governor's Regional Solutions Team to identify current and future projects and opportunities for collaboration, coordination and support among the City and state agencies. A summary of the visit is included as an attachment to this application.
- Planning Commission has been working to update portions of the municipal code and identify issues to be addressed in the EOA and HNA.
- A business inventory survey was conducted in partnership with the Chamber of Commerce to better understand existing businesses and industries and North Plains.
- A real estate development market assessment was conducted of key property currently owned by a private resident seeking to partner with the City on its strategic improvement. The City seeks to explore the potential for the property to be developed as retail commercial, which would require entitlement consistent with community development objectives.
- A work session for the North Plains City Council, Planning Commission and Vision Steering Committee explored residential and commercial design options and opportunities.

Project objectives include:

- Promote economic development and create jobs for residents of North Plains and surrounding communities.
- Provide a range of housing options to meet the needs of current and future North Plains' residents.
- Prepare a buildable lands inventory of residential and employment lands.
- Compile and analyze data on economic development and housing trends.
- Identify residential, commercial and industrial land needs.
- Develop policies to ensure adequate land to accommodate identified residential and employment needs.

- Provide the basis for updating the North Plains Municipal Code to implement housing and economic development policies.
- Update the comprehensive plan to demonstrate compliance with planning goals 9 and 10.

## **B. Products and Outcomes.**

The City of North Plains envisions the BLI, HNA and EOA will serve as a first step towards implementing the 2015 North Plains Vision with the support of the community. The EOA will help create a strong and diverse economic environment, which is essential for the City to maintain its exemplary quality of life. Sustainable economic activities provide services for residents, create jobs, spread wealth, offer opportunities and generate tax revenue. The HNA will help the City promote quality residential development and homes that are well-planned, contextually appropriate, and enhance the overall quality of life for current and future residents. Ultimately these analyses are imperative to understanding community needs, guiding growth and development and complying with statewide planning goals.

The EOA will update the City's employment projections, target industries and inventory of suitable employment lands. Economic goals and policies will provide the land use framework for an economic development strategy that includes identifying key infrastructure improvements to promote economic activity and create vibrant development to serve residents and visitors.

There is developable commercial and industrial land in the City of North Plains; however residents and City leaders are concerned with how this land will develop and how to attract the desired type of businesses and industries. There are also many opportunities for North Plains to define its commercial character, particularly along Commercial Street downtown and along Glencoe Road from Highway 26 to Commercial Street.

The City's visioning process identified a strong desire for a grocery store in North Plains. One expected outcome of these analyses is the assessment of potential sites for employment and retail uses as well as development of a strategy for targeting a grocery store to locate in North Plains. Additional development opportunities exist in the industrial/employment areas of the City. North Plains is seeking a strategy to encourage businesses that will provide quality employment opportunities.

Through this process, the City is looking to develop clear policies and implementation measures for ensuring quality commercial and industrial development that reflects the unique history and character of North Plains. The City is also seeking innovative ideas for how to capitalize on existing local economic opportunities and attract new opportunities to this independent community. The City proposes to work in coordination with Washington County to ensure the project outcomes support regional economic development priorities.

The HNA will identify the mix and density of needed housing and land necessary to satisfy these needs by housing type and density. Housing goals and policies will guide future residential development and serve as the basis for code revisions to encourage quality homes that contribute to a more livable community. The community is particularly interested in analyzing minimum lot sizes and considering residential design standards.

Primary deliverables (section C describes the major tasks and deliverables in greater detail):

- Buildable lands inventory for residential and employment uses in North Plains.
- Identify/Refine community economic development and housing objectives.
- Update employment forecast.
- Trend analysis to identify economic opportunities likely to expand or locate in North Plains.
- Analysis of residential development trends.

- Determine land needed to accommodate commercial and industrial needs.
- Determine projected housing needs by and density, including price ranges and rent levels.
- Develop policies that promote economic development and ensure sufficient land to meet future commercial and industrial land needs.
- Develop policies that encourage quality residential development and ensure sufficient land to satisfy projected housing needs at various price ranges and rent levels.
- Update economic and housing chapters of the North Plains Comprehensive Plan
- Build partnerships with the Chamber of Commerce and local businesses, Washington County, Metro and state agencies to promote an inclusive and transparent policy agenda.

## C. Work Program, Timeline & Payment.

### 1. Tasks and Products

#### Task 1. - Buildable Lands Inventory:

Prepare an inventory of buildable residential and employment lands using a methodology based on the DLCDC publication *Planning for Residential Growth*.

Step 1: Prepare a master list and map of land zoned for residential and commercial uses within the urban growth boundary (UGB) showing land that is vacant, partially vacant and developed.

Step 2: For developed land, start a further screening process by removing parcels from the buildable lands inventory that are fully developed per existing zoning. The result is partially vacant land.

Step 3: For remaining developed land, identify redevelopable land based on a method such as applying an appropriate screen of the ratio between land value and improvement value, obtained from the County Assessor. Remove the parcels from the buildable lands inventory where redevelopment is found infeasible.

Step 4: Introduce development constraint layers to the entire remaining inventory of both vacant and redevelopable parcels, including public/semi-public ownership, floodways, floodplains, Goal 5-protected wetlands, and steep slopes. Use constraint information to remove parcels without sufficient buildable land or reduce density of potential development.

Step 5: Review the draft inventory for any anomalies or unusual situations that might not show up in the data, and make adjustments to the inventory as appropriate.

Step 6: Calculate and categorize the remaining residential and employment development potential.

*Products:* Draft and final buildable lands inventory for residential and employment uses.

#### Task 2. - Housing Needs Analysis

Prepare a housing needs analysis to identify housing needs in North Plains by type and density.

Step 1: Apply base zoning designations to residential lands in the BLI to determine current density/mix of housing.

Step 2: Project the number of new housing units needed in the next 20 years.

Step 3: Identify relevant national, state and local demographic and economic trends and factors that may affect the 20-year projection of structure type mix.

Step 4: Describe demographic characteristics of the population and, if possible, household trends that relate to demand for different types of housing.

Step 5: Determine the types of housing that are likely to be affordable to the projected households based on household income.

Step 6: Estimate the number of additional needed units by structure type.

Step 7: Determine the needed density ranges for each plan designation and the average needed net density for all structure types.

Step 8: Identify and evaluate measures to increase the likelihood needed residential development will occur. Prepare measures to amend the comprehensive plan and recommend needed changes to land use regulations. Prepare a list of proposed code changes to implement new policies.

*Products:*

- a. Memo describing residential development trends.
- b. Memo describing housing needs (dwelling units, acres).
- c. Housing policies and recommended implementation measures.
- d. Draft and final housing needs analysis.

Task 3. - Economic Opportunities Analysis

Prepare an economic opportunities analysis to identify land needed to accommodate commercial and industrial growth.

Step 1: Engage the community in a process to identifying key goals, objectives and issues related to economic development. Draft a statement of Community Economic Development Objectives.

Step 2: Conduct an analysis of local, regional, statewide and national economic development trends. Estimate job growth associated with the economic development opportunities likely to expand or locate in the planning area within the planning period. Meet with local stakeholders and state economic development professionals regarding local economic development potential.

Step 3: Prepare a site suitability analysis that identifies the employment land uses appropriate for the study area.

Step 4: Prepare an inventory of suitable sites in the planning area to identify development constraints and examine opportunities for redevelopment.

Step 5: Assess the potential of buildable employment lands to meet the identified need by types and amounts.

Step 6: Prepare policies to successfully implement the Community Economic Development Objectives, including changes to the land supply and updates to the comprehensive plan. Prepare a list of proposed code changes to implement new policies.

*Products:*

- a. Community Economic Development Objectives and a memo describing economic development trends.
- b. Memo describing the range of site types suitable for employment uses in North Plains, an inventory of sites suitable for employment uses likely to occur in North Plains, and estimated need for employment land by category of site type.
- c. Economic development policies and recommended implementation measures.
- d. Draft and final economic opportunities analysis.

**2. Timeline**

The following is a tentative schedule for the work to proceed upon receipt of a signed contract. The schedule indicates the months in which major steps will be completed for each of the three tasks.

	<b>BLI</b>	<b>EOA</b>	<b>HNA</b>
Month 1	Steps 1-4		
Month 2	Step 5		
Month 3	Step 6	Steps 1-4	Steps 1-2
Month 4			
Month 5			
Month 6		Steps 5-7	Steps 3-5
Month 7			
Month 8		Step 8	Step 6
Month 9	Project Completion / Adoption		

**3. Payment Schedule**

The City is requesting that \$15,000 be paid at the completion of Task 2a and 3a, \$15,000 at the completion of Task 2b and 3b and the balance of \$10,000 at the completion of Task 2d and 3d.

<b>Task/Products</b>	<b>Payment</b>	<b>Date</b>
Task 1. Buildable Lands Inventory		
Task 2a. Housing Needs Analysis: <ul style="list-style-type: none"> <li>✓ Residential trends</li> </ul> Task 3a. Economic Opportunities Analysis: <ul style="list-style-type: none"> <li>✓ Community Economic Development Objectives</li> <li>✓ Economic development trends</li> </ul>	\$15,000	Month 3
Task 2b. Housing Needs Analysis: <ul style="list-style-type: none"> <li>✓ Housing needs (dwelling units, acres)</li> </ul> Task 3b. Economic Opportunities Analysis: <ul style="list-style-type: none"> <li>✓ Range of suitable site types</li> <li>✓ Inventory of suitable sites</li> <li>✓ Estimated land need</li> </ul>	\$15,000	Month 6
Task 2c. Housing Needs Analysis: <ul style="list-style-type: none"> <li>✓ Housing policies and recommended implementation measures</li> </ul> Task 3c. Economic Opportunities Analysis: <ul style="list-style-type: none"> <li>✓ Economic development policies and recommended implementation measures</li> </ul>		
Task 2d: Final Housing Needs Analysis Task 3d: Final Economic Opportunities Analysis	\$10,000	Month 9
<b>TOTAL</b>	\$40,000	

**D. Evaluation Criteria.**

The City of North Plains is seeking financial assistance to assess housing and economic development needs. The project aligns with program priorities, including a primary objective to promote economic development within the City. The project will provide the necessary analyses to update the comprehensive

plan with policies to guide future commercial, industrial and residential development. The project will result in an EOA intended to increase economic development opportunities. The EOA also will benefit economic development efforts, especially in downtown North Plains and the NE industrial/employment area. The results of the EOA and HNA will feed into planning for Goal 7 (Hazards) and Goal 11 (Public Facilities and Services) as part of the comprehensive plan update.

This project also aligns with many regional priorities of the Portland Metro Regional Solutions Center (RSC). Project outcomes will include:

- Infrastructure investment priorities to support livability and promote traded sector economic growth. (RSC Priority #2)
- Coordination with state agencies to explore possible uses on the Dant Russel and other potentially contaminated sites. (RSC Priority #3)
- Strategies to improve the local and regional economy by supporting and promoting appropriate industry clusters. (RSC Priority #4)
- Policies and strategies to develop land in a manner that accommodates future employment and housing growth, maximizes efficiency, provides transportation options and creates a livable community where people can live, work and play.

**E. Project Partners.**

The City will actively engage local, regional and state partners including the North Plains Chamber of Commerce, North Plains Neighborhood Associations, Washington County, Metro, DLCD and members of the Governor’s Regional solutions Team.

**F. Advisory Committees.**

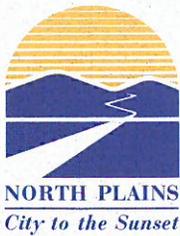
The City of North Plains will create a new Community Advisory Committee to guide development of the BLI, EOA and HNA. The committee will include representatives from the Planning Commission and City Council as well as business owners and neighborhood residents. City boards and commissions, including the North Plains Planning and Citizen Involvement commissions will be consulted throughout the project.

**G. Cost-Sharing and Local Contribution.**

The total project cost estimate for the BLI, EOA and HNA is \$70,000 and will take approximately nine months to complete. The City is requesting a grant amount of \$40,000 to cover a portion of the cost of the consultant. The City is proposing to provide matching funds of \$30,000. The City has adequate local capacity to successfully manage the project. A consultant will be retained to assist in completing the grant products.

**Product Request Summary**

<b>Product</b>	<b>Grant Request</b>	<b>Local Contribution</b>	<b>Total Budget</b>
Buildable Lands Inventory	\$ 5,000	\$ 5,000	\$ 10,000
Housing Analysis	\$ 20,000	\$ 15,000	\$ 35,000
Economic Opportunities Analysis	\$ 15,000	10,000	25,000
<b>TOTAL</b>	<b>\$ 40,000</b>	<b>\$ 30,000</b>	<b>\$ 70,000</b>



## CITY OF NORTH PLAINS

31360 NW Commercial St. North Plains, Oregon 97133

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September 30, 2015

Larry French  
Grants Administrative Specialist  
Department of Land Conservation and Development  
635 Capitol Street NE, Suite 150  
Salem, Oregon 97301-2540

Dear Mr. French:

Thank you for the opportunity to submit an application for a Technical Assistance grant from the Land Conservation and Development Commission (LCDC) to conduct a Buildable Lands Inventory, Economic Opportunities Analysis (EOA) and Housing Needs Analysis (HNA) for the City of North Plains. We are committed to this project as part of an overall effort to implement the 2015 North Plains Vision and update our Comprehensive Plan.

Over the past few years, North Plains and the Western Washington County region has seen increasing interest from developers. The goal of this effort is to plan for, guide and manage future housing and employment related growth. Our effort aligns with LCDC's top priority for this grant program, to "promote economic development." The HNA and EOA will result in updates to Chapter 9 (Economic Development) and Chapter 10 (Housing) of the North Plains Comprehensive Plan, including goals and implementation policies as well as relevant community development codes.

In addition to offering matching funds and in-kind contributions to this effort, we are planning or have initiated the following projects that will feed into to the EOA and HNA:

- A tour of North Plains for members of the Governor's Regional Solutions Team to identify current and future projects and opportunities for collaboration.
- Planning Commission has been working to update portions of the municipal code and identify issues to be addressed in the EOA and HNA.
- Conduct a business inventory survey in partnership with the Chamber of Commerce to better understand existing businesses and industries in North Plains.
- Conduct a real estate development market assessment of a key property currently owned by a private resident seeking to partner with the City on its strategic improvement. The City seeks to explore the potential for the property to be developed as retail commercial, which would require entitlement consistent with community development objectives.
- A work session for the North Plains City Council, Planning Commission and Vision Steering Committee to explore residential and commercial design options and opportunities.

The North Plains City Council and the North Plains Planning Commission discussed the application at their joint workshop on September 14, 2015 and the consensus of the group was to support this effort.

Thank you again for the opportunity to present our project for consideration of grant funding. If you have any questions please contact me at 503-572-1816 or Blake Boyles, City Manager of North Plains at 503-389-1397.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Hatcher", with a long horizontal flourish extending to the right.

David Hatcher  
Mayor



## Governor's Regional Solutions Team

# Outreach and Tour - City of North Plains



### GOVERNOR'S REGIONAL SOLUTIONS TEAM

1600 SW FOURTH AVE, SUITE 109  
PORTLAND, OR 97201

AUGUST 27, 2015

*Governor's Regional Solutions Team*

## **City of North Plains**

August 27, 2015

*David Hatcher, Mayor*

*Blake Boyles, Interim City Manager*

*Kirstin Greene, Cogan Owens Greene, LLC*

*Heather Austin, 3J Consulting, Inc.*

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Current and future projects identified by the City of North Plains:

- Growth management issues. How to grow without losing the small town feel.
- Lack of grocery stores.
- Unhappy with recent residential development.
- Dant Russell Site for future park development.
- Wetland/McKay Creek trail improvements.
- ODOT property for skate park on 307th Ave.
- NE industrial/employment area development.
- Gateway entrance to downtown.
- Future annexation of UGB area north of North Ave.
- Planning a Main Street workshop and future Master Plan.
- Visioning and a Comprehensive Plan update.
- Concern with bike safety on rural roads.
- Need for marketable industrial lands.
- New residential development design standards.
- Pursue funding for Transportation System Plan update.
- Update buildable land inventory.

Regional Solutions Team	Solutions & Tools
<p><u>Governor's Office</u>  <b>Bobby Lee</b>  RSC Coordinator  TEL: (503) 339-5223  EMAIL: bobby.lee@oregon.gov  WEBSITE:  <a href="http://www.oregon.gov/gov/admin/regional-solutions/Pages/default.aspx">http://www.oregon.gov/gov/admin/regional-solutions/Pages/default.aspx</a></p>	<ul style="list-style-type: none"> <li>I am your <u>primary contact</u> especially if there are community development issues involving multiple State agencies.</li> </ul>
<p><u>Oregon Department of Transportation</u>  <b>Andrew Plambeck</b>  TEL: (503) 731-8248  EMAIL: andrew.r.plambeck@odot.state.or.us  WEBSITE:  <a href="http://www.oregon.gov/ODOT/Pages/about_us.aspx">http://www.oregon.gov/ODOT/Pages/about_us.aspx</a></p>	<ul style="list-style-type: none"> <li>North Plains growing will require additional infrastructure throughout the community to sustain its quality of life. Many streets lack sidewalks. They could be good candidates for <u>TGM grants</u> and potential funding through <u>ODOT's Bike &amp; Pedestrian Program</u>.</li> <li>I will follow up with Blake about the specific ODOT properties that would be required for the <u>Dant Russell</u> site.</li> <li>In regards to <u>skate park</u> north of U.S. 26, preliminary conversation underway with ODOT's maintenance and right-of-way teams about potential property sale. Looks like there's a win-win solution.</li> </ul>
<p><u>Oregon Department of Land Conservation &amp; Development</u>  <b>Anne Debbaut</b>  TEL: (503) 725-2182  EMAIL: anne.debbaut@state.or.us  WEBSITE:  <a href="http://www.oregon.gov/LCD/pages/index.aspx">http://www.oregon.gov/LCD/pages/index.aspx</a></p>	<ul style="list-style-type: none"> <li>Please contact me if you need assistance with long range <u>land use and transportation planning</u>. I am already working with the city on a possible Housing Needs Analysis and Buildable Lands Inventory as well as possible design standards for residential zones.</li> <li>Also contact me for biennial <u>Technical Assistance grants</u> targeting comprehensive plan updates for transportation system plans, infrastructure finance plans and more. More information is available at: <a href="http://www.oregon.gov/LCD/Pages/grants.aspx">http://www.oregon.gov/LCD/Pages/grants.aspx</a></li> <li>Please feel free to contact me to initiate <u>Transportation and Growth Management (TGM) projects</u>, including Education and Outreach, Code Assistance, Quick Response,</li> </ul>

	<p>TGM grants, and including Model Development Code. Additional information is here: <a href="http://www.oregon.gov/LCD/TGM/pages/index.aspx">http://www.oregon.gov/LCD/TGM/pages/index.aspx</a>.</p>
<p><u>Business Oregon (Infrastructure Finance)</u>  <b>Janet Hillock</b>          TEL: (503) 229-5222          EMAIL: <a href="mailto:janet.a.hillock@oregon.gov">janet.a.hillock@oregon.gov</a>          WEBSITE: <a href="http://www.orinfrastructure.org/">http://www.orinfrastructure.org/</a></p>	<ul style="list-style-type: none"> <li>• <u>New water reservoir</u> – For Safe Drinking Water Revolving Loan Fund: Quarterly submission of Letter of Interest (by September 15) through Janet Hillock (503) 229-5222. <a href="http://www.orinfrastructure.org/LOI-Form/">http://www.orinfrastructure.org/LOI-Form/</a> Need for additional storage cannot solely be for growth or fire flows but perhaps helps with water conservation or replaces existing facilities that have issues.</li> <li>• For <u>brownfields assessment and cleanup</u> for both public and privately owned property please contact Karen Homolac (503)986-0191. Also: <a href="http://www.orinfrastructure.org/Infrastructure-Programs/Brownfields/">http://www.orinfrastructure.org/Infrastructure-Programs/Brownfields/</a></li> <li>• <u>Seismic rehabilitation for public schools</u> (Hillsboro School District) and public safety facilities through Gloria Zacharias at (503) 986-0132. Also: <a href="http://www.orinfrastructure.org/Infrastructure-Programs/Seismic-Rehab/">http://www.orinfrastructure.org/Infrastructure-Programs/Seismic-Rehab/</a></li> <li>• <u>For Industrial lands certification</u> please contact Sierra Gardiner at (503) 986-0141. Sites are certified but can value be added through marketing or other efforts? <a href="http://www.orinfrastructure.org/Infrastructure-Programs/Certified-Sites/">http://www.orinfrastructure.org/Infrastructure-Programs/Certified-Sites/</a></li> <li>• For the <u>McKay Creek Trail improvements</u>, there is a grant through Oregon Parks and Recreation Department that you should look into: <a href="http://www.oregon.gov/oprd/GRANTS/pages/lwcf_schedules.aspx">http://www.oregon.gov/oprd/GRANTS/pages/lwcf_schedules.aspx</a></li> </ul>
<p><u>Business Oregon (Business Development Officer)</u>  <b>Mitchell Gee</b>          TEL: (503) 580-2680          EMAIL: <a href="mailto:mitchell.gee@oregon.gov">mitchell.gee@oregon.gov</a>          WEBSITE: <a href="http://www.oregon4biz.com/">http://www.oregon4biz.com/</a></p>	<ul style="list-style-type: none"> <li>• Please contact me if you have <u>traded sector businesses</u> looking for incentives or other economic development support.</li> </ul>

<p><u>Oregon Department of Environmental Quality</u>  <b>Cheryl Grabham</b>  TEL: (503) 229-5326  EMAIL: cheryl.grabham@state.or.us  WEBSITE:  <a href="http://www.oregon.gov/DEQ/Pages/index.aspx">http://www.oregon.gov/DEQ/Pages/index.aspx</a></p>	<ul style="list-style-type: none"> <li>• For <u>Dant Russell Site</u> redevelopment, DEQ can provide technical assistance to ensure previous cleanup site remains undisturbed, and help evaluate any additional needs.</li> <li>• Please feel free to contact me if you have questions regarding <u>water and air quality issues</u>, particularly when you're ready to plan permitting. I can help navigate the process.</li> </ul>
<p><u>Oregon Department of Energy</u>  <b>Roger Kainu</b>  TEL: (503) 725-2184  EMAIL: roger.kainu@odoe.state.or.us  WEBSITE:  <a href="http://www.oregon.gov/ENERGY/Pages/index.aspx">http://www.oregon.gov/ENERGY/Pages/index.aspx</a></p>	<ul style="list-style-type: none"> <li>• North Plains has opportunity to offer citizens information for <u>weatherization</u> measures to improve efficiency. This includes low-income sector as well as commercial and industrial targets. Another is to engage local schools with ODOE programs that support school operation improvements to save energy and money.</li> <li>• There are low-interest loans available for <u>weatherization</u> through ODOE for public buildings. An additional thought is to consider the use of <u>solar arrays</u> to reduce individual residence/business utility costs. This can also be done in a city supported program with the local energy provider (PGE) to build a community solar array.</li> <li>• North Plains can also be a point for <u>electric vehicle charging</u>. Proximity to coastline destinations provides opportunity for consumers to stop in North Plains to visit the community while having their vehicle charged. The influx of residential sector consumers (young and affluent) will also bring the desire for vehicle charging as well as bikeways and a robust recycling program.</li> <li>• Residential developers should be made aware of ODOE's "<u>High Performance Home</u>" program that intersects with ETO program incentives. Quality of housing and performance goes up with tax credits and incentives to support additional costs for new construction measures.</li> </ul>
<p><u>Oregon Department of State Lands</u>  <b>Kirk Jarvie</b>  TEL: (503) 986-5320  EMAIL: kirk.jarvie@state.or.us</p>	<ul style="list-style-type: none"> <li>• <u>McKay Creek/Ghost Creek/turtle pond enhancement</u> and restoration opportunities may qualify for Oregon Watershed Enhancement Board (OWEB) grant monies. Contact at OWEB is Liz Redon 503-986-0028. <u>Pond turtle</u> restoration work may qualify for</li> </ul>

WEBSITE:

<http://www.oregon.gov/dsl/pages/index.aspx>

ODFW technical assistance and funding. Contact is Susan Barnes 971-673-6010. DSL permit may be required for work in creek or wetlands.

- Please contact me if you come across significant wetland issues as your community takes on community development projects.



813 SW Alder Street, Suite 320 • Portland, Oregon 97205-3111  
503.225.0192 • FAX: 503.225.0224 • www.coganowens.com

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*Engaging people to create and sustain great communities.*

October 7, 2015

**To:** Margaret Reh, Blake Boyles, Chair King and Members of the Planning Commission

**From:** Kirstin Greene, AICP, Managing Principal and Steve Faust, Principal

**CC:** Heather Austin, 3-J Consulting, Laurence Qamar, Qamar Town Planning

**Re:** Envision North Plains Implementation Preview: Residential Design

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Thank you for scheduling us with your Commission next Wednesday. We look forward to the meeting as one of the first actions to implement the community vision and continue the work you have already begun in earnest.

We understand clearly that residential design and housing standards are two of the top areas of concern in North Plains today. We commend the work you have done in these areas and look forward to discuss the works in progress in detail.

As discussed at the joint City Council / Planning Commission meeting last month, we will preview some housing design types in the context of North Plains. We also will review your draft design standards in advance. I and my colleague Laurence Qamar, Qamar Town Planning, will be leading the presentation and discussion.

We have revised the enclosed vision and implementation strategy documents after our discussion with you last month. We will be discussing them with the Vision Steering Committee earlier in the evening on the 14<sup>th</sup>.

Thanks again.



# Vision Implementation Strategy

## Updated Draft October 7, 2015

### North Plains in 2035 Vision Statement

In the year 2035, residents of North Plains enjoy their safe and welcoming community as a livable place for people of all ages. North Plains is an independent community within Washington County that maintains a small town character while accommodating current and future residents. Citizen participation is strong and community members can see the results of their involvement. Community gathering places and events form the heart of North Plains. *Strategies to implement this vision follow.*

Goals	2015	City	Other	2016	City	Other	2017
Community	Continue support for North Plains fairs and events	○	●				Final Comprehensive Plan, Code and Map updates ● Update TSP (Goal 12) for walking, biking, autos, freight***
	Identify needed Comprehensive Plan and Code changes	●		Draft key sections, goals			
Public safety	Continue support for police, fire and emergency services	●					
Neighborhoods	Convene a design work session to introduce residential and design concepts	●*		Convene a community workshop to discuss residential and commercial design*	●		
	Pursue Technical Assistance grant for Buildable Lands Inventory (BLI) and Housing Needs Analysis (HNA)**	●		<ul style="list-style-type: none"> <li>● Update BLI**</li> <li>● Update HNA (Goal 10)**</li> </ul>	●		
Connectivity/Health		●		Pursue funding for Transportation System Plan (TSP) update***	●		
Economic Opportunity	● Begin North Plains business inventory survey	●	●	Update EOA (Goal 9)**	●	○	
	Pursue Technical Assistance grant for Economic Opportunities Analysis (EOA)**	●	Chamber URA		●	Chamber, EDD, Washington County, GPI, Business Oregon	
Public Services				Update Public Facilities and Services (Goal 11) as needed			
Natural Resources	Discuss natural and historic amenities, provisions in Comp Plan			Update Historic and Natural Resources (Goal 5) as needed	●		

● = Lead; ○ = Support; \*TGM Education and Outreach Grant; \*\*DLCD Technical Assistance Grant; \*\*\*TGM Program Grant



**Final Draft Vision Statement  
October 7, 2015**

**North Plains in 2035**

In the year 2035, residents of North Plains enjoy their safe and welcoming community as a livable place for people of all ages. North Plains is an independent community within Washington County that maintains a small town character while accommodating current and future residents. Citizen participation is strong and community members can see the results of their involvement. Community gathering places and events form the heart of North Plains.

*Community*

Our events are inclusive and connect neighbors frequently. Residents and visitors enjoy the North Plains Elephant Garlic Festival and a rich variety of social and cultural activities to celebrate the city, its history and its people. North Plains' residents are active and engaged in civic events and decision-making processes.

*Neighborhoods*

Historic structures are maintained and rehabilitated to accommodate new homes and businesses. There is a range of quality housing for all ages and income levels. Housing is attractive, cohesive and builds upon historic North Plains' patterns. Land uses and housing types transition cohesively among neighborhoods.

*Connectivity*

North Plains a well planned and connected city where residents and visitors enjoy pedestrian and bicycle paths between neighborhoods and to downtown. Walking is safe; bicyclists understand designated routes and share the road safely. North Plains is connected to surrounding recreational, economic and cultural amenities.

*Economic Opportunity*

Downtown North Plains retains its old town atmosphere and is a vibrant, walkable, attractive place to shop, dine and gather. Glencoe Road and Commercial Street supply business-friendly, mixed-use areas for residential and commercial development. Employment areas provide land for industrial and other employment opportunities. Proximity to US 26 provides easy access to well paying jobs in the region. North Plains is recognized as a gateway to the Oregon Coast.

*Heritage and Natural Resources*

North Plains' agricultural heritage is visible and accessible in places like Lakeview Farms. City policies preserve natural assets and areas, such as McKay Creek and the turtle observation area.

*Public Services*

North Plains' families and visitors enjoy the City's parks, trails, community center and recreational opportunities. The library continues its vital role as a place of learning. Residents value community policing, fire prevention and emergency preparedness. Proficient government agencies maintain existing city assets and coordinate future development. Transportation routes for freight, automobiles, bicycles and pedestrians are well-marked and communicated. Parks and recreation activities are easily accessible, including walking, bicycling and golfing.