



CITY COUNCIL AGENDA
October 12, 2015, 6:30PM
Regular Meeting

CITY COUNCIL CHAMBERS, CITY HALL
 29592 ELLENSBURG AVE
 GOLD BEACH OR 97444

Call to order: _____ **Time:** _____

1. The pledge of allegiance

2. Roll Call:

	Present	Absent
Mayor Karl Popoff		
Council Position #1 Melinda McVey		
STARTING VOTE		
Council Position #2 Larry Brennan		
Council Position #3 Becky Campbell		
Council Position #4 Doug Brand		
Council Position #5 Tamie Kaufman		
City Administrator Jodi Fritts		
Student Liaison VACANT		

3. Special Orders of Business:

a. Presentation from Friends of Curry Health Network PAC regarding CHD November ballot measure

4. Consent Calendar:

None Scheduled

5. Citizens Comments

As presented to the Mayor at the beginning of the meeting

6. Public Hearing

None Scheduled

7. Citizen Requested Agenda Items

a. Request by Sue Johnson to address Council regarding bag ban possible ballot measure

8. Public Contracts and Purchasing

None Scheduled

9. Ordinances & Resolutions

a. R1516-06 Participation in Great Oregon ShakeOut

The City of Gold Beach is dedicated to enhancing quality of life, while promoting health, safety, and welfare of our citizens, businesses, and visitors in the most fiscally responsible manner. In doing this, the City will respect the past, respond to current concerns, and plan for the future, while maintaining environmental sensitivity in our beach oriented community

10. **Miscellaneous Items (including policy discussions and determinations)**
 - a. Annual Review of City Fees and Muni Court Fine Schedule
 - b. Discussion about possible tax on recreational marijuana—Post LOC conference

11. **City Administrator’s Report**
To be presented at the meeting

12. **Mayor and Council Member Comments**
 - a. Mayor Karl Popoff
 - b. Councilors
 - 1) Melinda McVey
 - 2) Larry Brennan
 - 3) Becky Campbell
 - 4) Doug Brand
 - 5) Tamie Kaufman
 - c. Student Liaison, Vacant

13. **Citizens Comments**
As permitted by the Mayor

14. **Executive Session**
The Council will meet in executive session immediately following Mayor & Council Members Comments and the final Citizens Comments sections of the agenda.
The Council will meet in executive session pursuant to: ORS 192.660(f): To consider information or records that are exempt from disclosure by law, including written advice from the City’s attorney.

The next scheduled meeting of the Gold Beach City Council is **Monday, November 9, 2015, at 6:30PM** in the Council Chambers of City Hall, 29592 Ellensburg Avenue, Gold Beach, Oregon.

15. **Adjourn Time:** _____

The location of the hearing/meeting is accessible to the disabled. Advance notice is requested if special accommodations are needed. Call 541-247-7029 so that appropriate assistance can be provided. The City of Gold Beach is an affirmative action EEOE and complies with section 504 of the rehab act of 1973. Complaints of discrimination should be sent to: USDA, Attention Director, Office of Civil Rights, Washington, D.C. 20250-9419

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SPECIAL ORDERS OF BUSINESS

GOLD BEACH CITY COUNCIL AGENDA REPORT

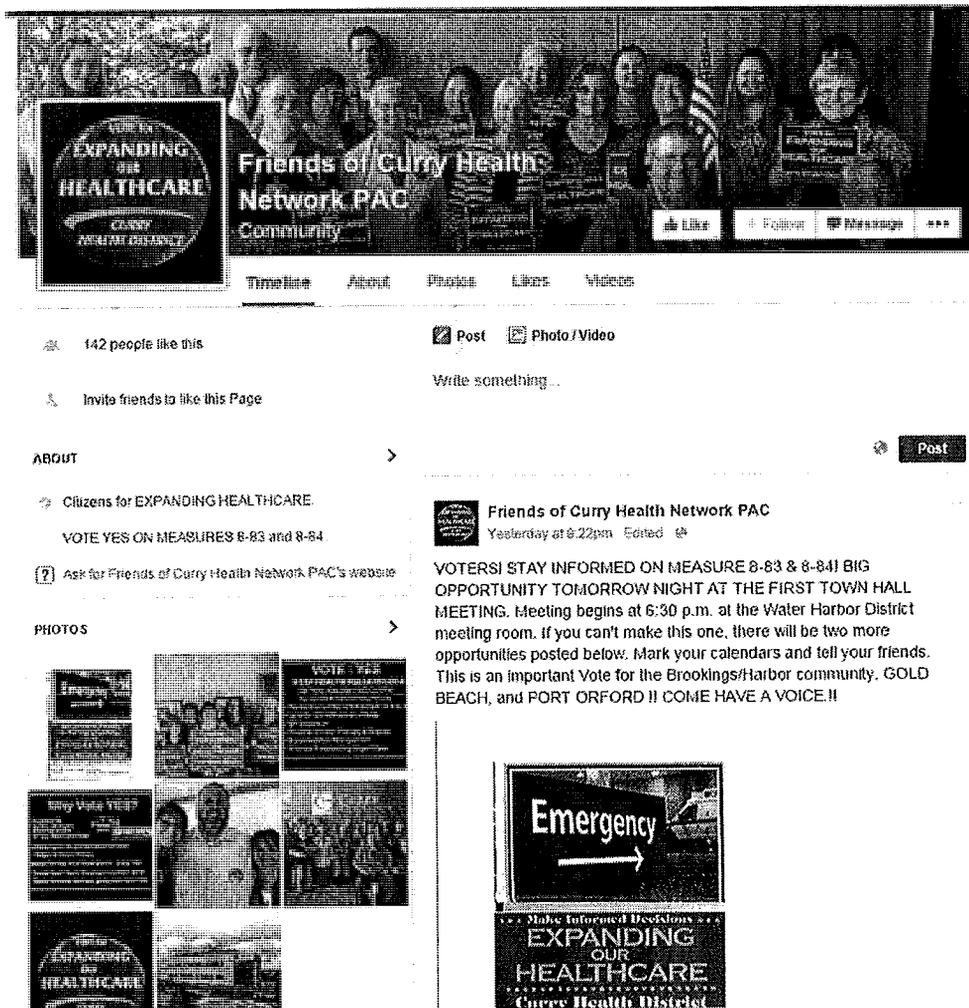


Agenda Item No. 3. a.
Council Hearing Date: October 12, 2015

TITLE: Presentation to Council by the Friends of Curry Health Network PAC

SUMMARY AND BACKGROUND:

The Curry Health District has two measures that will be on the November ballot regarding the possible expansion of the health district (which is currently North and Central Curry) to include South Curry. The PAC members will provide information regarding the North/Central ballot measure. They are respectfully requesting that the Council make a formal declaration of support for the measure.





CITIZEN REQUESTED AGENDA ITEMS

GOLD BEACH CITY COUNCIL AGENDA REPORT



Agenda Item No. 7. a.
Council Hearing Date: October 12, 2015

TITLE: Citizen Request to Address Council Sue Johnson, RE: Bag Ban Potential Ballot Measure

SUMMARY AND BACKGROUND:

Sue Johnson provided the attached letter and asked to be added to the next agenda to discuss the letter with the Council. The letter is regarding the Bag Ban potential ballot measure and use of city funds to assist a citizen initiative.

At the direction of the Council, I contacted our legal counsel regarding the City crafting the language for the ballot title. We have discussed several nuances of a citizen initiated, or a City initiated measure, and, as you might imagine, I would like to discuss which direction the City would like to go. I apologize for this matter taking so long but this is the law creation process—and as Ringo Starr so appropriately put it: *"It Don't Come Easy"* (Apple Records, 1971--sorry, but this has a life of its own...)

READER'S DIGEST VERSION OF DISCUSSION WITH LEGAL COUNSEL:

- The City Attorney is involved REGARDLESS of whether the citizen or the City starts the ballot process. No matter whether the citizen initiates a measure or the Council refers a measure, the City Attorney writes the ballot title (the short statement of what the measure is about). Also, once the citizen gathers enough signatures and the measure is certified to the ballot, the Council gets 30 days to either:
 - 1) just adopt the ordinance on their own without an election;
 - 2) send the initiative measure to the ballot; or
 - 3) send the measure to the ballot and refer their own competing measure.
- The Council effectively gets another bite at the apple but if a citizen is going to put a measure out there, it would be good to have it be something the City can work with.
- According to the Secretary of State's website, the citizen is required to provide the City elections official with BOTH SEL 307 **and a copy of the proposed ordinance or charter language**. I was not aware of this requirement. I assumed the City just wrote the ordinance *IF the measure passed*. Nope. We are required to have the fully formed, implementing ordinance at the time the measure is PROPOSED. That is requirement regardless of whether of who proposes the ballot measure—citizen or City.

TO: Jodi Fritts, Administrator; Mayor Karl Popoff & Gold Beach City Council

FROM: Sue Johnson, Tax Payer and Citizen of Gold Beach, 94316 Berry Road, PO Box 1714

DATED: September 21, 2015

SUBJECT: Ban on Plastic Bags in McKay's and Ray's

The reason I am writing this letter is to give my opinion on the above subject. I have been concerned ever since this subject was brought to the council for consideration. I have held my opinions for a long time because I felt confident that you would continue to make wise decisions for the majority of voters in the city. I believed you would all be reasonable and I had faith in all of you to do your duties and make decisions based upon investigation of the merits and faults of all proposals put before you. That opinion screeched to a stop when I read the article in the Curry County Reporter and the Pilot newspaper, last Wednesday, September 16. I am quite aware that one can't believe everything reported to newspapers, but both the articles pointed out that even though no decision was made by the council, it was motioned and passed that the city would ask their attorney to prepare a proper document regarding a citizen's request because the one written by the citizen, was, in your opinions, unenforceable.

My question is how much is this effort to make corrections on a document that was prepared by the citizen? Why is the city going to pay for the document to be prepared for a change that no one knows will be passed or approved by the council? This situation puts the city in a precarious position, in my opinion. What if I showed up at the next meeting and presented a proposal to you and you said it was not prepared properly? What would you do? I can only hope that you would tell me to go hire my own attorney then bring it back when it was done to your satisfaction? It is not your job to pay to have it done for the citizen, paying attorney's fees for them. When you passed this motion, did you have the attorney's advice? If so, how much did you pay your attorney? I think you should be prepared to pay an attorney for anyone else who wants to have legal documents made up for your consideration. I feel you have taken a huge step out of your bounds, all at the cost of the taxpayers.

For what is worth, I am totally opposed to this proposal. I use plastic bags when I shop because they are easier for me to handle. I shop at many, many non-profits in this town and others and without fail, they hand me my items in plastic bags. I volunteer at the Senior Center and we use plastic bags there for many things; mainly for the Meals on Wheels Program. I would guess we use around 100 bags per business day, more or less. All those bags are used over and over again, just like I do mine at home. I write the little Senior Citizens' Article in the newspaper and sometimes I have to mention in the article that we need more plastic bags. We are flooded with them donated to us. They are recycled when they are donated and we recycle them several times. The Senior Center does not have the funds to pay for all those plastic bags we use.

I hope you will consider these facts when you are making your ruling. The longer this issue keeps being considered, the more money it is costing us citizens. There is no reason for the time and money that has been wasted over this issue. I feel strongly that some investigation should be made with all the non-profit businesses and others who use those plastic bags daily. Your decision on this matter will affect everyone who shops at McKay's and Ray's not just those who live in Gold Beach. Tread softly.

My understanding is that if this measure should pass, the shoppers will pay an extra 10 cents per paper bag. Out of that money, 7 cents will go to the school and the remaining 3 cents will go to the retailer. That doesn't leave much for the customer, does it?

Here are the figures from my Property Tax Statement for 2014: **Total Value \$235,880.00, Total Tax \$ 2,221.75. That amount is shared by Education Total \$1,111.36, and General Government Total \$1,082.72.** That means that I am already paying a touch over 50% of my property taxes for education. As you all know, schools have approved budgets that they are forced to live within. I believe in educating our youth and I have no problem accepting the fact that 50% of my property taxes are spent on such. HOWEVER...I am not going to support being forced to pay an extra 7 cents to the schools for every shopping bag I buy. To me, that is the same thing as taxing me without a vote. I call it "sneaking a tax in through the back door". It is my opinion that if you continue to allow this issue to be pushed around until it might be passed, you would be aiding the school in a possibly illegal action. Maybe I am wrong but that is another possibility that should be investigated before this is given serious consideration.

I have no ponies in this show but if I did and I thought they were not being educated as well as I would like them to be, I would either make a huge donation to the school and/or do whatever I could to raise money for the school, but I certainly would not be trying to make everyone else pay extra just because I wanted more for the children. If you want to learn more about the older, poor people in this area that cannot afford to pay one cent more to help the schools, step on down to the Senior Center and see another side of life. Councilor Melinda McVay can tell you things from her many years of service there that will change your way of thinking about some that absolutely do not have two dimes to rub together. I volunteer there and doing so has certainly changed my thoughts about the importance of helping others if you can. Sometimes all it takes is a happy greeting at the door and a smiling face.

Thank you for giving me the time to give my opinion. Please add my name to the agenda for your next council meeting in October. If I have provided erroneous information, you can straighten me out at that time. Otherwise, I will need enough time to read this letter to the audience (if any) and wait for answers, if any, from all of you. Please see that this letter is delivered to all the addressees promptly after receipt.

Respectfully Submitted By,


Sue Johnson



ORDINANCES & RESOLUTIONS

**GOLD BEACH CITY COUNCIL
AGENDA REPORT**



Agenda Item No. **9. a.**
Council Hearing Date: October 12, 2015

TITLE: Resolution R1516-06 Participation in the Great Oregon ShakeOut

SUMMARY AND BACKGROUND:

Last month, Beth Barker-Hidalgo, Public Health Emergency Coordinator had respectfully requested that the City officially support and participate in the Great Oregon ShakeOut earthquake drill on October 15th. We registered as a participant after the last council meeting and as part of our participation we sent the attached information on the back of the September water bills. Resolution R1516-06 is the resolution officially acknowledging the City's support and participation with the drill.

REQUESTED MOTION/ACTION:

Pass the attached motion of intent to participate in the Great Oregon ShakeOut

SUGGESTED MOTION:

I make the motion that we adopt Resolution R1516-06, a resolution of intent to participate in the Great Oregon ShakeOut and work toward becoming a safer community.

Shake Out

The Great Oregon ShakeOut

Annual Statewide Earthquake Drill

Individuals and Families

At 10:15 a.m. on October 15, 2015, thousands of Oregonians will "Drop, Cover, and Hold On" in The Great Oregon ShakeOut, the state's largest earthquake drill ever! Everyone is encouraged to participate in the drill wherever you are at 10:15 a.m. on 10/15!

Major earthquakes may happen anywhere you live, work, or travel. The ShakeOut is our chance to practice how to protect ourselves, and for everyone to become prepared. The goal is to prevent a major earthquake from becoming a catastrophe for you, your organization, and your community.

Why is a "Drop, Cover, and Hold On" drill important? To respond quickly you must practice often. You may only have seconds to protect yourself in an earthquake before strong shaking knocks you down, or something falls on you.



Millions of people worldwide have participated in Great ShakeOut Earthquake Drills since 2008. The Great Oregon ShakeOut is held on the third Thursday of October each year.

Everyone can participate! Individuals, families, businesses, schools, colleges, government agencies and organizations are all invited to register.

Register today at ShakeOut.org/oregon

HOW TO PARTICIPATE

Here are simple things individuals and families can do to participate in the ShakeOut. Instructions and resources can be found at ShakeOut.org/oregon/howtoparticipate.

Plan Your Drill:

- Register at ShakeOut.org/oregon/register to be counted as participating, get email updates, and more.
- Download a Drill Broadcast recording from ShakeOut.org/oregon/drill/broadcast.
- Have a "Drop, Cover, and Hold On" drill at 10:15 a.m. on October 15.
- Discuss what you learned and make improvements.

Get Prepared for Earthquakes:

- Do a "hazard hunt" for items that might fall during earthquakes and secure them.
- Create a personal or family disaster plan.
- Organize or refresh your emergency supply kits.
- Identify and correct any issues in your home's structure.
- Other actions are at www.earthquakecountry.org.

Share the ShakeOut:

- Have a neighborhood party to discuss preparedness, and register for the ShakeOut.
- Invite friends and family members to register.
- Encourage your community, employer, or other groups you are involved with to participate.
- Share photos and stories of your drill at Shakeout.org/oregon/share.



As a registered ShakeOut Participant you will:

- Learn what you can do to get prepared
- Receive ShakeOut news and other earthquake information
- Be counted in the largest earthquake drill ever!
- Set an example that motivates others to participate

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FEMA

RESOLUTION R1516-06

A RESOLUTION OF INTENT TO PARTICIPATE IN THE GREAT OREGON SHAKEOUT AND WORK TOWARD BECOMING A SAFER COMMUNITY

WHEREAS, the City of Gold Beach recognizes that no community is immune from natural hazards whether it be earthquake, wildfire, flood, winter storms, drought, heat wave, or dam failure; and

WHEREAS, the City recognizes the importance enhancing its ability to withstand natural hazards as well as the importance of reducing the human suffering, property damage, interruption of public services, and economic losses caused by those hazards; and

WHEREAS, major earthquakes pose an ongoing threat to the entire city/region; and

WHEREAS, the City has a responsibility to promote earthquake preparedness internally as well as with the public, and plan appropriately for earthquake-related disasters; and

WHEREAS, the protection of city employees will allow them to facilitate the continuity of government and assist the public following a major earthquake event; and

WHEREAS, community resiliency to earthquakes and other disasters depends on the preparedness levels of all stakeholders in the community – individuals, families, schools, community organizations, faith-based organizations, non-profits, businesses, and government; and

WHEREAS, by participating in The Great Oregon ShakeOut on October 15, 2015, the City of Gold Beach has the opportunity to join and support all Oregonians in strengthening community and regional resiliency; and

WHEREAS, by supporting The Great Oregon ShakeOut, the City of Gold Beach can utilize the information on www.ShakeOut.org/oregon to educate its residents regarding actions to protect life and property, including mitigating structural and non-structural hazards and participating in earthquake drills; and

WHEREAS, by registering at www.ShakeOut.org/oregon, the City can participate in the ShakeOut “Drop Cover and Hold on” earthquake drill on October 15, at 10:15 a.m., and encourage the public, schools, businesses, and other community stakeholders to also register and participate.

NOW, THEREFORE, BE IT RESOLVED: the City Council of the City of Gold Beach, hereby approves participating in the Great Oregon Shakeout by taking time to recognize and acknowledge the importance of preparing our City for the purposes of building a resilient community and reducing the loss of lives and property from a major earthquake event by taking proactive steps today.

Passed by the City Council of the City of Gold Beach, County of Curry, State of Oregon, this 12th day of October, 2015.

Karl Popoff, Mayor

ATTEST:

Jodi Fritts, City Administrator



MISC. ITEMS

**(INCLUDING POLICY DISCUSSIONS
AND DETERMINATIONS)**

GOLD BEACH CITY COUNCIL AGENDA REPORT



Agenda Item No. **10. a.**
Council Hearing Date: October 12, 2015

TITLE: Pursuant to City Strategic Plan Goal 1: Achieve Fiscal Sustainability (1(g) Annual Fee Review

SUMMARY AND BACKGROUND:

Pursuant to the above referenced Strategic Plan goal we will review and update all fees annually. We formally adopted a new fee structure for all city departments in October of 2012. We reviewed them in 2013 but not in 2014. However, we do annually review and adjust utility rates for inflation each July. The other city fees such as business licenses, planning fees, muni court fines, etc. have not been adjusted in 3 years.

Attached is the CURRENT fee scheduled and staff proposed adjustments with notes within the spreadsheet for any proposed changes.

GENERAL INFO ON INFLATION

<http://www.usinflationcalculator.com/>

What is the Consumer Price Index (CPI)?

The Consumer Price Index, also referenced as CPI, is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services.

Is the CPI the best measure of inflation?

This perhaps, is best addressed by the Bureau of Labor Statistics (BLS) who creates the CPI. This is directly from their website:

Various indexes have been devised to measure different aspects of inflation. The CPI measures inflation as experienced by consumers in their day-to-day living expenses; the Producer Price Index (PPI) measures inflation at earlier stages of the production and marketing process; the Employment Cost Index (ECI) measures it in the labor market; the BLS International Price Program measures it for imports and exports; and the Gross Domestic Product Deflator (GDP Deflator) measures combine the experience with inflation of governments (Federal, State and local), businesses, and consumers. Finally, there are specialized measures, such as measures of interest rates and measures of consumers' and business executives' expectations of inflation.

The "best" measure of inflation for a given application depends on the intended use of the data. The CPI is generally the best measure for adjusting payments to consumers when the intent is to allow consumers to purchase, at today's prices, a market basket of goods and services equivalent to one that they could purchase in an earlier period. The CPI also is the best measure to use to translate retail sales and hourly or weekly earnings into real or inflation-free dollars.

What goods and services does the CPI include?

The BLS has created more than 200 categories for all goods and services they track. These 200 are placed within eight major groups:

Food and Beverages: meat, milk, beer, wine, snacks, etc.

Housing: rent of primary residence, owners' equivalent rent, fuel oil, bedroom furniture, etc.

Apparel: clothing like pants, shirts, sweaters, etc.

Transportation: vehicles, airline fares, gasoline, etc.

Medical Care: hospital services, drugs, medical supplies, glasses, etc.

Recreation: TV, pets, movies, etc.

Education and Communication: college costs, telephone services, computer software, postage, etc.

Other: smoking products, haircuts and other personal services

Inflation Rates Graph (2005-2015)

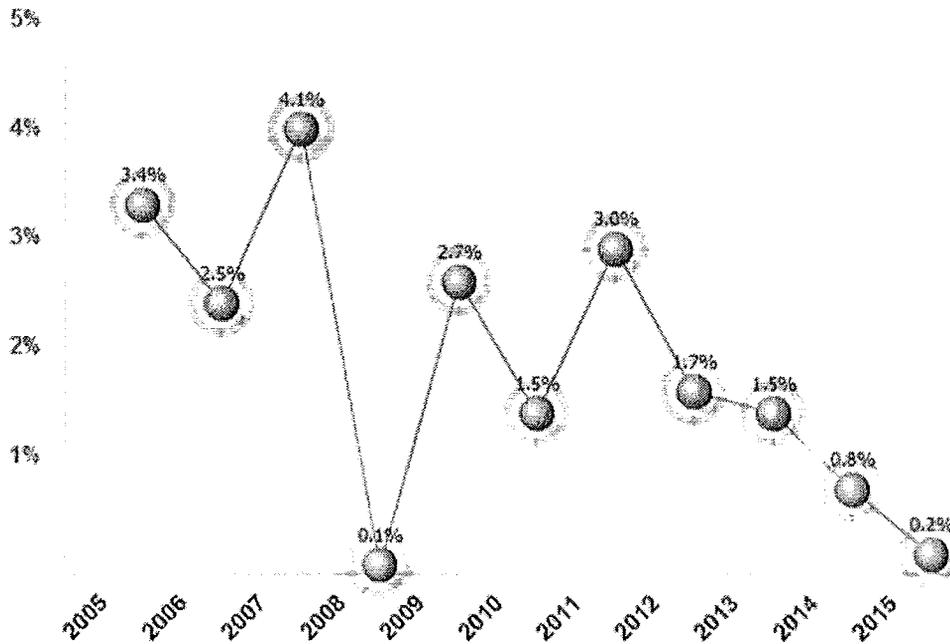


Table of Inflation Rates (%) by Month and Year (1999-2015)

Since figures below are 12-month periods, look to the December column to find inflation rates by calendar year. These also appear in the graph and chart above. For example, the rate of inflation in 2014 was 0.8%. The last column, "Ave," shows the average inflation rate for each year. They are published by the BLS but are rarely discussed in news media, taking a back seat to a calendar year's actual rate of inflation.

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ave
2015	-0.1	0.0	-0.1	-0.2	0.0	0.1	0.2	0.2					
2014	1.6	1.1	1.5	2.0	2.1	2.1	2.0	1.7	1.7	1.7	1.3	0.8	1.6
2013	1.6	2.0	1.5	1.1	1.4	1.8	2.0	1.5	1.2	1.0	1.2	1.5	1.5
2012	2.9	2.9	2.7	2.3	1.7	1.7	1.4	1.7	2.0	2.2	1.8	1.7	2.1
2011	1.6	2.1	2.7	3.2	3.6	3.6	3.6	3.8	3.9	3.5	3.4	3.0	3.2

The average inflation between 2012-2014 is a total of: 5.20%
The annual inflation for that period is a total of: 4%

As a relative comparator for our area, the Social Security COLAs:

Automatic Cost-Of-Living Adjustments

July 1975 -- 8.0%	January 1996 -- 2.6%
July 1976 -- 6.4%	January 1997 -- 2.9%
July 1977 -- 5.9%	January 1998 -- 2.1%
July 1978 -- 6.5%	January 1999 -- 1.3%
July 1979 -- 9.9%	January 2000 -- 2.5% ⁽¹⁾
July 1980 -- 14.3%	January 2001 -- 3.5%
July 1981 -- 11.2%	January 2002 -- 2.6%
July 1982 -- 7.4%	January 2003 -- 1.4%
January 1984 -- 3.5%	January 2004 -- 2.1%
January 1985 -- 3.5%	January 2005 -- 2.7%
January 1986 -- 3.1%	January 2006 -- 4.1%
January 1987 -- 1.3%	January 2007 -- 3.3%
January 1988 -- 4.2%	January 2008 -- 2.3%
January 1989 -- 4.0%	January 2009 -- 5.8%
January 1990 -- 4.7%	January 2010 -- 0.0%
January 1991 -- 5.4%	January 2011 -- 0.0%
January 1992 -- 3.7%	January 2012 -- 3.6%
January 1993 -- 3.0%	January 2013 -- 1.7%
January 1994 -- 2.6%	January 2014 -- 1.5%
January 1995 -- 2.8%	January 2015 -- 1.7%

(1) The COLA for December 1999 was originally determined as 2.4 percent based on CPIs published by the Bureau of Labor Statistics. Pursuant to Public Law 106-554, however, this COLA is effectively now 2.5 percent.

We adopted the fee resolution in October 2012 so we shouldn't the January 2012 COLA for comparison purposes. For 2013-2015 the total COLA change: 4.9%

This compares to the CPI increases we see above. If we make any changes to the current fee structure I'd recommend we don't exceed any particular fee by more than 5% without specific justification.

ADMINISTRATION/BUSINESS FEES

LICENSES & PERMITS	CURRENT FEE	PROPOSED FEE	
SOCIAL GAMING LICENSE			
Social Gaming License: Initial	\$150	NO LONGER REGULATE	
Social Gaming License: Renewal	\$100	NO LONGER REGULATE	
SIGN PERMIT	MINIMUM \$50 UP TO 25 SQ FT \$0.75 PER SQ FT AFTER	MINIMUM \$50 UP TO 25 SQ FT \$0.75 PER SQ FT AFTER	
SIGN VARIANCE	\$150	\$150	
BUSINESS LICENSE: BASIC	\$85	\$88	3.50%
ALL BUSINESS LICENSES: ANY TYPE	\$85	\$88	3.50%
AMUSEMENT MACHINE	\$50 PER MACHINE	\$50 PER MACHINE	
VENDING MACHINE	\$10 PER MACHINE	\$10 PER MACHINE	
LIQUOR LICENSE: INITIAL	\$100	\$100	
LIQUOR LICENSE: CHANGE	\$75	\$75	
LIQUOR LICENSE: RENEWAL OR TEMP	\$35	\$35	
ADMINISTRATIVE FEES	ADOPTED FEE	ADOPTED FEE	
CANDIDACY FILING FEE	\$50	\$50	
COPY FEE	0.25 PER PAGE	0.25 PER PAGE	
RESEARCH FEE OVER 15 MINUTES	\$35 PER HR	\$35 PER HR	
FAX or scan	\$3	\$3	
FILING/RECORDING AT COUNTY CLERK	ACTUAL COST	ACTUAL COST	
NSF FEE	\$30	\$35	BANK INCREASE
COPY OF AUDIO RECORDING	\$15	\$15	
LIEN FILING AND SATISFACTION	ACTUAL FILING COST + \$20	ACTUAL FILING COST + \$20	
PUBLIC RECORDS REQUEST	Copies: \$0.25 PER PAGE	Copies: \$0.25 PER PAGE	
	Research Labor: \$35 per hour	Research Labor: \$35 per hour	
	Digital copy by disc: \$5 per disc	Digital copy by disc: \$5 per disc	
	Certification of copy: \$5	Certification of copy: \$5	
	Delivery: actual USPS, UPS, or FEDEX costs	Delivery: actual USPS, UPS, or FEDEX costs	
	Non-standard copy/equipment costs: actual cost	Non-standard copy/equipment costs: actual cost	
COPIES OF REPORTS	Public Records Request Fees	Public Records Request Fees	
LIEN SEARCH	Public Records Request	Public Records Request	
LIST OF BUSINESS LICENSE HOLDERS	Public Records Request subject to RED FLAG regulations	Public Records Request subject to RED FLAG regulations	

UTILITY RELATED FEES (BUT NOT MONTHLY USER FEES)

UTILITY RELATED FEES	CURRENT FEE	PROPOSED FEE
*Monthly water/sewer utility rates set by separate resolution		
RESIDENTIAL SERVICE DEPOSITS		
Deposit for accounts with both water and sewer service	\$200	\$200
Deposit for water service only accounts	\$100	\$100
Deposit for sewer service only accounts	\$150	\$150
COMMERCIAL SERVICE DEPOSIT	TOTAL OF 2 HIGHEST UTILITY BILLS OR \$200 WHICHEVER IS GREATER	TOTAL OF 2 HIGHEST UTILITY BILLS OR \$200 WHICHEVER IS GREATER
METER ACCURACY TEST AT CUSTOMERS REQUEST	ACTUAL COST OF TEST + 1 HR LABOR (see PW fees)	ACTUAL COST OF TEST + 1 HR LABOR (see PW fees)
TEMPORARY CONNECT/DISCONNECT AT CUSTOMERS REQUEST	2 per year no cost, additional \$30 each visit	2 per year no cost, additional \$30 each visit
WEEKEND/HOLIDAY/AFTER HOURS TEMPORARY CONNECT/DISCONNECT AT CUSTOMERS REQUEST	Billed at PW Labor Charge	Billed at PW Labor Charge
CHECK WATER METER AT CUSTOMERS REQUEST	2 per year no cost, additional \$20 each visit	2 per year no cost, additional \$20 each visit
MOVING/ALTERING METER AT CUSTOMERS REQUEST	ACTUAL MATERIAL COSTS+ PW EQUIPMENT AND LABOR COSTS	ACTUAL MATERIAL COSTS+ PW EQUIPMENT AND LABOR COSTS
DAMAGE TO WATER SERVICE	Actual cost of repair and PW Labor	Actual cost of repair and PW Labor
DELIQUENT UTILITY BILL FEE	10%	10%
DISCONNECT/CONNECT DUE TO DELINQUENCY	\$30	\$30
DISCONNECT/CONNECT DUE TO DELINQUENCY AFTER HOURS/HOLIDAYS/WEEKEND	Billed at PW Labor Charge	Billed at PW Labor Charge
SHUT OFF FLAG NOTICE FOR DELINQUENCY	\$25	\$25
TURNING WATER OFF/ON WITHOUT AUTHORITY	\$75	\$75
WATER HYDRANT STAND-BY FEE	discontinue	REMOVE FROM SCHEDULE

PUBLIC WORKS CREW RELATED FEES

PUBLIC WORKS RELATED FEES	NO PROPOSED CHANGES	
	CURRENT FEE	PROPOSED FEE
ISSUE NEW ADDRESS W/PLATE	\$75	\$75
REPLACEMENT ADDRESS PLATE	\$25	\$25
PW LABOR	CURRENT WAGE + BENEFITS + 15%	CURRENT WAGE + BENEFITS + 15%
TV SEWER LINES	\$100 PER HR + LABOR FOR 2	\$100 PER HR + LABOR FOR 2
PICKUP W/OPERATOR	\$50 PER HR + LABOR	\$50 PER HR + LABOR
BACKHOE W/OPERATOR	\$200 PER HR + LABOR	\$200 PER HR + LABOR
SEWER SLUDGE TRUCK W/OPERATOR	\$200 PER HR + LABOR	\$200 PER HR + LABOR
BRUSH CUTTER W/OPERATOR	\$175 PER HR + LABOR	\$175 PER HR + LABOR
TAPPING MACHINE W/OPERATOR	\$450 PER HR + LABOR	\$450 PER HR + LABOR
SEWER CLEANER W/OPERATOR	\$250 PER HR + LABOR	\$250 PER HR + LABOR
DUMP TRUCK W/OPERATOR	\$175 PER HR + LABOR	\$175 PER HR + LABOR
STREET SWEEPER W/OPERATOR	\$250 PER HR + LABOR	\$250 PER HR + LABOR
COMPACTOR W/OPERATOR	\$50 PER HR + LABOR	\$50 PER HR + LABOR
BRUSH CHIPPER W/OPERATOR	\$175 PER HR + LABOR	\$175 PER HR + LABOR
LABOR CHARGES	CURRENT WAGE + BENEFITS + 15%	CURRENT WAGE + BENEFITS + 15%
ALL SERVICES, EQUIPMENT, SUPPLIES, MATERIALS, LABOR SUBJECT TO OVERHEAD		
Any supplies, materials, equipment rental, etc. purchased by City to complete proposed work	Actual Cost	Actual Cost
SDC FEES		
WATER: 3/4 METER	\$2800 + ANY EXTRA LABOR AND MATERIALS	\$2800 + ANY EXTRA LABOR AND MATERIALS
SEWER: 1 ERU	\$4400 + ANY EXTRA LABOR AND MATERIALS	\$4400 + ANY EXTRA LABOR AND MATERIALS
STREETS	\$1232 TO BE PAID AT THE TIME OF BUILDING PERMIT APPLICATION	\$1232 TO BE PAID AT THE TIME OF BUILDING PERMIT APPLICATION

PUBLIC SAFETY (POLICE, FIRE, MUNI ADMIN) FEES

PUBLIC SAFETY	CURRENT FEE	PROPOSED FEE
NUISANCE ABATEMENT	ACTUAL COST + \$75 ADMIN FEE	WE SHOULD DISCUSS THIS MAJOR PAIN
EXCESSIVE FALSE ALARMS		REMOVE FROM CHART
Errors by employees or other person	3 per calendar year then \$125 per each call out	3 per calendar year then \$125 per each call out
Mechanical errors	3 per calendar year then \$125 per each call out	3 per calendar year then \$125 per each call out
Towing Fee	Actual cost of towing plus \$25 admin fee	Actual cost of towing plus \$25 admin fee
FIRE CHARGES OUTSIDE OF DISTRICT		
FIRST PUMPER	\$400 per hour	\$400 per hour
SECOND PUMPER	\$350 per hour	\$350 per hour
MANPOWER	\$50 per hr per person	\$50 per hr per person
MATERIALS (FOAM ETC)	ACTUAL COST	ACTUAL COST
NOTES: MINIMUM 1 HR BILLED THEN 1/2 INCREMENTS. TIME ENDS WHEN ENGINE AND CREW RETURN TO STATION. CHARGES APPLY TO IN DISTRICT TO CONTROLLED BURNS THAT GET OUT OF CONTROL WITH OR WITHOUT A BURN PERMIT		
JAWS OF LIFE	No Charge	No Charge
MUNI COURT ADMINISTRATIVE		
Fee for sending to collections agency	25% of outstanding amount per ORS 137.118	25% of outstanding amount per ORS 137.118
Administrative fee for payment plan	\$25	\$25
License suspension fee required by ORS 809.267	\$15	\$15
Performance of marriage ceremony by Judge		\$50

Judge Fallman asked last month if I could propose to the Council a fee for marriage ceremonies. He has been asked a few times to perform ceremonies but did not feel comfortable without fee sanction by the Council. Municipal Judges in Oregon have statutory authority to officiate marriage ceremonies.

VISITOR CENTER FEES
PLANNING DEPARTMENT FEES

VISITOR CENTER	ADOPTED FEE	ADOPTED FEE
Packet Program	\$0.18 per request	\$0.25 per request
Videos	\$5	\$5
COFFEE MUGS		\$5
PLANNING FEES	ADOPTED FEE	ADOPTED FEE
Planning Commission Decision	\$600	\$600
Conditional Use Permit	\$600	\$600
Floodplain Development Permit	\$600	\$600
Variance	\$600	\$600
Administrative Decision by Planning Director	\$425	\$425
AD/CUP Permit Renewal	\$200	\$200
Subdivision	\$1,550	\$1,550
Partition	\$1,000	\$1,000
Lot Line Adjustment	\$500	\$500
Other Land Use Decisions		
Building/Zoning Permit Review (PC)	\$100	\$100
Zone Change	\$1,800	\$1,800
Appeal of Planning Commission or Director Decision	Cost of original application	Cost of original application

MUNICIPAL COURT TRAFFIC FINE SCHEDULE

Attached is the CURRENT fine schedule I would respectfully propose ALL fines be raised by a minimum \$10. The most common ticket (for speeding) is a total of \$220. A 5% increase would be \$11.

In my opinion, the traffic fine schedule is not the same as other City fee schedules. City staff does not provide a customer service that should be based on the nationwide cost-of-living. The fine schedule is for VIOLATIONS of City/state traffic regulations and a totally preventable fee to the person being issued the ticket. The municipal court fines are not for revenue generating purposes but to DETER CRIME. They should cost more than services provided.

**EXHIBIT A
CITY OF GOLD BEACH MUNICIPAL COURT
TRAFFIC OFFENSES
PRESUMPTIVE FINE SCHEDULE**

OFFENSE	PRESUMPTIVE FINE	MAXIMUM FINE	ORS
VIOLATIONS			
Class A	\$495	\$2,000	
Class B	\$320	\$1,000	
Class C	\$220	\$500	
Class D	\$170	\$250	
If an accident is involved add \$50 to the presumptive fines below:			
SPEEDING			
Speed Racing	\$495	\$2,000	811.125
Violation Basic Rule (VBR) Over Limit:			
1 to 10 miles	\$170	\$250	811.100
11 to 20 miles	\$220	\$500	811.100
21 to 30 miles	\$320	\$1,000	811.100
over 30miles	\$495	\$2,000	811.100
Unsafe speed when going slower than posted speed	\$320	\$1,000	811.100
Violating Designated Speed Limit:			
1 to 10 miles	\$170	\$250	811.111
11 to 20 miles	\$220	\$500	811.111
21 to 30 miles	\$320	\$1,000	811.111
If the speed limit is 65 mph or greater:			
Exceeding the limit by 10 mph or less	\$220	\$500	811.111
Exceeding the limit by more than 10 but not more than 20	\$320	\$1,000	811.111
* ADD \$42 SURCHARGE IF DEFENDANT IS DRIVING VEHICLE THAT REQUIRES CDL			
SERIOUS TRAFFIC OFFENSES			
Violations of Ignition Interlock Devices	\$495	\$2,000	813.608
Careless Driving	\$320	\$1,000	811.135
Driving While Suspended (DWS)	\$495	\$2,000	811.175
ACCIDENTS/REPORTS			
Fir to Perf Driv Dut/Domes Animal	\$320	\$1,000	811.710
Fir to Perf Witness Duties	\$320	\$1,000	811.715
Fir Driver to Report Accident	\$320	\$1,000	811.725
Fir Occupant to Report Accident	\$320	\$1,000	811.735
Fir Owner to Report Accident	\$320	\$1,000	811.730
Failure to Remove a Motor Vehicle from the Highway	\$220	\$500	811.717
PEDESTRIAN VIOLATIONS			
Fir Obey Trf Control Dev	\$170	\$250	814.020
Fir Use Tunnel/Overhd	\$170	\$250	814.060
Fir/Improper Use Sidewalk/Shoulder	\$170	\$250	814.070
Fir Yld Emergency Vehicle	\$170	\$250	814.050
Fir Yld Vehicle	\$170	\$250	814.040
Sudden Leaving Curb	\$170	\$250	814.040
Unlawful Hitchhiking	\$170	\$250	814.080
Fir Obey Railroad Signal	\$170	\$250	814.030

**EXHIBIT A
CITY OF GOLD BEACH MUNICIPAL COURT
TRAFFIC OFFENSES
PRESUMPTIVE FINE SCHEDULE**

BICYCLE VIOLATIONS			
Applicability of MV Code to Bicycle	Same as Veh		814.400
Unsafe Riding Sdwk	\$170	\$250	814.410
Fir Sig Stop/Turn	\$170	\$250	814.440
Clinging to Veh	\$170	\$250	814.480
Fir To Wear Bicycle Helmet	\$25	\$25	814.485
Fir Use Bicycle Seat	\$170	\$250	814.470
Fir Use Bicycle Lane/Path	\$170	\$250	814.420
Improp Use of Lane by Bicycle	\$170	\$250	814.430
Unlawful Load on Bicycle	\$170	\$250	814.450
Unlawful Passenger on Bicycle	\$170	\$250	814.460
Viol Bicycle Equip Requirements	\$170	\$250	815.280
MOPEDS, MOTORCYCLES, MOTOR ASSISTED SCOOTERS (MAS) AND ASSISTED MOBILITY DEVICE			
Illegal Alteration of Moped	\$220	\$500	814.310
Moped Clinging to Vehicle	\$170	\$250	814.230
MTC/Moped More than 2 Abreast	\$320	\$1,000	814.250
Unlawful Moped or MTC Operation	\$320	\$1,000	814.200
Unlawful Moped or MTC Passing	\$320	\$1,000	814.240
Operating Moped on Bike Lane	\$170	\$250	814.210
Oper Moped on Sidewalk/Bike Trail	\$170	\$250	814.210
Oper Moped w/o Lights	\$320	\$1,000	814.320
Carrying Passenger on Moped	\$170	\$250	814.330
Unlawful Moped Passenger	\$170	\$250	814.340
Fir MTC Operator to Wear Helmet	\$170	\$250	814.269
Fir MTC Passenger to Wear Helmet	\$170	\$250	814.275
Clinging to MV by MTC-Unless Disabled	\$320	\$1,000	814.220
No Helmet/Moped Rider	\$170	\$250	814.260
Operate MTC w/o Lights	\$320	\$1,000	814.320
Unlawfully Carrying Passenger on MTC	\$320	\$1,000	814.325
Endangering MTC Passenger	\$170	\$250	814.280
Unlawful Operation of MAS	\$170	\$250	814.512
Failure to use Bike Lane-MAS	\$170	\$250	814.514
Improper Operation on Highway-MAS	\$170	\$250	814.518
Improper Operation in Lane-MAS	\$170	\$250	814.520
Failure to Signal-MAS	\$170	\$250	814.522
Unsafe Operation on Sidewalk-MAS	\$170	\$250	814.524
Unsafe Oper on bike path or lane-MAS	\$170	\$250	814.526
Operation of MAS in crosswalk	\$170	\$250	814.528
Carrying a Passenger on a MAS	\$170	\$250	814.530
Operating MAS with an unlawful load	\$170	\$250	814.532
Fir of MAS Operator to Wear Helmet	\$25	\$25	814.534
Endangering a MAS operator	\$25	\$25	814.536
Vio of MAS equipment requirements	\$170	\$250	815.283
Vio of Electric personal assistive mobility device equipment requirements	\$170	\$250	815.284
Unsafe oper of electric assist mobility device	\$170	\$250	814.552
Dangerous movement of stopped, standing, parked vehicle	\$320	\$1,000	811.565

**EXHIBIT A
CITY OF GOLD BEACH MUNICIPAL COURT
TRAFFIC OFFENSES
PRESUMPTIVE FINE SCHEDULE**

SIGNAL AND TRAFFIC CONTROL			
Pass Stopped Veh at X-Walk	\$320	\$1,000	811.020
Fir Obey Police Officer	\$320	\$1,000	811.535
Fir Obey Stop Sign	\$320	\$1,000	811.265
Fir Obey Traf Cont Device	\$320	\$1,000	811.265
Fir Obey Traf Signal	\$320	\$1,000	811.265
Fir to Signal (Electric)	\$170	\$250	811.405
Fir to Signal (Ln Chng)	\$170	\$250	811.375
Fir to Signal (Stop) With Lts	\$170	\$250	811.405
Fir to Signal (Turn) With Lts	\$170	\$250	811.405
Imp Left Turn	\$320	\$1,000	811.340
Imp Right Turn	\$320	\$1,000	811.355
Fir Use Appropriate Signal	\$320	\$1,000	811.400
Unlawful MC Passing	\$320	\$1,000	814.240
Unsafe Pass (On Left)	\$320	\$1,000	811.410
Unsafe Pass (On Right)	\$320	\$1,000	811.415
Unsafe Pass (No Passing Zone)	\$320	\$1,000	811.420
Unsafe Passing of Person on Bicycle	\$320	\$1,000	811.065
Fir Use Special Left Turn Lane	\$320	\$1,000	811.345
Inter w/Trf Cont Dev	\$495	\$2,000	810.240
Impr Turn at Stop Lt (When Red)	\$320	\$1,000	811.360
Unlawful or Unsignaled Turn	\$170	\$250	811.335
Imp U-Turn	\$320	\$1,000	811.365
Fir Obey One-Way Designation	\$320	\$1,000	811.270
Crossing Cntr Line of 2-Way/4 Lane	\$320	\$1,000	811.310
Depriving MC/Moped of Full Lane	\$320	\$1,000	811.385
Drvng Wrong Way Around Rotary Island	\$320	\$1,000	811.330
Fir of Slow Drvr to Dry in Rt Lane	\$320	\$1,000	811.315
Fir to Drive in Single Lane	\$320	\$1,000	811.370
Fir to Drive on Right	\$320	\$1,000	811.295
Fir to Drive on Rt of Approach Veh	\$320	\$1,000	811.300
Fir to Drive on Rt Side of Div Hwy	\$320	\$1,000	811.320
Fir to Keep Camper, Trailer, Truck in Rt Lane	\$320	\$1,000	811.325
Unlawful Change of Lane (Unsafe)	\$170	\$250	811.375
Unsignaled Change of Lane	\$170	\$250	811.375
Fir to maintain safe distance from emerg veh	\$320	\$1,000	811.147
FAILURE TO YIELD RIGHT-OF-WAY			
Fir to Yld Bicycle on Sidewalk	\$320	\$1,000	811.055
Fir to Stop for Pedestrian who is Blind	\$320	\$1,000	811.035
Fir to Stop for Pedestrian on Sidewalk	\$320	\$1,000	811.025
Fir to Yld Bicycle in Bike Lane	\$320	\$1,000	811.050
Fir to Yld at Contld Intrs	\$320	\$1,000	811.265
Fir to Yld at Drvwy/Alley/Priv Rd	\$320	\$1,000	811.280
Fir to Yld Emergency Vehicle	\$320	\$1,000	811.145
Fir to Yld Left Tum	\$320	\$1,000	811.350
Fir to Yld at Merging Lane	\$320	\$1,000	811.285
Fir to Yld Ped (Crswlk w/o Cntrl Dv)	\$320	\$1,000	811.028
Fir to Yld Ped (Crswlk, Tum on Red)	\$320	\$1,000	811.360
Fir to Yld Ped (Crswlk w/ Tr Sig)	\$320	\$1,000	811.028
Fir to Yld Uncontrld Hwy Intrs	\$320	\$1,000	811.275
Fir to Yld to Traffic Control Member	\$495	\$2,000	811.017
OPERATORS LICENSE VIOLATIONS			
No MTC Endorsement	\$320	\$1,000	807.010
Veh Oper w/o Driving Priv (Exp DL)	\$320	\$1,000	807.010
Veh Oper w/o Driving Priv (No DL)	\$320	\$1,000	807.010
License Restrictions	\$320	\$1,000	807.010
Fir Carry/Dsp/Present/Deliver DL	\$220	\$1,250	807.570
Fir Chg Name/Add DL w/in 30 Days	\$170	\$250	807.560
Fir Chg Name/Add ID w/in 30 Days	\$170	\$250	807.420
Fir to Suaender Out-of-State DL	\$170	\$250	807.540
Holding Multiple DL's	\$320	\$1,000	807.550
Veh Oper with Cancelled Lic	\$320	\$1,000	807.010

**EXHIBIT A
CITY OF GOLD BEACH MUNICIPAL COURT
TRAFFIC OFFENSES
PRESUMPTIVE FINE SCHEDULE**

VEHICLE LICENSE VIOLATIONS			
Exp Veh Lic/Reg (Fee Must be Paid)	\$170	\$250	803.315
Fir Chg Name/Addr w/in 30 Days	\$170	\$250	803.220
Fir Sign/Carry/Dsply Reg	\$170	\$250	803.505
Fir Trnsfr Title w/in 30 Days	\$170	\$250	803.105
Impr Disp Lic Pit Sticker	\$170	\$250	803.560
Impr Disp Veh Plates	\$170	\$250	803.540
Improper Display Dealer Plates	\$170	\$250	822.045 (h)
Improper Use of Dealer Plates	\$320	\$1,000	822.045 (g)
Switched Lic Plates	\$170	\$250	803.540
Switched Lic Plate Sticker	\$320	\$1,000	803.550
Fir to Reg Veh	\$170	\$250	803.300
Fir to Renew Veh Reg	\$170	\$250	803.455
Illegal Alteration/Dsply Plates	\$320	\$1,000	803.550
Exp Out-of-State Plates	\$220	\$500	803.545
Fir to Dsply Plates	\$170	\$250	803.540
Fir to Dsply Out-of-State Plates	\$220	\$500	803.545
Fir to Surr Out-of-State Reg/Plates	\$170	\$250	803.380
Improper Display of a Permit	\$170	\$250	803.655
LIGHT VIOLATIONS			
Fir Mark End of Load (Over 4') w/Light or Flag			
Opr w/Nonstandard Ltg Equip (Type, Visibility, Color, Placement)	\$220	\$500	815.275
Opr w/o Required Ltg Equip	\$220	\$500	816.300
Def Headlights	\$220	\$500	816.330
Def Taillights	\$220	\$500	816.330
Def Reg. Plate Light (Visible 50')	\$220	\$500	816.330
Def Brake Lights	\$220	\$500	816.330
Def Turn Signals	\$220	\$500	816.330
Def Hi-Beam Indicator	\$220	\$500	816.330
Def Reflectors	\$220	\$500	816.330
Aux Lights Over 54" on	\$220	\$500	816.330
Back-Up Lights on When Going Forward	\$320	\$1,000	811.520
Driving w/o Lights	\$320	\$1,000	811.520
Fir to Dim HL (500' Oncom: 350' Rear)	\$320	\$1,000	811.520
Fir to Use Park Lights	\$170	\$250	811.520
More than 4 Lights When Hdlt Req.	\$320	\$1,000	811.520
Using Park Lights When Hdlt Required	\$320	\$1,000	811.520
Use of Prohibited Lighting Equip	\$220	\$500	816.360
REQUIRED EQUIPMENT			
Brakes (Inclgd Ernrgncy Brks)	\$220	\$500	815.130
Fenders/ Mudflaps	\$220	\$500	815.185
Horn (Audible 200 Ft)	\$220	\$500	815.230
Op/Allow Op Illgl Equip/Unsafe Veh	\$220	\$500	815.100
Rear View Mirror (Unobstructed 200 Ft)	\$220	\$500	815.235
Forward Crossover Mirror/Failure to Inspect	\$220	\$500	815.237
Turn Signals (Exc Pre '73 MC & Mopds)	\$220	\$500	816.320
Windshield Wiper	\$220	\$500	815.215
Exhaust System	\$220	\$500	815.250
Illegal Window Tinting	\$320	\$1,000	815.222

**EXHIBIT A
CITY OF GOLD BEACH MUNICIPAL COURT
TRAFFIC OFFENSES
PRESUMPTIVE FINE SCHEDULE**

EXCESSIVE NOISE VIOLATIONS			
Engine Braking	\$495	\$2,000	811.492
Excess Noise (Tires, Engine, Exhaust)	\$170	\$250	815.025
Improper Use of Horn	\$220	\$500	815.225
Unreasonable Sound Amplification from a vehicle	\$170	\$250	815.232
MISCELLANEOUS VIOLATIONS			
Operating a Motor Vehicle while using a Mobile Communications Device	\$170	\$250	811.507
Certificate	\$1,201	\$6,250	822.100
Blocking Cross Traffic	\$170	\$250	811.290
Carry Dog External Veh	\$170	\$250	811.200
Carry Child External Veh	\$320	\$1,000	811.205
Damage/Remove Sign	\$495	\$2,000	810.240
Drag Object on Road	\$170	\$250	818.320
Drv on Bicycle Ln/Path	\$320	\$1,000	811.435
Oper w/obstructing Passenger	\$170	\$250	811.190
Driving Uninsured	\$320	\$1,000	806.010
Fir to Carry Proof of Compliance w/Financial Responsibility Reg	\$320	\$1,000	806.012
Fir to Stop for School Bus	\$495	\$2,000	811.155
Unsafe School Vehicle Operation	\$320	\$1,000	820.180
Follow Fire Truck (500 Ft)	\$320	\$1,000	811.150
Follow too Close	\$320	\$1,000	811.485
Operating Unsafe Veh	\$320	\$1,000	815.020
Impeding Traffic	\$170	\$250	811.130
Op Low Speed Veh on Highway	\$320	\$1,000	811.512
Littering (Op/Pass)	\$220	\$1,250	164.805
Obstruction on Windows	\$170	\$250	815.220
Open Vehicle Door	\$170	\$250	811.490
Overtaking Stopped Vehicle	\$320	\$1,000	811.020
Prmt Unlwfal Oper Veh	\$320	\$1,000	811.255
Sifting, Leaking Load	\$320	\$1,000	818.300
Studded Tires (Illgl-May 1 to Oct 31)	\$220	\$500	815.160
Drvg on Hwy Divider	\$320	\$1,000	811.430
Endangering Child Passenger	\$170	\$250	811.210(1)(b)(c)
Fir to Wear Seat Belt	\$170	\$250	811.210(1)(a)(d)
Fir to Maintain Safety Belts	\$220	\$500	811.225
Fir to Stop Emerging from Alley, Driveway, Bldg	\$320	\$1,000	811.505
Illegal Backing	\$170	\$250	811.480
Interference with Emergency Veh	\$320	\$1,000	811.150
Passenger Obstruction of Driver	\$220	\$500	814.130
Unlawful Use of Television	\$320	\$1,000	815.240
Viol Max Size Limits	\$170	\$250	818.090
Viol Towing Safety Reg	\$320	\$1,000	818.160
Viol Min Road Clearance	\$320	\$1,000	815.245
Viol Truck Route (Authority 810.040)	\$320	\$1,000	811.450
Viol Maximum Weight Limits when Vehicle	\$495	\$2,000	
Visible Emissions	\$170	\$250	815.200

**GOLD BEACH CITY COUNCIL
AGENDA REPORT**



Agenda Item No. **10. b.**
Council Hearing Date: October 12, 2015

TITLE: Discuss Recreational Marijuana Tax

SUMMARY AND BACKGROUND:

Earlier in the summer the Council discussed taxing the new legal Recreational Marijuana sales. It was decided to wait until after the League of Oregon Cities conference to see if the League had more up-to-date info to share. I have attached the most recent Marijuana info from their website in addition to the LOC conference session that Councilor Kaufman attended.

Since the 2008 symposium and book, "Toward One Oregon," university faculty from Portland State University, Oregon State University, and the University of Oregon have continued to support small projects that address the disconnects between rural and urban Oregon. While urban centers have recovered economically from the recession, rural communities have not. A panel will review examples of successful projects in which universities have partnered to address specific concerns. In addition a Q & A session will address who else needs to step up to re-connect rural and urban communities.

CONCURRENT SESSIONS

4:00 p.m. – 5:30 p.m.

The Juntos Program: Addressing the Educational Needs of Latinos Through Engagement – *Cascade A*

Presented by Oregon State University

Panelists: Vincent Adams, Rural Communities Explorer Program Coordinator, Oregon State University

Jeff Sherman, Open Campus and Strategic Initiatives Program Leader, Oregon State University

Latinos are one of the largest forces changing the demography and economy of Oregon. Learn about some of the changes in the Latino population in the state and how Oregon State University's Open Campus is engaging communities to support the academic achievement of Latino students and their transition to college.

Marijuana: Legislation, Legal and Rule Making – *Cascade B*

Facilitator: Sherilyn Lombos, City Manager, Tualatin

Panelists: Scott Winkels, Intergovernmental Relations Associate, League of Oregon Cities

Sean O'Day, General Counsel, League of Oregon Cities

Theresa Marchetti, Livability Programs Supervisor, City of Portland Office of Neighborhood Involvement

Learn how recently-passed marijuana legislation came to be, the legal options cities have before them, and how rule making is proceeding.

Oregon's Future Water Supply: Why We Can't Afford to Wait – *Cascade C*

Facilitator: Steve Shropshire, Attorney, Jordan Ramis PC

Panelists: Tom Byler, Director, Oregon Water Resources Department

Rob Kirschner, Staff Attorney, The Freshwater Trust

April Snell, Executive Director, Oregon Water Resources Congress

*As
Councilor
Kaufman
attended*

Regulation of Marijuana in Oregon



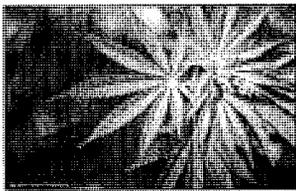
Sean O'Day, General Counsel
League of Oregon Cities
LOC 2015 Annual Conference

A Little History

- ▶ In December of 1999, the Oregon Legislature adopted the Oregon Medical Marijuana Act. The OMMA allowed qualifying individuals and their caregivers to grow and possess specified amounts of marijuana for medical purposes.
- ▶ In 2013, the Oregon Legislature adopted HB 3460, which provided for the operation of medical marijuana dispensaries in Oregon.
- ▶ In November of 2014, the Oregon voters adopted Measure 91, which legalized recreational marijuana in Oregon.
- ▶ In 2015, the Oregon legislature adopted a number of bills intended to modify and clarify the legal systems regulating medical and recreational marijuana in Oregon: HB 3400, HB 2041, and SB 460.

HB 3400

- ▶ HB 3400 does not replace Measure 91- it changes certain portions of Measure 91 but leaves others intact.
- ▶ Different pieces of HB 3400 take effect at different times.





Only those 21 and over may possess or consume recreational marijuana.

Possession Limits (M91 section 6)

- ▶ No possession of more than one ounce of useable marijuana in a public place
- ▶ Homegrown marijuana: not to exceed 4 plants and 8 oz of useable marijuana at any given time.
- ▶ Homemade marijuana products: not to exceed 16 oz in solid form and 72 oz in liquid form at a given time.
- ▶ Delivery of not more than one ounce of homegrown marijuana, not more than 16 oz solid homemade marijuana products, and not more than 72 oz liquid homemade marijuana products at a given time by a person 21 or over to another person 21 or over for noncommercial purposes.



Prohibitions (M91 sections 54,56,57)

- ▶ No use of marijuana in a public place
- ▶ No homegrown marijuana in public view
- ▶ No homemade marijuana extracts



Recreational restrictions do not apply to medical card holders. The Oregon Health Authority retains jurisdiction over medical dispensaries.



OLCC to Regulate Recreational Marijuana

- ▶ OLCC rules due on or before January 1, 2016.
- ▶ OLCC to accept license applications on or before January 4, 2016.
- ▶ OLCC is saying that licenses will likely not be issued until late summer/early fall of 2016.



Types of Licenses/Registrations

- ▶ Recreational Producer License (Growers)
- ▶ Recreational Processor License
- ▶ Recreational Wholesale License
- ▶ Recreational Retail License
- ▶ Medical Marijuana Producer (Grower)
- ▶ Medical Marijuana Processor (New)
- ▶ Medical Marijuana Dispensary



An individual or entity can hold one or more of these licenses. Licenses are issued for one year.

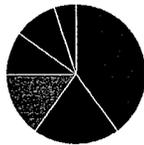
Tax - HB 2041

- ▶ The state will impose a 17% sales tax on retail recreational marijuana sales.



Tax Breakdown

- Common School Fund - 40%
- Mental Health, Alcoholism and Drug Services Account - 20%
- State Police - 15%
- Cities - 10%
- Counties - 10%
- Oregon Health Authority for Alcohol and Drug Abuse Prevention Programs - 5%



- Common School Fund
- Mental Health, Alcoholism and Drug Services
- State Police
- Cities
- Counties
- Oregon Health Authority Alcohol and Drug Abuse Prevention

City Revenue Sharing

- ▶ Before July 1, 2017
 - ▶ Revenue dedicated to cities will be distributed proportionally by population
- ▶ After July 1, 2017
 - ▶ 50% of revenue dedicated to cities will be distributed proportionally based on the number of producer, processor and wholesaler licenses in the city
 - ▶ 50% of revenue dedicated to cities will be distributed proportionally based on the number of retail licenses in the city

Cities that prohibit recreational or medical marijuana facilities from locating within their city limits are not eligible to receive any state marijuana tax revenues.

Local Taxes (HB 3400 section 34a)

- ▶ Cities can adopt up to a 3% local sales tax on retail recreational marijuana sales.
- ▶ Local taxes must be approved by the voters of the City at the next statewide general election (November 2016).
- ▶ Cities may not adopt or impose any other type of tax or fee on the production, processing, or sale of marijuana.

City Regulations (HB 3400 section 33)

- ▶ Cities may adopt reasonable regulations related to the operation of licensed recreational producers, processors, wholesalers, and retailers.
- ▶ Cities may adopt reasonable restrictions on the public's access to premises where a licensed recreational marijuana facility is located.
- ▶ Cities may adopt reasonable regulations related to the location of licensed recreational marijuana facilities in the City.
- ▶ Cities may not require recreational retail facilities to locate more than 1000 feet from each other.



City Regulations (HB 3400 section 34)

- ▶ Before issuing a license to recreational retail marijuana facility, OLCC will ask the City for a Land Use Compatibility statement (LUCS), demonstrating that the facility is allowed as a permitted or conditionally permitted use in the applicable zone. OLCC will not issue the requested license if the LUCS shows that the facility is a prohibited use in the zone.
- ▶ A city must respond to a request for a LUCS within 21 days of receipt of the request (if the use is permitted) or final City approval (if the use is conditionally permitted).
- ▶ OLCC will begin accepting applications on January 4, 2016. LUCS requests could follow shortly thereafter.

Medical Marijuana Grow Sites (HB 3400 section 82)

- ▶ State law does not restrict medical marijuana grows to any particular zone.
- ▶ If located in a residential zone: up to 12 plants.
 - ▶ Except, if the residential grow was registered with OHA prior to January 1, 2015: up to 24 plants.
- ▶ If located in a zone other than a residential zone: up to 48 plants.
 - ▶ Except, if the non-residential grow was registered with OHA prior to January 1, 2015: up to 96 plants.



Medical Marijuana Processors (HB 3400 section 85)

- ▶ New category of medical marijuana facility.
- ▶ Must register with the Oregon Health Authority.
- ▶ If a Medical Marijuana Processor produces extracts, the Processor may not be located in a residential zone.



Medical Marijuana Dispensaries (HB 3400 section 86)

- ▶ May not be located in a residential zone.
- ▶ Must be located at least 1000 feet from another medical marijuana dispensary.
- ▶ Must be located at least 1000 feet from public, private, and parochial elementary and secondary schools.
- ▶ If a school locates within 1000 feet of a pre-existing medical dispensary, the dispensary is not required to move.



Local Option
(HB 3400 sections 133-136)

Cities may adopt ordinances prohibiting any or all medical and recreational marijuana facilities within city limits.

(Silent on Medical marijuana grows)

Ordinances may be adopted by council if No vote was 55% or more, until December??

If not vote was under 55% and after December ?? the ordinances must be approved by the voters at the next statewide general election (November 2016).

A yes vote would not prohibit the possession of marijuana for personal use in the city.

VOTE



Local Option

- ▶ A city that prohibits any type of marijuana facility may not impose a local tax and is not eligible to collect state shared marijuana revenues.
- ▶ Once the Council adopts an ordinance prohibiting any or all marijuana facilities, the City must provide the ordinance to the OHA and OLCC.
- ▶ OHA and OLCC will stop issuing licenses and registrations for marijuana facilities in the City until the date of the next statewide general election.

Local Option - Grandfathering

▶ Certain marijuana facilities may continue to operate in the City even if the voters approve a prohibition.

▶ **Medical Marijuana Dispensaries:**

▶ A dispensary is grandfathered if:

- ▶ The dispensary is registered with OHA on or before the date the city ordinance is adopted and the dispensary has successfully completed a city land use application process; OR
- ▶ The dispensary was registered or had applied to be registered with OHA on or before July 1, 2015 and the dispensary has successfully completed a city land use application process.

▶ **Medical Marijuana Processors**

▶ A medical processor is grandfathered if:

- ▶ The processor is registered with OHA on or before the date the city ordinance is adopted and the processor has successfully completed a city land use application process; OR
- ▶ The processor was registered with OHA on or before July 1, 2015, the processor was processing marijuana on or before July 1, 2015, and the processor has successfully completed a city land use application process.

Sale of Recreational Marijuana by Medical Dispensaries - SB 460

- ▶ From October 1, 2015, through December 31, 2016, medical marijuana dispensaries can sell limited amounts of recreational marijuana to individuals who are 21 and over.
- ▶ Sales are limited to leaves, buds, and non-flowering plants.
- ▶ Sales are limited to one-quarter ounce of leaves and/or bud per person per day.
- ▶ City councils may adopt ordinances prohibiting sales of recreational marijuana by medical marijuana dispensaries.
- ▶ Beginning January 4, 2016, a state sales tax of 25% will be imposed on recreational marijuana sales by medical marijuana dispensaries.

There is still a lot of uncertainty...

- ▶ OLCC Rulemaking
- ▶ OHA Rulemaking
- ▶ Pending Litigation - Cave Junction I and II
- ▶ Future Litigation
- ▶ 2016 Legislative Session
- ▶ Federal Law



Common Issues to Consider: Tax

- ▶ Can my city put a ban and a tax on the November 2016 ballot?
- ▶ Can my city collect the 3% tax before the November 2016 election?
- ▶ Can my city tax medical marijuana?
- ▶ Can my city continue to impose a tax that it adopted prior to passage of HB 3400?



Common Issues to Consider: Opt Out

- ▶ Can my city recriminalize marijuana?
- ▶ Can my city ban medical marijuana grow sites?
- ▶ What is the difference between the grandfathering provisions in sections 133 and 134 of HB 3400 and sections 135 and 136 of HB 3400?
- ▶ If my city opts out, what is the process for opting back in?
- ▶ If my city opts back in, is it eligible for state shared tax revenues? Local tax?
- ▶ Can my city impose an effective ban using its business license ordinance? If it does, is it eligible for state tax revenue?



Common Issues to Consider: Early Sales

- ▶ Is there a time limit on when my city can ban early sales?
- ▶ If my city waits to ban early sales, do dispensaries already engaging in those sales get grandfathered in?
- ▶ Can my city tax early sales?
- ▶ If my city opts out of early sales, are we still eligible for state tax revenues?



Common Issues to Consider: Time, Place & Manner

- Existing State Restrictions
- Local Registration
- Location & Buffers
- Buffers
- Odor and Noise
- Background Checks
- Security
- Signs
- Transportation
- Inspection/Enforcement
- More . . .



MARIJUANA
Choices that city leaders will face in the coming months.



DOES YOUR CITY WANT TO BAN?

- If "Yes":
 - HB 3400 provides that a city wishing to ban commercial marijuana activities may do so by either council referral to the voters or by direct council action depending how votes in the county responded to Measure 91.
 - A city may ban all or any combination of the allowable commercial activity but the bill does not address personal use and production allowable under Measure 91.
- If "No", here are some things to consider:
 - Will this create workforce issues with employees responsible for permits, utilities and fees?
 - Does your city coordinate sufficiently with its electricity provider?
 - Is your fire protection sufficient to allow processing of flammable liquid concentrates?
 - Was a vote to end prohibition and endorsement of commercial marijuana sales?

DOES YOUR CITY WANT TO FURTHER REGULATE?

- If Yes:
 - According to HB 3400, cities may impose "reasonable" restrictions on the time, place and manner of commercial marijuana license holders.
 - However, land-use based regulations must be in keeping with the city's comprehensive plan.
- If "No", there is no requirement that regulations be adopted in a certain time frame. The city may revisit the issue at any time.

EXAMPLES OF TPM REGULATIONS

- Prohibiting marijuana dispensaries within 1000 feet of any place minors congregate;
- Limiting hours of operation;
- Offensive odor prohibitions;
- Lighting requirements;
- Prohibiting sale or production of extracts made with flammable/explosive substances or methods.

DOES YOUR CITY WANT TO TAX RETAIL MARIJUANA ?

- If "Yes":
 - HB 2041 preempts cities from imposing marijuana taxes with the exception of a 2 percent point of sale tax on recreational marijuana sold in OLCC licensed stores.
 - The tax may be imposed by a city council but must be voted on.
 - The Oregon Department of Justice does not believe that the state is currently allowed to collect the tax on behalf of cities.
 - Until banking regulations on a federal level are resolved, taxes will most likely be paid in cash.
- If "No":
 - Taxes need not be imposed in a certain time frame and a city is free to revisit the issue under HB 2041.

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Frequently Asked Questions About **Local Regulation of Marijuana**

July 31, 2015

During the 2015 legislative session, the Legislature passed four laws relating to medical and recreational marijuana:

- **HB 3400**, the omnibus bill that amends the Oregon Medical Marijuana Act (OMMA) and Measure 91, which the voters passed in November 2014 legalizing recreational marijuana use in Oregon;
- **HB 2041**, which revises the state tax structure for recreational marijuana;
- **SB 460**, which authorizes early sales of recreational marijuana by medical marijuana dispensaries; and
- **SB 844**, which contains miscellaneous provisions.

Below are answers to some of the most commonly asked questions about the new legislation and its impact on local governments.

HOME RULE AND FEDERAL LAW

I've heard that cities did not need this legislation to regulate marijuana because Oregon is a home rule state. What is home rule?

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 ordinances without having to obtain permission from the state. City governments in Oregon derive home rule authority through the voters' adoption of a home rule charter as provided for in the Oregon Constitution. All 242 cities in Oregon have adopted a home rule charter. A 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.

So how does home rule relate to a city's authority to regulate marijuana?

Home rule authority allows local governments to enact ordinances regulating marijuana unless preempted by state law. The state Legislature can limit local government authority if it passes legislation that clearly and unambiguously preempts that authority. Because the Legislature recently passed four bills relating to marijuana, it is important to understand how state and local authority interact because that relationship will impact what cities can and cannot do when it comes to regulating marijuana. Specifically, unless clearly preempted, cities can impose regulations in addition to those authorized under HB 3400 under their home rule authority.

Isn't marijuana illegal under federal law? If so, how can Oregon legalize it?

Marijuana is classified under the federal Controlled Substances Act as a Schedule I drug, which means it is unlawful under federal law to grow, distribute, possess or use marijuana for any purpose. Individuals who engage in such conduct could be subject to federal prosecution.

However, the courts thus far have upheld a state's authority to decriminalize marijuana for state law purposes. Oregon did so for medical marijuana in 1998 and for recreational marijuana in 2014. What that means is someone who grows, distributes, possesses or uses marijuana within the limits of those state acts is immune from state prosecution, but might still be subject to federal prosecution if federal authorities desired to do so.

Can we as a city council use our home rule authority and vote to re-criminalize marijuana within our city?

No. A city's home rule authority is subject to the criminal laws of the state of Oregon. As noted above, the OMMA and Measure 91 provide immunity from criminal prosecution for individuals who are acting within the parameters of those laws. Consequently, a council cannot remove the immunity provided by state law.

The immunity provided by state law does not extend to all crimes committed while engaging in marijuana-related activities. For example, the immunity provided by state law does not apply to the crime of driving under the influence. Likewise a city should be able to impose criminal penalties against a person engaging in a marijuana-related activity that violates another law, such as a business license ordinance, zoning or anti-smoking regulations. However, before doing so, a city should work with its city attorney to confirm that the state law immunities do not apply.

BANS

Can my city ban the growing, processing, and sale or transfer of marijuana?

HB 3400 provides a process, explained below, for cities to ban six of the seven types of marijuana activities registered or licensed by the state. Specifically, the six types of marijuana activities that cities can ban under HB 3400 are:

- Medical marijuana processors (preparing edibles, skin and hair products, concentrates and extracts);
- Medical marijuana dispensaries;
- Recreational marijuana producers (growers);
- Recreational marijuana processors (preparing edibles, skin and hair products, concentrates and extracts);
- Recreational marijuana wholesalers; and
- Recreational marijuana retailers.

The seventh marijuana activity registered by the state is the growing of medical marijuana. The bills the Legislature enacted in 2015 are silent on whether a city can ban medical marijuana growers from operating. (State law does expressly place limits on the number of plants and the amount of marijuana that can be located at any particular grow site.) As noted below, the statutes do not indicate that the process in HB 3400 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.

What process does the city need to go through under HB 3400 to impose a ban on the growing, processing, or sale or transfer of marijuana?

The process that the city needs to go through 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.

Under either procedure, as soon as the 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.

Can my city ban the personal use and growing of marijuana?

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 the city attorney to discuss whether the city can do so under either home rule, federal preemption, or both legal theories.

If the city adopts a ban under HB 3400, are existing marijuana activities grandfathered (allowed to remain open)?

The answer depends upon the type of activity. 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.

However, HB 3400 does not provide similar protection to any of the other marijuana activities that a city can ban under that legislation. Consequently, recreational marijuana growers, processors, wholesalers and retailers are subject to a ban under HB 3400, even if those businesses are already operating at the time the ban was enacted.

Although some businesses may argue that they have a due process right to continue operating, the status of marijuana as an illegal drug under federal law makes it unlikely that a court would recognize a due process right for a marijuana business owner. However, cities will want to work closely with their city attorney on enforcement of a ban against existing businesses.

If my city adopts a ban under HB 3400, will it still get a share of state marijuana tax revenues?

No. A city that adopts an ordinance prohibiting the establishment of medical or recreational marijuana businesses is not eligible to receive a distribution of state marijuana tax revenues.

My city requires businesses to obtain a license to operate, and city ordinance provides that the city will not issue a business license if a business operates in violation of local, state or federal law, creating an effective ban on marijuana businesses. Can we continue to enforce that ordinance instead of adopting a ban using the procedure described in HB 3400?

Yes. The League has taken the position that cities may still adopt and enforce their business license ordinances. However, a city should be prepared to defend its authority to do so.

HB 3400 does not contain a broad express preemption on local government authority.¹ Nothing in HB 3400 makes the ban procedures in the law the exclusive means for prohibiting marijuana businesses. Consequently, the League has taken the position that HB 3400 does not prevent a city from banning marijuana activities through other means, such as adopting or enforcing a business license ordinance that prohibits issuance of a business license to a business operating in violation of local, state or federal law.

However, cities that decide to enforce a business license ordinance instead of adopting a ban under HB 3400 should consult their city attorney about the case of *City of Cave Junction v. State of Oregon*, Josephine County Circuit Court Case #14CV0588, which is currently on appeal before the Oregon Court of Appeals. At issue in that case 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.

LOCAL TAX

Can my city tax recreational marijuana?

Yes, as long as the city has not adopted an ordinance under HB 3400 prohibiting marijuana activities in the city.

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.

Can my city tax medical marijuana?

It is unclear whether a city can tax medical marijuana. HB 3400 provides that authority to “impose a tax or fee on the production, processing or sale of marijuana items in this state is vested solely in the Legislative Assembly,” and a city may not adopt or enact ordinances imposing a tax or fee on those activities except for the 3 percent tax on recreational activities discussed above. The legal question is whether that section applies to medical marijuana. Cities interested in taxing medical marijuana should work closely with their city attorney.

¹ Section 57 of HB 3400 does provide that Measure 91 supersedes any “inconsistent” local enactments. Although some people have suggested that Section 57 is a broad preemption of local authority, the League disagrees. The liquor control act contains similar wording and the Oregon appellate courts have not interpreted that section to be a broad preemption. For more information and analysis of the inconsistency provision in Measure 91, as amended by HB 3400, see the memorandum on the League’s A-Z Marijuana Resources webpage entitled, “Measure 91 and Local Control.”

My city enacted a tax on medical and recreational marijuana before HB 3400 was enacted. Can we continue to impose that tax now?

The status of taxes enacted prior to HB 3400 is an open question. HB 3400 provides that, except as provided by law, the authority to “impose” a tax or fee on the production, processing or sale of marijuana items is vested solely in the Legislative Assembly, and a city may not “adopt or enact” ordinances imposing a tax or a fee on those activities. Arguably, cities that have already adopted or enacted a tax prior to the effective date of HB 3400 are grandfathered in. 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.

My city requires all businesses to obtain a license and pay a fee. Does that fee count as part of the 3 percent tax or fee that the city can impose under HB 3400?

HB 3400 limits a local tax on “the sale of marijuana items” to 3 percent and provides that a city may not otherwise adopt or enact an ordinance imposing a tax or fee on “the production, processing or sale of marijuana items.” Although HB 3400 preempts certain local taxes and fees, a city may be able to continue to impose taxes and fees of general applicability, which are not specific and limited to marijuana businesses, without being subject to the 3 percent limit. Cities considering imposing such a tax or fee should obtain their city attorney’s advice before doing so.

If my city adopts a ban for some—but not all—marijuana activities, can it still impose a local tax on those activities not banned?

Probably not. HB 3400 broadly provides that a city that adopts a ban under HB 3400 prohibiting one or more marijuana activities within its jurisdiction “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.”

STATE TAX

What is the state going to tax and in what amount?

Under HB 2041, the state will impose a 17 percent tax on the retail sale of marijuana items, including marijuana leaves and flowers; immature marijuana plants; marijuana concentrates and extracts; marijuana skin and hair products; and other marijuana products.

Early sales of recreational marijuana from medical marijuana dispensaries, however, will be taxed at a higher rate. Starting January 4, 2016, early sales of recreational marijuana from a medical marijuana dispensary will be taxed at a rate of 25 percent.

How much of the state tax revenues will go to cities?

Ten percent of the state marijuana tax revenues will be distributed to cities that do not adopt ordinances prohibiting the establishment of marijuana facilities registered and licensed by the state.² The revenue will be distributed to cities “[t]o assist local law enforcement in performing its duties” under Measure 91.

² The remaining 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; 10 percent to counties; and 5 percent to the Oregon Health Authority.

The state's Legislative Revenue Office has estimated that the total distribution for cities in the 2015-2017 biennium will be \$440,000, jumping to \$5.92 million in the 2017-2019 biennium.

How will the state tax revenues be distributed to cities?

Until July 1, 2017, the state tax revenue dedicated to cities will be distributed proportionately based on population to those cities that do not adopt prohibiting ordinances. After July 1, 2017, those revenues will be distributed proportionately based on the number of recreational licenses issued for premises located in each city. Fifty percent of the revenue for cities will be distributed based on the number of recreational grower, processor and wholesale licenses issued for a premises in the city. The other 50 percent will be distributed based on the number of recreational retail licenses issued for premises in the city.

TIME, PLACE AND MANNER RESTRICTIONS

Does state law place any restrictions on where marijuana businesses can locate?

Yes. Medical marijuana dispensaries, recreational marijuana retail stores, and medical and recreational marijuana processors that process marijuana extracts cannot locate in a residential zone.

In addition, medical marijuana dispensaries and recreational marijuana retail stores are subject to the following restrictions:

- Neither can locate within 1,000 feet of certain public and private schools, unless the school is established after the marijuana facility.
- Medical marijuana dispensaries cannot locate within 1,000 feet of another dispensary.
- Medical marijuana dispensaries cannot locate at a grow site.

Finally, before issuing any recreational marijuana 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 starts to run varies:

- If the use is an outright permitted use, 21 days from receipt of the request; or
- If the use is a conditional use, 21 days from the final local permit approval.

I have heard that the new legislation ends "card stacking" and puts limits on the amount of marijuana at a medical marijuana grow site. What are those limits?

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.

In addition to possessing mature marijuana plants, a medical marijuana grower may possess the amount of usable marijuana that the person harvests from the mature plants, not to exceed 12

pounds of usable marijuana per mature plant for outdoor grow sites and 6 pounds of usable marijuana per mature plant for indoor grow sites.

I have heard that cities can impose “reasonable restrictions” on medical and recreational marijuana businesses. What does that mean?

Although the League takes the position that the Legislature has not foreclosed other regulatory options, HB 3400 expressly provides that cities may impose reasonable regulations on the following:

- The hours of operation of retail licensees and medical marijuana grow sites, processing sites and dispensaries;
- The location of all four types of recreational licensees, 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 retail licensees;
- The manner of operation of all four types of recreational licensees, as well as medical marijuana processors and dispensaries; and
- The public’s access to the premises of all four types of recreational licenses, as well as medical marijuana grow sites, processing sites and dispensaries.

The law also provides that time, place and manner regulations imposed on recreational licensees 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.

EARLY SALES OF RECREATIONAL MARIJUANA

What are “early sales” of recreational marijuana?

As of July 1, 2015, people 21 years of age and older can possess limited amounts of recreational marijuana under state law. However, the OLCC has not yet issued licenses for the retail sale of recreational marijuana, and does not expect to do so 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, the Legislature authorized medical marijuana dispensaries to sell limited quantities of recreational marijuana.

In particular, 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.

When will early sales start?

Medical marijuana dispensaries may begin selling limited quantities of recreational marijuana on October 1, 2015. 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 and selling recreational marijuana.

Can my city opt out of early sales?

Yes. Under SB 460, a city may adopt an ordinance prohibiting the early sales described above. The city council may adopt the ordinance without referring it to the voters.

If my city opts out of early sales, is the city still eligible to receive state marijuana tax revenues?

Probably. HB 2041 provides that a city that adopts an ordinance “prohibiting the establishment” of marijuana businesses registered or licensed by the state is not eligible to receive state marijuana tax revenues. An ordinance prohibiting early sales under SB 460, however, would not prohibit the establishment of a state-registered or licensed facility. Rather, such an ordinance would merely limit the activities at an existing medical marijuana dispensary. As a result, a city prohibiting early sales should remain eligible to receive state marijuana tax revenues.

Can my city impose a local tax on early sales?

Probably not. 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 the 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.

TIMELINE

The following is a summary of key dates that local government officials need to be aware of regarding the effective date and implementation of Oregon’s new marijuana laws:

- **June 30, 2015** – HB 3400 becomes effective. However, many provisions of the law do not go into effect immediately.
- **July 1, 2015** – Personal possession of limited amounts of recreational marijuana is allowed for those 21 or older.
- **October 1, 2015** – Sales of recreational marijuana from medical marijuana dispensaries begin, unless a city has enacted an ordinance prohibiting early sales pursuant to SB 460 § 2(3).
- **December 24, 2015** – City councils that are eligible to adopt a prohibition on marijuana activities without a voter referral must have adopted the prohibition by this date.
- **January 1, 2016** – Most amendments to Measure 91 go into effect. In addition, after this date, medical marijuana growers may apply for an OLCC license to grow recreational marijuana at the same site.
- **January 4, 2016** – The OLCC must approve or deny recreational license applications as soon as practicable after this date (HB 3400 § 171). In addition, medical marijuana dispensaries engaging in early sales of recreational marijuana must begin collecting a 25 percent state tax on those sales.
- **March 1, 2016** – Most amendments to the OMMA go into effect.

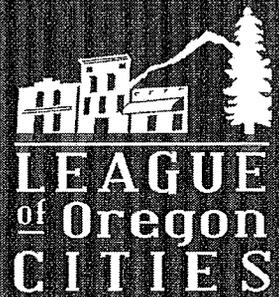
- **November 8, 2016** – Next statewide general election. Cities may refer measures on prohibition of marijuana activities and measures on local taxes at this election.
- **December 31, 2016** – Early sales of recreational marijuana from medical marijuana dispensaries end.



LEAGUE OF OREGON CITIES

**LOCAL GOVERNMENT
REGULATION OF
MARIJUANA IN
OREGON**

**REVISED
AUGUST 2015**



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Introduction and A Word of Caution

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

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

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

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

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

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

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

Home Rule in Oregon

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

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

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

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

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

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

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

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

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

Federal Law

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

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

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

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

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

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

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

An Overview of Oregon's Marijuana Laws

Oregon Medical Marijuana Act

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

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

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

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

Recreational Marijuana

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

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

Taxation of Recreational Marijuana

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

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

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

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

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

Early Sales of Recreational Marijuana

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

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

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

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

Local Government Options for Regulation of Marijuana

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

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

Registration and Licenses

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

Oregon’s Seven Regulated Marijuana Activities

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

State Restrictions on the Location of Medical and Recreational Marijuana Activities

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

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

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

Medical Grow Sites and Recreational Producers

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

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

Medical Processing Sites and Recreational Processors

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

Medical Marijuana Dispensaries

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

Prior to HB 3400, dispensaries could not locate within 1,000 feet of a public or private elementary, secondary or career school attended primarily by minors. The Legislature has now revised that restriction so that a dispensary may not locate within 1,000 feet of a public elementary or secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary or secondary school, teaching children as described in

ORS 339.030(1)(a).⁷ As a practical matter, that means that dispensaries cannot locate within 1,000 feet of most public and private elementary, middle and high schools. However, if a school is established within 1,000 feet of an existing dispensary, the dispensary may remain where it is unless the OHA revokes its registration.

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

Recreational Wholesalers and Retailers

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

Local Tax

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

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

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

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

(2) If a person has control of a child five or six years of age and has enrolled the child in a public school, the person is required to send the child to, and maintain the child in, regular attendance at the public school while the child is enrolled in the public school.”

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

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

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

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

Ban on Early Sales

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

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

Ban on State-Registered and Licensed Activities

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

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

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

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

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

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

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

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

Business License Ordinance

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

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

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

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

Development Code

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

Land Use Code

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

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

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

Time, Place and Manner Regulations

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

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

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

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

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

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

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

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

Appendix A

Early Sales Opt Out

APPENDIX A

Early Sales Opt Out

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

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

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

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

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

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

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

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

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

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

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

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

EMERGENCY. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect on {date/passage}.

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

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

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

Appendix B

Council Opt Out

APPENDIX B

Council Opt Out

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

EMERGENCY. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect on {date/passage}.

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

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

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

Appendix C

Opt Out by Voter Referral

APPENDIX C

Opt Out by Voter Referral

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

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

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

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

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

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

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

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

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

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

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

DEFINITIONS.

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

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

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

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

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

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

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

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

- (a) Marijuana processing sites;

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

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

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

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

EMERGENCY. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect on {date/passage}.

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

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

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

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

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

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

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

¹² Exhibit 1 should include the question and summary.

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

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

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

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

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

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

EFFECTIVE DATE. This resolution is effective upon adoption.

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

BALLOT TITLE

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

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

QUESTION

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

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

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

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

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

SUMMARY

A concise and impartial statement summarizing the measure and its major effect
175 word limit under ORS 250.035(1)(c)

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

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

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

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

EXPLANATORY STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix D

Local Tax by Voter Referral

APPENDIX D

Local Tax by Voter Referral

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

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

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

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

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

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

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

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

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

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

DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE. This resolution is effective upon adoption.

BALLOT TITLE

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

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

²¹ Exhibit 1 should include the question and summary.

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

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

QUESTION

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

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

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

SUMMARY

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

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

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

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

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

EXPLANATORY STATEMENT

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

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

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

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

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

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

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

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

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