



**Eugene City Council**

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# EUGENE CITY COUNCIL AGENDA

July 13, 2016

**12:00 p.m. CITY COUNCIL WORK SESSION**  
**Harris Hall**  
**125 East 8<sup>th</sup> Avenue**  
**Eugene, Oregon 97401**

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**Meeting of July 13, 2016;**  
**Her Honor Mayor Kitty Piercy Presiding**

**Councilors**

Greg Evans, President  
George Brown  
George Poling  
Claire Syrett

Alan Zelenka, Vice President  
Mike Clark  
Chris Pryor  
Betty Taylor

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**12:00 p.m. CITY COUNCIL WORK SESSION**  
**Harris Hall, 125 East 8<sup>th</sup> Avenue**

**12:00 p.m. A. WORK SESSION:**  
**Retail Cannabis Sales Tax**

**12:45 p.m.\* B. WORK SESSION:**  
**Rental Housing Code Overview**

*City Council President: I move to direct the City Manager to prepare an ordinance to extend the sunset date to \_\_\_\_\_ (insert date) to allow time for further discussion of Housing Policy Advisory Board recommendations.*

*Call for vote.*

*Adjourn.*

The Eugene City Council welcomes your interest in these agenda items. This meeting location is wheelchair-accessible. For the hearing impaired, an interpreter can be provided with 48 hours' notice prior to the meeting. Spanish-language interpretation will also be provided with 48 hours' notice. To arrange for these services, contact the receptionist at 541-682-5010. City Council meetings are telecast live on Metro Television, Comcast channel 21, and rebroadcast later in the week.

El consejo de la Ciudad de Eugene agradece su interés en estos asuntos de la agenda. El lugar de la reunión tiene acceso para sillas de ruedas. Se puede proveer a un intérprete para las personas con discapacidad auditiva si avisa con 48 horas de anticipación. También se puede proveer interpretación para español si avisa con 48 horas de anticipación. Para reservar estos servicios llame al 541-682-5010. Las reuniones del consejo de la ciudad se transmiten en vivo por Metro Television, Canal 21 de Comcast y son retransmitidas durante la semana.

For more information, contact the Council Coordinator at 541-682-5010,  
or visit us online at ***www.eugene-or.gov***.

# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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## Work Session: Retail Cannabis Sales Tax

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Meeting Date: July 13, 2016  
Department: Central Services  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: A  
Staff Contact: Glenn Klein  
Contact Telephone Number: 541-682-5010

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### **ISSUE STATEMENT**

City Council has requested a work session to consider a tax on retail cannabis sales that would be referred to voters and to discuss how the revenues of such a tax would be distributed. The work session poll also requested consideration of other possible regulation of retail cannabis businesses.

### **BACKGROUND**

#### ***State Retail Marijuana Tax***

Beginning July 1, 2017, the current state tax of 25 percent imposed 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, will reduce to 17 percent. Under ORS 475B.345, 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.

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. The revenue will be distributed to cities “[t]o assist local law enforcement in performing its duties” under Measure 91. 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.

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.

### ***Local Option Marijuana Taxes and Regulations***

HB 3400, which was enacted by the legislature during the 2015 session and codified in ORS Chapter 475B, addresses a local option marijuana tax. It 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.”

Early figures indicate that retail sales of marijuana have exceeded expectations, but insufficient information is available upon which one can draw any reasonable conclusions as to what actual dollar amounts might be available for distribution to cities or through enactment of a local option marijuana tax. While preliminary revenue numbers have been described in popular media, very little information has been made available relating to the costs incurred by the State of Oregon in the administration and enforcement of ORS 475B.

The League of Oregon Cities has prepared some background information that describes various possible approaches to retail marijuana sale regulations (time, place, manner of sales), as well as a local option marijuana tax. Attachments A and B include the LOC information as background for possible future council discussions.

An ordinance that would enact a local option marijuana tax of 3% was advertised in accordance with legal requirements and a public hearing has been scheduled for July 18. In the event Council does not choose to move forward with a tax at this time, the ordinance and public hearing will be cancelled.

### **RELATED CITY POLICIES**

A local marijuana tax would contribute to the Council Goal of Fair, Stable and Adequate Resources.

### **COUNCIL OPTIONS**

Council could choose to refer a local option marijuana tax to the voters at the November 2016 election, or to not move forward with a tax at this time.

### **CITY MANAGER’S RECOMMENDATION AND SUGGESTED MOTION**

If council desires to place a local option marijuana tax on the November ballot, the City Manager recommends holding a public hearing on July 18 and taking action on July 25. Suggested motion for this option: I move to direct the City Manager to move forward with the public hearing on July 18 on the proposed ordinance.

If council would like to discuss other regulation of retail marijuana sales businesses, the City Manager recommends a future work session on that topic. Suggested motion for this option: I move to direct the City Manager to schedule an additional work session in the fall to discuss possible regulations of retail marijuana sales businesses.

**ATTACHMENTS**

- A. LOC White Paper
- B. LOC Frequently Asked Questions
- C. Proposed Ordinance

**FOR MORE INFORMATION**

Staff Contact: Glenn Klein  
Telephone: 541-682-5010



LEAGUE OF OREGON CITIES

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**LOCAL GOVERNMENT  
REGULATION OF  
MARIJUANA IN  
OREGON**

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**THIRD EDITION  
REVISED MAY 2016**



Published by the League of  
Oregon Cities

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## Introduction and a Word of Caution

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

The League published the first edition of this guide in the spring of 2015. Its original focus was regulation of medical marijuana under the Oregon Medical Marijuana Act (OMMA). In November 2014, Oregon voters adopted Measure 91, legalizing the growing, distribution, possession and use of marijuana in certain amounts for recreational (*i.e.* non-medical) personal use. In 2015, the state Legislature passed four bills—HB 3400, HB 2041, SB 460 and SB 844—which made comprehensive reforms to Measure 91 and the OMMA and addressed issues of local control, taxation, and early sales, among other things. All of those changes are now codified in ORS 475B.

Since that time, the Oregon Liquor Control Commission (OLCC), the agency charged with implementing the recreational marijuana licensing process, and the Oregon Health Authority (OHA), the agency charged with implementing the OMMA, have engaged in rulemaking. In addition, in 2016, the Legislature once again amended Oregon’s marijuana laws with the adoption of three additional pieces of legislation—HB 4014 (Or Laws 2016, ch 24), SB 1511 (Or Laws 2016, ch 83), and SB 1598 (Or Laws 2016, ch 23). Some of the changes made by those bills are discussed in more detail below.

All of those changes have made it difficult for local government officials to stay on top of this ever evolving regulatory landscape. Consequently, the League has prepared this third edition of the guide, revising its regulatory guidance to reflect the latest statutory and administrative rule changes, as well as providing sample ordinance wording for both medical and recreational marijuana facilities that is consistent with those changes. Because most experts believe that the medical marijuana and recreational marijuana systems will eventually merge, the sample ordinance provisions in this edition do not differentiate between medical marijuana or recreational marijuana businesses and treats both the same for purposes of regulating the time place and manner of those activities.

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.

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 businesses.

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.

It is important to note that this guide, although lengthy, is not intended to give exhaustive treatment of every issue that a city might face with respect to marijuana regulation. The regulation of marijuana is becoming increasingly complex as the industry grows and evolves and as the Legislature and state agencies adopt new laws and administrative rules. As such, this guide and the sample wording that is attached serves as a starting point (not an ending point) for local government officials to understand this topic so that eventually they can spot issues and further analyze and develop local solutions.

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### **This guide is not a substitute for legal advice**

City councils considering taxing, regulating or prohibiting marijuana businesses 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.

## Home Rule in Oregon

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

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

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

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

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

The leading court case interpreting Oregon’s home rule amendment is *La Grande/Astoria v. PERB*, 281 Or 137, 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 on a topic also regulated by state statute, as long as the local enactment is not “incompatible” with state law, “either because both cannot operate concurrently or because the Legislature meant its law to be exclusive.” In addition, the court said that where there is a local enactment and state enactment on the same subject, the courts should attempt to harmonize state statutes and local regulations whenever possible.<sup>2</sup>

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

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

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

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

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

<sup>4</sup> See *Rogue Valley Sewer Services v. City of Phoenix*, 357 Or 437, 454-55, 353 P3d 581 (2015); see also *Thunderbird Mobile Club v. City of Wilsonville*, 234 Or App 457, 474, 228 P3d 650, rev den, 348 Or 524 (2010) (“A local ordinance is not incompatible with state law simply because it imposes greater requirements than does the state, nor because the ordinance and state law deal with different aspects of the same subject.” (internal quotations omitted)).

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

## 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:

- 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.

Recently, the federal government has started reexamining the status of marijuana. In December 2014, Congress directed the Department of Justice not to use any of its funding to prevent states like Oregon from implementing their medical marijuana laws. The effect of that appropriations bill is currently being litigated in federal court.

In addition, under the federal CSA, the attorney general may, by rule, transfer a drug between schedules or remove a drug from the schedules if certain requirements are met. The United States Drug Enforcement Agency (DEA) has indicated that it currently is reviewing marijuana's status as a Schedule I controlled substance and expects to release a final determination in the first half of 2016. The DEA has not, however, given any indication of whether it will reclassify or remove marijuana from the schedules. Should the DEA reclassify or remove marijuana from Schedule I, the League will update its members to address the implications of any reclassification.

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

There are two separate laws and regulatory structures governing marijuana at the state level: the Oregon Medical Marijuana Act, which regulates medical marijuana, and the Control and Regulation of Marijuana Act, which regulates recreational marijuana. Since their adoption by the voters, the Legislature has made substantial changes to both acts.

### *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 475B.400 – ORS 475B.525). 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 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.

The OMMA originally was envisioned as a system in which patients would grow for themselves the marijuana that they needed, or designate a small scale grower, and, as a result, the regulation was relatively minimal. The OMMA did not originally envision large-scale grow sites, processing sites, or dispensaries. However, as time went on, the Legislature saw a need to impose more restrictions on medical marijuana grows, create a system for registering processors, and create a system for state-registered facilities to lawfully transfer medical marijuana between growers and patients or caregivers.

Legislation in 2015 and 2016 addressed some of the local government concerns about the lack of regulation that had not been addressed in the original legislation. For example, a medical marijuana grow site now can have only a limited number of mature marijuana plants and a limited amount of usable marijuana harvested from those plants. In addition, medical marijuana is now classified as a farm crop, but the Legislature was careful to carve out local regulatory authority not available for other farm crops. The Legislature also added a new registration category for medical marijuana processors, and imposed greater restrictions on those facilities. Along similar lines, the Legislature also added further restrictions on where certain medical

marijuana facilities can locate, and imposed new testing, labeling, inspection and reporting requirements.

With the Legislature's more robust statutory scheme came more extensive administrative rules from the OHA. Those rules, found primarily in Oregon Administrative Rule 333-008, cover many of the gaps left by the Legislature, including setting out a detailed registration system and requirements for testing, reporting, background checks, security, and advertising, among other things.

### *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. The OLCC is the agency charged with licensing and regulating the growing, processing, and sale of recreational marijuana. In particular, the OLCC has been tasked with administering a license program for producers, processors, wholesalers and retailers, and under that program, a person may hold more than one type of license.

Since the voters approved Measure 91, the Legislature has made notable changes to its structure, primarily increasing accountability and safety requirements. For example, the Legislature added testing, labeling, inspection and reporting requirements for licensees, required handlers permits for those working with marijuana, and charged the OLCC with licensing OHA-accredited laboratories to conduct the required testing. The Legislature also expanded the OLCC's rulemaking authority, tasking the agency with, among other things, developing and maintaining a seed-to-sale tracking system and adopting restrictions on the size of recreational marijuana grows. The Legislature also tasked the OLCC with certifying public and private marijuana researchers. As noted above, the Legislature has also tasked the OLCC with creating a system for transitioning medical marijuana registrants to OLCC recreational licensing, with the possibility for recreational licensees to register with the OLCC to engage in activities related to medical marijuana.

The OLCC has adopted temporary rules that begin to implement those legislative changes and to fill some of the gaps left by the Legislature. For example, the OLCC has imposed extensive security requirements for alarm systems, video surveillance, and a restriction on public access to certain facilities or areas within facilities. The OLCC has also imposed health and safety requirements, including sanitary requirements and restrictions on how marijuana is processed. In addition, the OLCC has addressed a number of other issues including testing, packaging, labeling, advertising, waste, and implementing a seed to sale tracking system. At the time this guide was published, the OLCC was in the process of adopting permanent rules.

### *State Taxation of Recreational Marijuana*

Early sales of recreational marijuana from medical marijuana dispensaries are taxed at a rate of 25 percent. When sales from OLCC-licensed retailers begin later in 2016, the sale of marijuana items will be subject to a 17 percent state tax, to be collected by those retailers. However, in

2016, the Legislature clarified that medical marijuana cardholders and caregivers will not have to pay the state tax on the retail sale of marijuana items. (SB 1511, § 17)

Of that state tax revenue, 10 percent will be transferred to cities to “assist local law enforcement in performing its duties” under the Control and Regulation of Marijuana Act, *i.e.* the law regulating recreational marijuana.<sup>6</sup> That 10 percent will be distributed using different metrics before and after July 1, 2017. Before that date, 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, 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.

### *Registration and License Types*

Taking into consideration both the medical system and the retail system, there are 10 marijuana activities that require registration or a license from the state.<sup>7</sup> The table on the next page provides a summary of each type of activity and its registration/licensing requirements along with a citation to the laws that governs those activities.

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

<sup>7</sup> This guide focuses on regulation of those activities. In 2016, the Legislature preempted cities from prohibiting or otherwise limiting homegrown marijuana production, processing, and storage as described in ORS 475B.245 and a medical marijuana patient and caregiver's possession of seeds, plants, and usable marijuana as allowed under state law. (HB 4014, § 33).



## Oregon's Ten Regulated Marijuana Activities

	Grow	Make Products	Wholesale	Transfer to User	Research & Testing*
<b>Medical Regulated Activities</b>	<p><b>Marijuana Grow Site:</b></p> <p>Location for planting, cultivating, growing, trimming, or harvesting marijuana or drying marijuana leaves or flowers</p> <p><i>Register with OHA</i></p> <p>ORS 475B.420; OAR 333-008-010 to 333-008-0750</p>	<p><b>Marijuana Processing Site:</b></p> <p>Location for compounding or converting marijuana into medical products, concentrates or extracts</p> <p><i>Register with OHA</i></p> <p>ORS 475B.435; OAR 333-008-1600 to 333-008-2200</p>	<p><b>Wholesaler:**</b></p> <p>Purchase marijuana items for resale to a person other than a consumer.</p> <p><i>License with OLCC</i></p> <p>SB 1511, §4 (2016)</p>	<p><b>Dispensary:</b></p> <p>Transfer usable marijuana, immature marijuana plants, seed, and medical products, concentrates and extracts to patients and caregivers.***</p> <p><i>Register with OHA</i></p> <p>ORS 475B.450; OAR 333-008-1000 to OAR 333-008-1248</p>	<p><b>Laboratories:</b></p> <p>Conducts testing of recreational and medical marijuana items.</p> <p><i>Obtain license under ORS 475B.560 and OAR 845-025-5000 to 845-025-5075.</i></p> <p><i>Obtain accreditation from OHA</i></p> <p>ORS 475B.565</p>
<b>Recreational Regulated Activities****</b>	<p><b>Producers:</b></p> <p>Manufacture, plant, cultivate, grow, harvest</p> <p><i>Obtain license from OLCC</i></p> <p>ORS 475B.070; OAR 845-025-2000 to OAR 845-025-2080</p>	<p><b>Processors:</b></p> <p>Process, compound or convert marijuana into products, concentrates or extracts, but does not include packaging or labeling</p> <p><i>Obtain license from OLCC</i></p> <p>ORS 475B.090; OAR 845-025-3200 to OAR 845-025-3290</p>	<p><b>Wholesalers:</b></p> <p>Purchase marijuana items for resale to a person other than a consumer</p> <p><i>Obtain license from OLCC</i></p> <p>ORS 475B.100; OAR 845-025-3500</p>	<p><b>Retailers:</b></p> <p>Sell marijuana items to a consumer</p> <p><i>Obtain license from OLCC</i></p> <p>ORS 475B.110; OAR 845-025-2800 to OAR 845-025-2890</p>	<p><b>Researchers:</b></p> <p>Public or private research of medical and recreational marijuana, including medical and agricultural research</p> <p><i>Certification from OLCC</i></p> <p>ORS 475B.235 and OAR 845-025-5300 to 845-025-5350</p>

\*These activities support both the recreational and medical marijuana systems.

\*\*There is no means for obtaining a medical wholesale license from OHA. Legislation in 2016 allows an OLCC licensed recreational wholesaler to obtain authority from OLCC to also wholesale medical marijuana.

\*\*\*Medical Marijuana Dispensaries can do limited retail sales until December 2016. OAR 333-008-1500

\*\*\*\*In addition to the ten types of regulated activities, certain employees must also obtain an OLCC handlers permit. ORS 475B.215; OAR 845-025-5500 to OAR 845-025-5590.

## *Early Sales of Recreational Marijuana*

Since July 1, 2015, people 21 years of age and older have been able to possess limited amounts of recreational marijuana under state law. Because the OLCC was not prepared to issue licenses for the retail sale of recreational marijuana at that same time, the Legislature authorized medical marijuana dispensaries to sell limited quantities of recreational marijuana between October 1, 2015 and December 31, 2016. By the time early sales end, recreational retailers are expected to be operating.

Under current law, medical marijuana dispensaries may 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.

Starting June 2, 2016, medical marijuana dispensaries also may sell the following to a person who is 21 or older and presents proof of age:

- Non-psychoactive medical cannabinoid products intended to be applied to the skin or hair;
- One single-serving, low-dose unit of cannabinoid edible per person per day; and
- One prefilled receptacle of cannabinoid extract per person per day.

## *Is a Consolidated System on the Horizon?*

During the 2016 legislative session, the Legislature amended the recreational marijuana laws to begin shifting towards a consolidated system. In particular, the Legislature imposed a requirement on the OLCC to adopt rules governing the process of transitioning from medical registration with OHA to medical/recreational licensing with the OLCC. Specifically, one bill provides that the OLCC is to establish a program that allows medical registrants to convert to a retail license. HB 4014 §§ 24 and 25 (2016). In addition, another bill created new provisions allowing recreational licensees to register with the OLCC to engage in the same retail license activity for medical marijuana purposes, essentially allowing one licensee to engage in retail and as medical marijuana activities under the regulatory control of the OLCC. (SB 1511, §§ 1-6) At the time this guide was published, the OLCC has yet to issue rules as set out in that legislation. However, the upshot of those changes is that subject to the rules OLCC adopts, that legislation will enable co-location of both medical and recreational marijuana activities under the oversight of one agency.

Although oversight of marijuana activities may be consolidating into the OLCC, it's important to note that for now the recreational and medical programs continue to retain separate characteristics and businesses operating within them will be subject to different rules. For example, in 2016 the Legislature added a separate description of what constitutes medical

marijuana, with a definition that suggests that medical products may carry a different potency than recreational marijuana. (SB 1511, § 11). Additionally, as discussed below, the spacing requirements remain different (for recreational retailers local governments can't require more than a 1,000 feet buffer, but medical marijuana under state law must be at least 1,000 feet from each other.) Thus a person licensed to conduct both retail and medical marijuana activities will still be operating under different sets of rule for each activity.

## 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, administrative rules, 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 ORS 475B.340, ORS 475B.500, 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 10 types of marijuana activities authorized by state statute and the restrictions state law (including administrative regulations adopted by the OLCC [found in OAR chapter 845, division 25] and the OHA [found in OAR chapter 333, division 8]) 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.

### 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, when 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, 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*

ORS 475B does not restrict where medical marijuana grow sites or recreational marijuana producers can locate. In fact, in 2016, the Legislature clarified that both medical and recreational marijuana are farm crops, allowing marijuana to be grown on land zoned for exclusive farm use. Nonetheless, such grows are still subject to local time place and manner restrictions.

However, the OLCC has adopted some restrictions on where recreational marijuana facilities generally can locate, and where recreational marijuana producers in particular can locate. (OAR

845-025-1115). All recreational marijuana facilities (including grows) are prohibited from locating:

- On federal property;
- At the same physical location or address as a medical marijuana facility that has maintained its medical registration with the OHA; or
- At the same physical location or address as a liquor licensee.

(OAR 845-025-1230) Recreational marijuana growers are additionally prohibited from locating on public land or on the same tax lot or parcel as another licensed grower under common ownership. (OAR 845-025-1115)

In addition to location restrictions, state law and rule places limitations on the number of plants that a medical marijuana grower can grow in residential zones on 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 grow sites that were in existence and had registered with the state by January 1, 2015. For those grow sites, the number of plants is limited to the number of plants that were at the grow site as of December 31, 2015, as long as that number does not 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 currently suspended or revoked.

Those medical limits, however do not apply to grow sites that are converting to recreational grows under the provisions of SB 4014 and are reapplying through the OLCC to become a recreational and medical grow site.

### *Medical Processing Sites and Recreational Processors*

Processors that produce medical marijuana extracts may not be located in an area zoned for residential use. The OHA has defined "zoned for residential use" to mean "the only primary use allowed outright in the designated zone is residential." (OAR 333-008-0010(64)).

Processors that make recreational marijuana extracts may not be located in an area zoned *exclusively* for residential use, and they are also subject to the general location restrictions in the OLCC rules outlined above.

### *Medical Marijuana Dispensaries*

Under state law, medical marijuana dispensaries may not locate in residential zones, may not be located at the same address as a grow site, and may not be located within 1,000 feet of another dispensary.

In addition, dispensaries may not locate within 1,000 feet of a public elementary or secondary school for which attendance is compulsory under ORS 339.020, or a private or parochial

elementary or secondary school, teaching children as described in ORS 339.030(1)(a).<sup>8</sup> As a practical matter, that means that dispensaries cannot locate within 1,000 feet of most public and private elementary, middle and high schools. However, if a school is established within 1,000 feet of an existing dispensary, the dispensary may remain where it is unless the OHA revokes its registration. In addition, under the 2016 legislation, a city can allow a dispensary within 500 feet of a school under limited circumstances. (SB 1511, § 29).

### *Wholesalers and Recreational Retailers*

Wholesale and retail licensees may not locate in an area that is zoned exclusively for residential use and are subject to the same general OLCC restrictions on location noted above. 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. In addition, under the 2016 legislation, a city can allow a dispensary within 500 feet of a school under limited circumstances. (SB 1511).

State law does not impose a 1,000-foot buffer between retailers as it does for medical marijuana dispensaries. In fact, as discussed further under local government options, under state law, a city cannot prohibit a retailer from being located within a distance greater than 1,000 feet from another retailer. In other words, the maximum buffer that a city can impose between retailers is 1,000 feet.

### *Compatibility with Local Requirements - Land Use Compatibility Statement (LUCS)*

In addition to express restrictions on the location of certain marijuana facilities, state law also requires certain marijuana facilities to obtain a land use compatibility statement (LUCS) from the local government before the state will issue a license. In particular, recreational producers, processors, wholesalers, and retailers must request a land use compatibility statement from a local government before the OLCC issues a license. A LUCS describes whether the proposed use is allowable in the zone requested, and must be issued within 21 days of:

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<sup>8</sup> ORS 339.020 provides, "Except as provided in ORS 339.030:

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

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

- Receipt of the request if the land use is allowable as an outright permitted use; or
- Final local permit approval, if the land use is allowable as a conditional use.

Certain small-scale medical marijuana growers outside of city limits do not have to request a LUCS when applying for a recreational marijuana license. (SB 1598, § 2).

A local government that has a ballot measure proposing to ban marijuana activities does not have to act on the LUCS while the ballot measure is pending.

## Local Government Means of Regulation

In recent years, the Legislature has enacted several pieces of legislation that have encroached, but not entirely preempted, a city's home rule authority to regulate marijuana. What follows is a discussion of those various encroachments and the options that remain available for cities that may wish to regulate or prohibit marijuana activities.

### *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.

In ORS 475B.345, adopted in 2015, the Legislature 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 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. The Legislature went 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 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 that provision. In addition, in 2016, the Legislature adopted an additional restriction on local governments by providing that a local tax may not be imposed on a medical marijuana patient or caregiver. (SB 1511, § 18).

ORS 475B.345 preempts local governments from imposing a tax on the production, processing or sale of recreational marijuana, except as provided by state law. State law provides that a city may impose up to a 3 percent tax on the sale of marijuana by an OLCC-licensed retailer, but an ordinance adopting such a tax must be referred to the voters at a statewide general election. In 2016, the Legislature attempted to expand the state preemption by providing that a local tax may not be imposed on a medical marijuana patient or caregiver. (SB 1511, § 18).

Cities that do impose a local tax may look to the state for help in administering that tax. Recognizing that cities, particularly smaller cities, may not have the resources to administer and

enforce a local marijuana tax, the 2016 Legislature clarified that local governments may contract with the Oregon Department of Revenue (DOR) to collect, enforce, administer, and distribute locally-imposed marijuana taxes. (HB 4014, § 32). The League is working to develop a sample contract that cities interested in contracting with DOR can use as a starting point in discussions with the agency.

For those cities that enacted taxes on medical or recreational marijuana prior to the Legislature's adoption of ORS 475B.345, 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 ORS 475B.345 are grandfathered in under the law. However, the issue is not free from doubt, and cities that decide to collect on pre-ORS 475B.345 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 ORS 475B.345 should work closely with their city attorney to discuss the implications and risks of that approach.

### *Ban on Early Sales*

On October 1, 2015, medical marijuana dispensaries began 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 ORS 475B.345, 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. ORS 475B.345 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 ORS 475B.800, 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. The law is silent on whether a city can ban medical marijuana growers, marijuana laboratories, and marijuana researchers from operating in the city. However, ORS 475B.800 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, marijuana laboratories, or marijuana researchers should consult their city attorney about whether they can do so under either home rule, federal preemption or both legal theories.



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) had the opportunity to enact a ban through council adoption of an ordinance prohibiting any of the six activities listed above. For cities that did not take that approach within the required timeline, 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 OHA for medical bans and the 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.

If voters reject a ballot measure proposing to ban marijuana activities, the OHA and the OLCC will not begin registering and licensing marijuana facilities until the first business day of the January following the statewide general election. (HB 4014, § 31). That system will allow cities that want to regulate marijuana businesses time to adopt time, place, and manner ordinances after the ban is rejected and before new registrations or licenses are issued by the state.

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.

If a city that has imposed a ban decides to lift that ban, the governing body may repeal the ordinance, and must give notice of the change to the appropriate regulatory agency (either OHA or OLCC). (HB 4014, § 30).

It is also important to note that in 2016 the Legislature preempted cities from imposing restrictions on certain aspects of the personal possession of recreational and medical marijuana. (HB 4014 § 33). As a result, cities interested in enacting a ban on any aspect of personal use and growing of marijuana should consult with their city attorney to discuss the scope of the preemption, and whether the city can regulate or ban under either home rule, federal preemption or both legal theories.

## *Business License Ordinance*

Although ORS 475B.800 provides an avenue for cities to ban certain marijuana activities, nothing in the statute makes that the exclusive means for prohibiting marijuana activities. As a result, some cities may not need to go through the procedures outlined in ORS 475B.800 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 ORS 475B.800 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 previously, 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 to those state requirements, cities can impose their own more stringent land use requirements and restrictions. Moreover, cities that desire to prohibit marijuana facilities altogether might also do so through amendments to their land use codes. Before considering this option, cities should work with their legal counsel to first determine if the wording of their zoning codes already prohibits marijuana operations, and if not, to identify the appropriate land use procedures and the amount of time it would take to comply with them. If the wording in a city's zoning codes does not prohibit marijuana operations, the city has different options. One option is to add wording such as "an allowed use is one that does not violate local, state or federal law" to the city's zoning code. Cities that adopt a prohibition that references federal law would then rely on existing mechanisms in their ordinances for addressing zoning violations.<sup>9</sup>

It is important to note that under ORS 475B.063 (as amended in HB 4014, section 11), a land use compatibility statement is required as part of the OLCC's licensing process. In particular, before issuing a producer, processor, wholesaler or retailer license, an applicant 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, and the city need not act on a LUCS request while a measure proposing to ban marijuana facilities is pending.

### *Time, Place and Manner Regulations*

ORS 475B.340 (recreational) and ORS 475B.500 (medical) provide 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.

ORS 475B.340 and ORS 475B.500 provide that cities may regulate marijuana facilities by imposing reasonable restrictions on:

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<sup>9</sup> Under existing law, the League believes it is clear that a city may enforce civil regulations of general applicability (such as zoning codes, business licenses and the like) through the imposition of civil penalties. Although a city likely cannot directly recriminalize conduct allowed under state criminal law, it is a different legal question whether a city may impose criminal penalties for violating a requirement of general applicability when the conduct at issue is otherwise immune from prosecution under state law (i.e. whether a city may impose criminal penalties for operation of a medical marijuana dispensary in violation of a city's land use code). *Cf. State v. Babson*, 355 Or 383, 326 P3d 559 (2014) (explaining that generally applicable, facially neutral law, such as a rule prohibiting use of public property during certain hours, may be valid even if it burdens expressive conduct otherwise protected under Article I, section 8, of the Oregon Constitution). Consequently, a city should work closely with its city attorney before imposing criminal penalties against a person operating a medical marijuana facility in violation of a local civil code, such as a zoning, business license or development code.

- The hours of operation of recreational marijuana producers, processors, wholesalers, and 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; production and processing by marijuana researchers; and medical marijuana grow sites, processing sites and dispensaries; and
- 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.

What regulations a city ultimately adopts will depend on community wants and needs, as well as on future changes to the law and to the rules adopted by the OHA and the OLCC. 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 laws and administrative rules go into effect.



## Frequently Asked Questions About Local Regulation of Marijuana

May 24, 2016

### What's New?

Oregon's medical and recreational marijuana laws are now codified in ORS chapter 475B. Provisions relating to recreational marijuana are found in ORS 475B.005 to 475B.399. Medical marijuana is addressed in ORS 475B.400 to to 475B. 525. Testing of cannabis and cannabis products are covered in ORS 47B.550 to ORS 475B.590. Packaging, labeling and dosage of cannabis and cannabis products are covered in ORS 475B.600 to 475B.655. Taxation of cannabis and cannabis products is addressed in ORS 475B.700 to 475B.760. Provisions relating to the authority of cities and counties to prohibit the establishment of cannabis-related businesses are found in ORS 475B.800.

During the 2016 legislative session, the following amendments were made:

#### HB 4014 (2016)

- Allows but does not mandate the ability for cities and counties to enter into IGA's with Oregon Department of Revenue to collect local marijuana sales taxes (3 percent)
- Clarifies that a land use compatibility statement (LUCS) request is not a land use decision and therefore not subject to review by the Oregon Land Use Board of Appeals
- Eliminates two-year residency requirement
- Reduces the cost of a medical marijuana card for veterans
- Directs OLLC to adopt rules allowing medical marijuana grow sites, processing sites and dispensaries to convert from OHA to OLLC licenses
- Allows tax deduction for production, processing or sale of marijuana items which would have otherwise been available under section 280E of Internal Revenue Code
- Creates a process by which city or county can repeal a previously adopted ban on one or more types of marijuana business (the "opt-in" ordinance)

#### SB 1598 (2016)

- Allows existing medical marijuana growers operating outside of cities to sell into the recreational market without completing a LUCS/ LUCS still required within city limits
- Treats medical marijuana grown on agricultural lands as a farm crop but allows city or county to impose reasonable regulations on marijuana production other unlike other agricultural crops

## [SB 1511 \(2016\)](#)

- Expands access to allow OLCC licensed producers, processors and retailers to participate in both recreational and medical marijuana markets
- All recreational marijuana will be subject to the “seed-to-sale” tracking requirement
- Expanded early start: adult-use customers able to purchase single serving low-dose marijuana products that have passed appropriate purity and potency tests from the OHA until December 31, 2016
- Delay in effective date of plant limits: A medical grower in the process of applying to become an OLCC licensee (and who has filed the paperwork) is granted a stay on the reduction in plant limits through December 31, 2016
- OHA is directed to consider higher allowable dosages for medical patients with serious medical conditions

## [HB 4094 \(2016\)](#)

- Exempts financial services from certain Oregon criminal laws for providing financing or financial services to marijuana businesses

Below are answers to some of the most commonly asked questions about Oregon’s marijuana laws and their impacts 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 ORS chapter 475B 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. Thus far, courts 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.

The U.S. Drug Enforcement Agency has indicated that it may consider reclassifying marijuana in the future. To date, this has not occurred nor is there any indication that any reconsideration by the DEA would result in a reclassification.

## **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?**

ORS 475B.800 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 ORS 475B.800 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 ORS 475B.800 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 ORS 475B.800 to impose a ban on the growing, processing, or sale or transfer of marijuana?**

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) were permitted to 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. The general election date for 2016 is November 8.

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?**

ORS chapter 475B 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 ORS 475B.800, 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, ORS 475B.800 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 ORS 475B.800, 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 ORS 475B.800, 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.

**If the voters in my city vote to reject the ban, when will the Oregon Liquor Control Commission or Oregon Health Authority begin registering or licensing marijuana businesses?**

Section 31 of HB 4014 (2016) provides that licensing or registration on the first business day of the January immediately following the date of the statewide general election. This date was chosen to provide an opportunity for cities and counties to adopt local time, place or manner restrictions, business license ordinances and forms and to take other action required to address issues and concerns relating to the addition of marijuana businesses in the city. Cities dealing with this situation will want to visit with their city attorney to discuss action steps and to further determine if there are home rule or business license possibilities to prohibit some or all marijuana business activities.

**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 ORS 475B.800?**

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.

ORS chapter 475B does not contain a broad express preemption on local government authority.<sup>1</sup> Nothing in ORS 475B makes the ban procedures in the law the exclusive means for prohibiting marijuana businesses. Consequently, the League has taken the position that ORS 475B 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 ORS 475B.800 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.

**If my city adopts a ban under ORS 475B.800 and the ban is approved by the voters at a statewide general election, will it be possible to repeal the ban at a later time?**

Yes, ORS 475B.800 provides the mechanism by which a city that has effectively banned marijuana businesses may repeal that prohibition. The process by which a city or county may opt in to allow marijuana businesses is quite similar to the process required (and described above) by which a city opted out of allowing marijuana businesses.

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<sup>1</sup> 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 ORS 475B, see the memorandum on the League’s A-Z Marijuana Resources webpage entitled, “Measure 91 and Local Control.”

The city council must adopt an ordinance repealing its earlier ordinance which prohibited one or more of the six activities listed above, and that ordinance of repeal must be referred to the voters at a statewide general election, meaning an election in November of an even-numbered year. The general election date for 2016 is November 8. The next available election date to opt in will be November 6, 2018.

As soon as the council adopts the ordinance, it must submit it to the Oregon Health Authority (OHA) for medical marijuana activities and the Oregon Liquor Control Commission (OLCC) for recreational marijuana activities. Those agencies will begin registering and licensing on the first business day of the January immediately following the date of the statewide general election. This date was chosen to provide an opportunity for cities and counties to adopt local time, place or manner restrictions, business license ordinances and forms and to take other action required to address issues and concerns relating to the addition of marijuana businesses in the city.

## **LOCAL TAX**

### **Can my city tax recreational marijuana?**

Yes, as long as the city has not adopted an ordinance under ORS 475B.800 prohibiting marijuana activities in the city.

Under ORS 475B.345, 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. ORS 475B.345 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.

### **My city enacted a tax on medical and recreational marijuana before ORS 475B was enacted. Can we continue to impose that tax now?**

The status of taxes enacted prior to ORS 475B is an open question. ORS 475B.345 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 ORS 475B.345 are grandfathered in. However, the issue is not free from doubt, and cities that decide to collect on pre-ORS475B345 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 ORS475B.345 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 ORS 475B.345 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. ORS 475B.800(5) broadly provides that a city that adopts a ban under ORS 475B.800 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 ORS 475B.700, 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.<sup>2</sup> The revenue will be distributed to cities “[t]o assist local law enforcement in performing its duties” under Measure 91.

Early figures indicate that retail sales of marijuana have exceeded expectations, but insufficient information is available upon which one can draw any reasonable conclusions as to what actual dollar amounts might be available for distribution to cities. While preliminary revenue numbers have been described in popular media, very little information has been made available relating to the costs incurred by the State of Oregon in the administration and enforcement of ORS 475B.

### **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

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<sup>2</sup> 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.

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.

### **Will the Oregon Department of Revenue be available to help collect local marijuana sales taxes on behalf of cities and counties?**

Yes. Section 32 of HB 4014 amends ORS 305.620 to allow cities and counties to enter into intergovernmental agreements with the Oregon Department of Revenue (DOR) for the collection, enforcement, administration and distribution of local marijuana sales taxes. The League is working with the DOR to create an intergovernmental agreement template.

## **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, ORS 475B.340, as amended by section 66 of HB 4014, 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 have been allowed to possess limited amounts of recreational marijuana under state law. The OLCC anticipates the issuance of licenses for the retail sale of recreational marijuana 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 did early sales start?**

Medical marijuana dispensaries began 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 ORS 475B, 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. ORS 475B.345 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:

- **January 1, 2016** – Most amendments to Measure 91 go into effect. In addition, after this date, medical marijuana growers became eligible to 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.
- **January 2, 2017** – OLCC and OHA begin processing applications of marijuana businesses in cities and counties where proposed bans were rejected by local voters.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CONCERNING IMPOSITION OF A THREE PERCENT TAX ON THE RETAIL SALES OF RECREATIONAL MARIJUANA; ADDING PROVISIONS TO THE EUGENE CODE, 1971; PROVIDING FOR AN EFFECTIVE DATE; AND REFERRING THE CODE AMENDMENTS TO THE ELECTORS OF THE CITY AT THE NOVEMBER 8, 2016 ELECTION.**

**THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:**

**Section 1.** Sections 3.700, 3.702, 3.704, 3.706, 3.708, and 3.710 of the Eugene Code, 1971, are added to provide as follows:

**Retail Tax on Marijuana Items**

**3.700** **Retail Tax on Marijuana Items - Definitions.** The following words and phrases as used in this Chapter shall have the following meanings:

**City Manager.** The city manager or the city manager's designee.

**Tax Administrator.** The person designated by the city manager.

**Consumer.** A person who purchases, acquires, owns, holds or uses marijuana items other than for the purpose of resale.

**Marijuana item.** Marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts as defined in ORS 475B.015.

**Marijuana retailer.** A person licensed under ORS 475B.110 who sells marijuana items to a consumer in the State of Oregon.

**Person.** Individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

**Retail sale price.** The total consideration paid to a marijuana retailer for a marijuana item by or on behalf of a consumer, excluding any tax.

**3.702** **Retail Tax on Marijuana Items - Tax Imposed.** The city hereby imposes a tax on each marijuana item sold to a consumer within the city by a marijuana retailer. The tax shall equal three percent of the retail sale price for each marijuana item sold.

**3.704** **Retail Tax on Marijuana Items - Collection.** The consumer shall pay the tax to the marijuana retailer at the time of the purchase or sale of the marijuana item. Every marijuana retailer shall collect the tax from the consumer at the time of the sale of a marijuana item. The marijuana retailer shall remit the tax to the tax administrator.

- 3.706 Retail Tax on Marijuana Items - Accounting and Records.** Every marijuana retailer must keep, preserve and make available to the tax administrator detailed records of all sales made and all taxes collected consistent with administrative regulations adopted by the city manager pursuant to section 2.019 of this code.
- 3.708 Retail Tax on Marijuana Items - Penalties and Interest.** The city manager shall adopt administrative rules pursuant to section 2.019 of this code to specify the amount of penalties and interest that a retailer must pay if the retailer fails to timely remit any tax imposed by this code. The amount of penalties and interest established by administrative regulation shall be consistent with comparable provisions of state law.
- 3.710 Retail Tax on Marijuana Items - Appeal.** Any person aggrieved by any decision of the tax administrator under this code may appeal the decision in the manner provided in section 2.021 of this code. The appeal shall be heard and determined as provided in section 2.021 of this code.

**Section 2.** The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

**Section 3.** The provisions of Section 1 of this Ordinance shall not become effective unless approved by the electors of the City of Eugene at the City election to be held concurrently with the statewide election on November 8, 2016.

**Section 4.** If approved by the electors of the City of Eugene at the November 8, 2016 City election, this Ordinance shall become effective on January 1, 2017.

**Passed by the City Council this**

\_\_\_\_\_ day of July, 2016.

**Approved by the Mayor this**

\_\_\_\_\_ day of July, 2016.

\_\_\_\_\_  
**City Recorder**

\_\_\_\_\_  
**Mayor**



# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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## Work Session: Rental Housing Code Overview

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Meeting Date: July 13, 2016  
Department: Planning and Development  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: B  
Staff Contact: Rachelle Nicholas  
Contact Telephone Number: 541-682-5495

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### **ISSUE STATEMENT**

This work session provides an opportunity for the City Council to review the Rental Housing Code and direct staff on the future of the program. If no further action is taken the code's ordinance will sunset on September 30, 2016 and be repealed.

### **BACKGROUND**

#### History

The Eugene Rental Housing Code (Attachment A) was adopted by the City Council in 2004 to set minimum habitability standards for rental housing. Rental housing accounts for nearly half of Eugene's housing with approximately 35,550 units dispersed across the City. When the code was adopted in 2004 it covered four habitability standards: heating, structural integrity, plumbing, and weatherproofing. In 2007, the council added two standards to the code: security and smoke detectors, and then later, in 2009, language was added to address the source of mold as a symptom of water intrusion caused by faulty weatherproofing, plumbing or structural integrity.

The Rental Housing Code prescribes a process that ensures a renter notifies the owner of concerns before they may file a complaint with the City. The goal of the Rental Housing Code is to help tenants and property owners communicate to resolve any issues without further City involvement or legal action. A complaint can be filed with the City after the tenant provides the owner or property manager written notification and allows them 10 days to remedy the problem. A complaint can be filed on-line, in-person, or by mail.

The program receives about 300 calls from tenants each year. This number does not include online or walk-in inquiries. Staff helps tenants determine if their issue fits within the criteria addressed by the code or if there are other agencies or resources that would be more appropriate. To date, 303 formal complaints have been filed. Based on the number of tenant calls received versus the number of actual complaints filed, staff believes many of the tenant concerns are resolved through communication, mediation or the written notification process. In some cases, tenants may decide not to follow through with notifying the owner.

#### Funding

The Rental Housing Code is funded with a \$10.00 per rental unit fee paid annually. The program is a Special Revenue fund which allows the revenues to stay within the fund. All program costs are

covered by fees. Because the number of rental units is constantly changing the amount of revenue varies each year. In the last two years, there has been an increase in the number of rental units.

The work of the program is distributed across several employees whose time is charged to the program. This work includes responding to tenant and property owners, investigation and mediation of complaints, updating the database with current rental unit and owner information, billing, and outreach efforts. The amount of time is equivalent to about two full-time employees.

### Rental Housing Code and State Law

The State Residential Landlord Tenant Act (ORS Chapter 90) includes general habitability and maintenance standards for rental units in addition to legal protections for tenants. The law is enforced through the legal system which can be a financial barrier for some tenants. If the owner fails to make repairs the tenancy may be terminated by the tenant. For many tenants this is not a viable solution since they will be faced with the financial impacts of finding another home, the cost of moving, and paying additional rent and security deposits. Another option would be for the tenant to sue the property owner for a court order requiring that the owner make a repair. In order to do this a tenant must file a case in circuit court and would need the assistance of an attorney. Both of these processes are time consuming and cost-prohibitive for low-income tenants. Eugene's Rental Housing Code provides a neutral third party to help mediate a repair dispute.

The City's Rental Housing Code provides a local mechanism to resolve health and safety concerns outside of the court system and enforce minimum housing standards for rentals. This service is not available through the State, County or other agency. The City's Housing Code provides free mediation that does not require attorneys or other associated court costs. Currently, the majority of the complaints received by the Rental Housing program are resolved through staff mediation.

### Outreach

Staff continues to explore ways to improve outreach efforts to both property owners and tenants. The Rental Housing Code program website [www.eugene-or.gov/rentalhousing](http://www.eugene-or.gov/rentalhousing) provides easy access to program information as well as contact information, and online complaint form. In addition, property owners can go to this site to pay rental unit fees. The site has been visited over 4,000 times in the last year.

The program recently created a new brochure (Attachment C) for use at outreach events and for distribution through local partners and agencies. The brochure was also translated into Spanish (Attachment D) to help increase outreach and access to Spanish-speaking community members. Staff regularly attends University of Oregon events including the student renter fair.

### Stakeholder Input and Recommendations

Over the last several of years, staff has worked with a sub-committee of community members, appointed by the Housing Policy Board (HPB), to review the Rental Housing code program's costs, enforcement of cases, and other non-financial topics. This committee provided a set of recommendations for the Rental Housing code program to the HPB on June 6, 2016. The recommendations include adding additional habitability standards to the Code that would require:

- working electrical systems;
- carbon monoxide detectors;
- rodent control, specifically rats; and
- working appliances (all that are supplied by the owner such as air conditioning, refrigerator, etc.)

A copy of the full report is in Attachment B.

### Ordinance Sunset

When the Rental Housing Code was created, it included an initial sunset date of December 31, 2008. Since that time the sunset date has been extended two times by the City Council. Currently, Eugene's Rental Housing code is scheduled to sunset on September 30, 2016, if no action is taken.

## **RELATED CITY POLICIES**

### *City Council Goals*

- **Safe Community:** A community where all people are safe, valued and welcome.
- **Sustainable Development:** A community that meets its present environmental, economic and social needs without compromising the ability of future generations to meet their own needs.
- **Effective, Accountable Municipal Government:** A government that works openly, collaboratively, and fairly with the community to achieve measurable and positive outcomes and provide effective, efficient services.

### *Envision Eugene Pillars*

- Provide affordable housing for all income levels
- Promote compact urban development and efficient transportation options
- Protect, repair, and enhance neighborhood livability

## **COUNCIL OPTIONS**

Option A: Direct staff to prepare an ordinance to extend the sunset date to a time certain to allow time for further discussion of the Housing Policy Advisory Board recommendations.

Option B: Direct staff to prepare an ordinance to extend the sunset date to a time certain and include the proposed Housing Policy Advisory board additions.

Option C: Direct staff to prepare an ordinance that extends the sunset date to a time certain with no additions to the code.

Option D: Take no further action, thereby allowing the ordinance to automatically expire on September 30, 2016.

## **CITY MANAGER'S RECOMMENDATION**

The City Manager recommends option A, to extend the sunset date to a time certain to allow time for further discussion of the Housing Policy Advisory Board recommendations.

**SUGGESTED MOTION**

Move to direct the City Manager to prepare an ordinance to extend the sunset date to \_\_\_\_\_(insert date) to allow time for further discussion of Housing Policy Advisory Board recommendations.

**ATTACHMENTS**

- A. Rental Housing Code
- B. Housing Policy Advisory Board recommendation
- C. Rental Housing Program brochure (English)
- D. Rental Housing Program brochure (Spanish)

**FOR MORE INFORMATION**

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Staff E-Mail: [rachelle.d.nicholas@ci.eugene.or.us](mailto:rachelle.d.nicholas@ci.eugene.or.us)

## RENTAL HOUSING

**8.400 Rental Housing – Title.** Sections 8.405 through 8.440 of this code constitute the “City Rental Housing Code,” and may be referred to as such.

*(Section 8.400 added by Ordinance No. 20329, enacted November 30, 2004, effective December 30, 2004, to sunset December 31, 2011; sunset date extended to September 30, 2012 by Ordinance No. 20480, enacted November 28, 2011, effective December 30, 2011; sunset date extended to September 30, 2016 by Ordinance No. 20494, enacted June 11, 2012, effective July 14, 2012.)*

**8.405 Rental Housing - Purpose.** The purpose of this City Rental Housing Code is to provide minimum habitability criteria to safeguard health, property and public wellbeing of the owners, occupants and users of rental housing and is intended to supplement rather than conflict with the habitability standards of the State of Oregon Residential Landlord and Tenant Act.

*(Section 8.405 added by Ordinance No. 20329, enacted November 30, 2004, effective December 30, 2004, to sunset December 31, 2011; sunset date extended to September 30, 2012 by Ordinance No. 20480, enacted November 28, 2011, effective December 30, 2011; sunset date extended to September 30, 2016, by Ordinance No. 20494, enacted June 11, 2012, effective July 14, 2012.)*

**8.410 Rental Housing – Applicability.**

- (1) Except as provided in subsection (2) of this section, the standards provided in section 8.425 of this code shall apply to all rental housing.
- (2) The following living arrangements are excluded from the application of sections 8.405 through 8.440 of this code:
  - (a) Occupancy in transient lodging;
  - (b) Occupancy in hospitals and other medical facilities;
  - (c) Occupancy in residential care facilities licensed by the State;
  - (d) Occupancy in institutions providing educational, counseling, religious or similar service, but not including residence in off-campus, non-dormitory housing;
  - (e) Occupancy in a dwelling occupied for no more than 90 days by a purchaser prior to the scheduled closing of a real estate sale or by a seller following the closing of a sale, as permitted under the terms of an agreement for sale of a dwelling unit or the property of which it is a part;
  - (f) Occupancy by a member of a fraternal or social organization in a structure operated for the benefit of the organization;
  - (g) Occupancy in a dwelling by a squatter;
  - (h) Occupancy in a vacation dwelling;
  - (i) Occupancy in a dwelling by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;
  - (j) Occupancy by an owner of a condominium unit or holder of a proprietary lease in a cooperative; and

- (k) Occupancy in premises rented to be used by the occupant primarily for agricultural purposes.

*(Section 8.410 added by Ordinance No. 20329, enacted November 30, 2004, effective December 30, 2004, to sunset December 31, 2011; sunset date extended to September 30, 2012 by Ordinance No. 20480, enacted November 28, 2011, effective December 30, 2011; sunset date extended to September 30, 2016, by Ordinance No. 20494, enacted June 11, 2012, effective July 14, 2012.)*

**8.415 Rental Housing – Definitions.** For purposes of sections 8.400 through 8.440 of this code, the following words and phrases mean:

**Agent.** A person authorized to act on behalf of another person.

**Building code.** The currently adopted edition of the State of Oregon Structural Specialty Code or Oregon Residential Specialty Code.

**City Manager.** The city manager or the manager's designee.

**Dwelling unit.** A building or portion of a building that is used as a home, residence or sleeping place by one or more persons who maintain a household. For purposes of this City Rental Housing Code, where portions of a residential building are occupied under separate rental agreements, but tenants share eating, cooking, and/or sanitation facilities, each portion under a separate rental agreement shall be considered a dwelling unit.

**Habitable room.** Any room used for sleeping, living, cooking or dining purposes, but excluding closets, pantries, bath or toilet rooms, hallways, laundries, storage spaces, utility rooms and similar spaces.

**Mechanical code.** The current edition of the State of Oregon Mechanical Specialty Code or Oregon Residential Specialty Code.

**Plumbing code.** The current edition of the State of Oregon Plumbing Specialty Code or Oregon Residential Specialty Code.

**Rental agreement.** All written or oral agreements concerning the use and occupancy of a dwelling unit and premises. "Rental agreement" includes a lease.

**Rental housing.** A legal dwelling unit which is the subject of a rental agreement.

**Transient lodging.** A room or suite of rooms which is occupied not as a principal residence by persons for periods of less than 30 consecutive days.

*(Section 8.415 added by Ordinance No. 20329, enacted November 30, 2004, effective December 30, 2004, to sunset December 31, 2011; sunset date extended to September 30, 2012 by Ordinance No. 20480, enacted November 28, 2011, effective December 30, 2011;*

*sunset date extended to September 30, 2016, by Ordinance No. 20494, enacted June 11, 2012, effective July 14, 2012.)*

**8.420 Rental Housing – Dangerous Buildings.** Conditions which constitute a dangerous building and procedures for abating them are provided in Section 8.005(25) of this code.

*(Section 8.420 added by Ordinance No. 20329, enacted November 30, 2004, effective December 30, 2004, to sunset December 31, 2011; sunset date extended to September 30, 2012 by Ordinance No. 20480, enacted November 28, 2011, effective December 30, 2011; sunset date extended to September 30, 2016, by Ordinance No. 20494, enacted June 11, 2012, effective July 14, 2012.)*

**8.425 Rental Housing – Standards.**

- (1) Structural Integrity. Roofs, floors, walls, foundations and all other structural components shall be capable of resisting loads prescribed by the building code in effect at the time of construction.
- (2) Plumbing.
  - (a) Plumbing systems shall be maintained in a safe and sanitary condition and shall be free of defects, leaks and obstructions. The presence of significant visible mold may be a symptom of faulty plumbing, however, the presence of mold, by itself, is not a violation for purposes of sections 8.400 through 8.440 of this code.
  - (b) Repairs must be permanent rather than temporary and shall be through generally accepted plumbing methods. If significant visible mold results from faulty plumbing, repairs must include removing the mold, which may include mold on or in interior walls, sheetrock, insulation, floors, carpets or carpet backing.
- (3) Heating.
  - (a) A permanently installed heat source able to provide a room temperature of 68 degrees Fahrenheit three feet above the floor, measured in the approximate center of the room, in all habitable rooms. Portable space heaters shall not be used to achieve compliance with this section.
  - (b) All heating devices or appliances shall conform to applicable law at the time of installation.
  - (c) Ventilation for fuel-burning heating appliances shall be as required by the Mechanical Code at the time of installation.
- (4) Weatherproofing.
  - (a) Roof, exterior walls, windows and doors shall be maintained to prevent water intrusion into the building envelope which may cause damage to the structure or its contents or may adversely affect the health of an occupant. The presence of significant visible mold may be a symptom of faulty weatherproofing, however, the presence of mold, by itself, is not a violation for purposes of sections 8.400 through 8.440 of this code.

- (b) Repairs must be permanent rather than temporary and shall be through generally accepted construction methods. If significant visible mold results from faulty weatherproofing, repairs must include removing the mold, which may include mold on or in interior walls, sheetrock, insulation, floors, carpets or carpet backing.
- (5) Security. Doors and windows leading into a dwelling unit must be equipped with locks and shall be maintained in a condition so as to restrict access into the dwelling unit.
- (6) Smoke detectors. Every dwelling unit shall be equipped with an approved and properly functioning smoke alarm or smoke detector installed and maintained in accordance with the state building code, ORS 479.270, 479.275, and 479.285, and applicable rules of the State Fire Marshal.
- (7) Interpretations.
  - (a) The city manager is empowered to render interpretations of sections 8.400 through 8.440 of this code.
  - (b) Such interpretations shall be consistent with the purpose of this code.

*(Section 8.425 added by Ordinance No. 20329, enacted November 30, 2004, effective December 30, 2004, to sunset December 31, 2008; amended by Ordinance No. 20408, enacted May 27, 2008, effective June 30, 2008, to sunset December 31, 2011; amended by Ordinance No. 20431, enacted April 27, 2009, effective May 29, 2009, to sunset December 31, 2011; sunset date extended to September 30, 2012 by Ordinance No. 20480, enacted November 28, 2011, effective December 30, 2011; sunset date extended to September 30, 2016, by Ordinance No. 20494, enacted June 11, 2012, effective July 14, 2012.)*

#### **8.430 Rental Housing – Enforcement.**

- (1) Authority. The city manager may enforce all the provisions of sections 8.400 through 8.440 of this code.
- (2) Complaint.
  - (a) A complaint must be in writing and may be filed in person or by mail or fax.
  - (b) A person who files a complaint must be a party to the current rental agreement covering the property in question or an agent of the party.
  - (c) A complaint must include the following:
    1. Name of person filing the complaint and, if different, the name of the affected tenant. Complaints may not be submitted anonymously;
    2. Name of the owner or the owner's agent;
    3. Address of the dwelling unit with the alleged violation;
    4. A complete description of the alleged violation; and
    5. A copy of the written notice of the alleged code violation that has been sent by the tenant to the owner or the owner's agent



- (d) Complaints shall be processed by the city manager. The city manager shall adopt rules pursuant to section 2.019 of this code that specify the procedure to be followed in processing complaints. Before initiating an investigation under subsection (3) of this section, the city manager shall:
  - 1. Confirm that the complainant has standing to file a complaint;
  - 2. Confirm that the subject of the complaint could be a violation of this code;
  - 3. Confirm that the owner or the owner's agent has had ten days since mailing of the written notice by the tenant to respond to the complaint; and
  - 4. Provide notice to the owner or the owner's agent of the complaint per written procedures.
- (3) Investigations.
  - (a) The city manager shall initiate investigations only after completion of the process in subsection (2) of this section.
  - (b) The city manager shall conduct an investigation to confirm the validity of the complaint.
  - (c) If the city manager determines that the complaint is not valid, the case shall be closed and all parties notified.
  - (d) If the city manager determines that the complaint is valid, the city manager shall issue a notice and order pursuant to subsection (5) of this section.
- (4) Inspection and Right of Entry. When it may be necessary to inspect to enforce the provisions of sections 8.400 through 8.440 of this code, the city manager may enter the building or premises at reasonable times to inspect or to perform the duties imposed therein, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the city manager shall first make a reasonable effort to locate the owner, the owner's agent, or other person having charge or control of the building or premises and request entry. If entry is refused by the owner, the city manager shall have recourse to every remedy provided by law to secure entry, including issuance of administrative search warrants. If entry is refused by the tenant, the complaint may be dismissed and the case closed. The city shall provide notice to the owner or owner's agent not less than 24 hours prior to a scheduled inspection of the premises in order to afford the owner or landlord the opportunity to be present during the inspection.
- (5) Notices and Orders.
  - (a) For valid complaints, the city manager shall issue an order to the owner or the owner's agent. The notice and order shall include the following:
    - 1. Address and unit number if applicable;
    - 2. A statement that the city manager has found the premises to be in violation of section 8.425 of this code as alleged in the complaint;

3. A description of the violation;
  4. A deadline for completing repairs of ten days, unless the city manager determines that the necessary repairs cannot be completed within the ten day period. If the city manager makes such a determination, the owner or owner's agent shall submit a compliance schedule acceptable to the city within ten days;
  5. A statement advising the owner or the owner's agent that if the required repairs are not completed by the deadline stated in the notice and order, the city manager may:
    - a. Issue an administrative civil penalty, or initiate a prosecution in municipal court, or both; and
    - b. Initiate action to recover all city costs associated with the processing of the complaint, investigation and the resolution of the issue.
  6. A statement that the owner or the owner's agent may appeal the notice and order as specified in section 8.435 of this code; and;
  7. The date after which a reinspection will be scheduled.
- (b) The city manager shall mail the order, and any amended or supplemental notice and order, to the tenant and to the owner or the owner's agent by first class mail.
- (6) Failure to Comply.** Failure to comply with the notice and order issued under subsection (5) of this section by the specified date shall constitute a violation subject to the penalties contained in section 8.995 of this code.

*(Section 8.430 added by Ordinance No. 20329, enacted November 30, 2004, effective December 30, 2004, to sunset December 31, 2011; sunset date extended to September 30, 2012 by Ordinance No. 20480, enacted November 28, 2011, effective December 30, 2011; sunset date extended to September 30, 2016, by Ordinance No. 20494, enacted June 11, 2012, effective July 14, 2012.)*

**8.435 Rental Housing – Appeals.** Any owner or owner's agent upon whom an order is served under section 8.430 of this code shall have the right to appeal within the time and in the manner provided in section 2.021 of this code. The appeal must include the applicable fee.

*(Section 8.435 added by Ordinance No. 20329, enacted November 30, 2004, effective December 30, 2004, to sunset December 31, 2011; sunset date extended to September 30, 2012 by Ordinance No. 20480, enacted November 28, 2011, effective December 30, 2011; sunset date extended to September 30, 2016, by Ordinance No. 20494, enacted June 11, 2012, effective July 14, 2012.)*

**8.440 Rental Housing – Registration and Fees.**

- (1)** All rental housing not excluded under 8.410(2) shall be registered with the city on a form and in a manner to be determined by the city manager.

- (2) For the purpose of offsetting the costs to the city associated with the enforcement of this code, the city manager, using the process contained in section 2.020 of this code, shall set a fee for each dwelling unit covered by a rental agreement.
- (3) The following unit types, while subject to the standards, enforcement procedures, and other requirements established in sections 8.400 through 8.440 of this code, shall be exempt from the fee payment requirements:
  - (a) Rentals with a recorded deed restriction requiring the units to be rented affordably to households at or below 60 percent of the Area Median Income; and
  - (b) Rentals that have been approved by the city for an exemption from property taxes pursuant to sections 2.910 to 2.922 and 2.937 to 2.940 of this code or that are recognized by the city as exempt from property taxes pursuant to ORS 307.092.
- (4) The owner or the owner's agent shall be responsible for paying the fee. The total fee shall be paid for any dwelling unit which is covered by this Rental Housing Code for any portion of a billing period, and no refunds will be provided after fees are paid if a dwelling unit:
  - (a) Ceases to be a rental; or
  - (b) Changes ownership.
- (5) For each month in which the fee is not paid by the date specified in the written notice of payment, a penalty shall be assessed to the owner or the owner's agent. The amount of the penalty shall be set pursuant to section 2.020 of this code.
- (6) The city manager may initiate appropriate action to collect the fees due. All costs associated with these actions, including attorney fees, may be assessed to the owner or the owner's agent.

*(Section 8.440 added by Ordinance No. 20329, enacted November 30, 2004, effective December 30, 2004, to sunset December 31, 2011; sunset date extended to September 30, 2012 by Ordinance No. 20480, enacted November 28, 2011, effective December 30, 2011; amended and sunset date extended to September 30, 2016, by Ordinance No. 20494, enacted June 11, 2012, effective July 14, 2012.)*



**Memorandum**

Date: 3/16/16  
To: Housing Policy Board; Eugene City Council  
From: Eugene Rental Housing Committee  
Subject: Report on Rental Housing Code

**Background:**

Eugene enacted a rental housing code, with a sunset clause, in 2005. Its purpose is to "provide minimum habitability criteria to safeguard health, safety, property and public wellbeing to owners, occupants and users of rental housing." City Council has renewed the code several times, each time making minor changes. The ordinance sunsets again in September 2016. One of the changes the Council made when it renewed the Code in 2012 was to create an advisory committee to report through the Housing Policy Board on the working of the code. This is a report of the work of the committee and the code. Members of the committee are:

Heather Buch (landlord)  
Norton Cabell, chair, (chair of the Housing policy Board, a landlord)  
Eric Hall (landlord, former board member of Rental Owners Association)  
Chris Wig (tenant advocate)  
Jim Straub (landlord, former president of Rental Owners Association)  
Geni Sustello (director of public housing at HACSA)  
John VanLandingham (Legal Aid, member of the Housing Policy Board)

**Synopsis of complaints:**

In fiscal years 2013, 2014, and 2015:

- 72 complaints were logged. (Not every complaint is logged; some are satisfied over the phone or the housing code is determined not to apply.)
- 5 complaints were dismissed because either the tenant didn't follow up with a copy of written notice to the landlord or the tenant denied access to the landlord for repairs.
- 22 complaints were resolved before an inspection was required (usually because the landlord made the repair to the tenant's satisfaction, or because the tenant moved out).
- 46 complaints required inspection by city staff.
  - 30 required an order to correct. All were eventually corrected.
  - 16 complaints were found, after inspection, to require no action.
- 1 resulted in a fine.

The subjects of the complaints are as follows (most complaints involved more than one subject):

Tenants complained about		Inspector found:
Mold	47	14
Weather tightness	43	20
Plumbing	33	14
Electrical	15	13
Security	18	7
Heating	17	10
Smoke detector	3	4
Structural integrity	1	0
Other	3	0

#### **Work of the committee:**

Meetings of the committee have been devoted mostly to reviewing the complaints and how city staff has responded to them, and some to reviewing the costs of the program.

The committee did not review every complaint but does review those it deems interesting, especially the complicated ones and those that drag on for some time. When the code was last renewed and the committee formed, there was a perception among landlords of unfairness: of inspectors going beyond the issues in the complaint, and of inspectors taking the tenant's side. (Inspectors, it should be noted, are obligated by law to document conditions that are a threat to health or safety.) The committee found, however, no such instances and that staff regularly has acted professionally and properly.

The program has been expensive to run. It costs about \$300,000 annually, which is paid for by a \$10 per unit annual fee levied on landlords (who sometimes pass it on to tenants). That works out to almost \$12,500 per complaint actually filed or \$30,000 per "order to correct" or \$285 per logged call. The committee reviewed the budget and expenditures and didn't find any viable ways substantially to cut the costs.

Not all inquiries result in a complaint. In 2012 and 2013, an average of just over 1,000 calls were logged each year. Almost half were from landlords, most regarding billing. The inquiries (both calls and walk-ins) from tenants that didn't result in a formal complaint concerned housing issues such as pests, electrical, garbage, screens, appliances, insulation, and carbon monoxide detectors. Non-housing issues included general landlord-tenant issues, evictions, and fair housing.

With the imminent sunset, the committee has been looking at codes in other jurisdictions and worked with staff to identify gaps in our own code.

#### **Benefits of the program:**

1. Tenants who do complain about legitimate problems often get results.
2. The requirement for a written complaint helps both landlord and tenant by documenting the problem, reducing "he said, she said" arguments, and by helping to resolve problems more promptly than might occur otherwise.

3. Inspections are impartial and are performed by individuals with expertise. In a later dispute about the condition of the housing, the inspector and the report can be subpoenaed.
4. Tenants who follow the required process receive some legal protection, since landlord-tenant law prohibits retaliation against tenants who reasonably complain. However, it can be argued that no tenant complains without risk.
5. It is clearer to both parties what a landlord's obligations are, and what they are not.

**And the concerns:**

1. Cost. It is an expensive program to run, particularly when weighed against the actual results.
2. While this is a general fund category, city council promised that the costs of the program would be borne by the door tax, but that the latter shouldn't be a new source of revenue for the city in general. The revenue (which runs about \$320,000 annually) has exceeded the expenses (in fiscal '13 by \$18,000; fiscal '14 by \$34,000; fiscal '15 by \$66,000). The accumulated surplus since 2005 is now \$263,000. We have no recommendation regarding the surplus, feeling it will begin to shrink and the surplus will insulate against fee increases.
3. Should additional areas be covered? Should timelines for code compliance (especially in winter) be shortened?

**Recommendations:**

1. Renew the rental housing code and extend the sunset provision four years.
2. Retain an advisory committee.
3. Add some items to the code:
  - a. Working electrical systems. While electrical safety is covered under existing codes, working electrical is not. If electricity fails in part of a dwelling—but it doesn't create a safety risk—it is not covered.
  - b. Carbon monoxide detectors. We should mirror Oregon Landlord-Tenant Law and other jurisdictions by requiring such alarms where a potential source of CO is present.
  - c. Rats. Oregon Landlord-Tenant Law requires a landlord to provide premises free of pests and vermin. Some codes make that an ongoing problem. Pest and vermin problems, other than rats, are usually caused by tenants; an infestation of rats is usually not.
  - d. Certain appliances. Landlord-Tenant Law requires a landlord to maintain appliances the landlord provides. There is some disagreement regarding what is covered. We recommend that if a landlord provides a range, refrigerator, air conditioning, dishwasher, microwave, clothes washer, or clothes dryer, that the landlord must maintain the appliance.
4. Not add certain items to the code. The committee considered the following but is not recommending covering them:
  - a. Window screens. These are not essential, they are easily and cheaply provided by the tenant.
  - b. Insulation. Energy efficiency and insulation (or their lack) is expensive to retrofit and is usually reflected in the rent. Requiring them would have significant impact

on housing costs in Eugene. The committee has been looking into tenant education programs and will continue that effort.

- c. Ventilation, particularly in bathrooms. Lack thereof usually creates mold, which is already covered by other city codes.
  - d. Garbage. If it is outside, it is covered by other codes.
  - e. Evictions, etc. These are beyond the scope of the code.
  - f. External maintenance. Items like working gutters and downspouts that cause water intrusion into the dwelling unit are already covered by the code.
5. Shorten some timelines. Before the City can react to a complaint, the tenant must provide ten days' written notice of the failure to the landlord. This works a serious hardship on tenants when it is an essential utility, such as no heat in the winter or no working toilet. Oregon Landlord-Tenant Law provides that if an essential utility is lacking—posing “an imminent and serious threat to the tenant’s health, safety or property”—and is not repaired within 48 hours after written notice, the tenant may terminate the tenancy. The committee doesn’t want the tenant to be forced to move out; rather it wants to allow the City to intervene. Hence, the recommendation is to shorten the 10-day notice period to 48 hours in the case of an essential utility.





## Rental Housing Program

The City of Eugene works with property owners and renters to ensure our community has safe and livable rental housing. The rental housing code (*Eugene Code 8.425*) was adopted to establish minimum habitability standards that all rental properties must meet, and to provide assistance to renters and property owners or managers when there is a question about those standards.

### Funding

Costs for the program are paid by a \$10 per unit fee annually. The property owner or owner's agent is responsible for paying the fee. Funding of the program helps ensure our community has safe and livable rental housing.



### How to File a Complaint

A complaint may be filed with the City only after the renter has sent written notice to the owner or the property manager. The renter must allow 10-days for the owner to respond to the complaint.

To file a complaint related to the structural integrity, heating, plumbing, weatherproofing, security or smoke detection of a rental:

- 1 Send a written notice to the owner or the property manager.
- 2 Allow 10-days for the owner or property manager to respond.
- 3 If there is no response you can submit a complaint to the City online at [www.eugene-or.gov/rentalhousing](http://www.eugene-or.gov/rentalhousing).

Complaint investigations will begin only after the steps above have been completed.

**Contact the Rental Housing Program for further information or for help through the process.**



### Contact Us

[www.eugene-or.gov/rentalhousing](http://www.eugene-or.gov/rentalhousing)  
[rentalhousing@ci.eugene.or.us](mailto:rentalhousing@ci.eugene.or.us)  
541-682-8282



Attachment C



## Rental Housing Program



HEATING  
SECURITY  
SMOKE DETECTION  
STRUCTURAL INTEGRITY  
WEATHERPROOFING  
PLUMBING  
MOLD

# The Rental Housing Code covers the basics.

The rental housing code only covers habitability standards for rental properties. Other laws and City of Eugene codes address legal and human rights issues for property owners, managers and renters.

## HEATING

There must be a permanently installed heating source able to provide a room temperature of 68°F. Heating devices must conform to applicable laws and fuel-burning appliances must be properly ventilated.



## SMOKE DETECTION

Each unit must have an approved and working smoke alarm or smoke detector installed and maintained in accordance with the state building code.



## SECURITY

Doors and windows must be equipped with working locks.



## STRUCTURAL INTEGRITY

Roof, floors, walls, foundations and all other structural components must meet the building code.



## WEATHERPROOFING

Roof, exterior walls, windows and doors must prevent water leakage into living areas; repairs must be permanent and use accepted construction methods.



## PLUMBING

Systems must be in a safe and sanitary condition, free of defects, leaks and obstructions; repairs must be permanent and use accepted plumbing methods.



*Mold is addressed through the weatherproofing and plumbing standards.*



## Concerns about your Rental Property?

The goal of the Rental Housing Program is to help renters and owners communicate with each other to resolve issues without further city involvement or legal action. If you are concerned your rental property may not meet the code, you can:

- Learn more about the rental housing standards at [www.eugene-or.gov/rentalhousing](http://www.eugene-or.gov/rentalhousing)
- Talk to your property manager about your concern; follow up with written communication about the issue and keep a copy for your records.
- If your concern persists, you can file a complaint with the City of Eugene – *see reverse for details.*

## Additional Resources for Renters

### Lane County Legal Aid

[www.lclac.org](http://www.lclac.org)  
541-485-1017

### Community Alliance of Tenants

[www.oregoncat.org](http://www.oregoncat.org)

### Renter's Rights Hotline

503-288-0130

### Fair Housing Council of Oregon

[www.fhco.org](http://www.fhco.org)  
503-223-8197

## Resources for Currently Enrolled Students

### UO: ASUO Legal Services

541-346-4273

### LCC: Student Legal Services

541-463-5365

## Resources for Property Owners and Managers

### Rental Owners Association in Lane County

[www.laneroa.com](http://www.laneroa.com)  
541-485-7368

### Oregon Rental Housing Association, Inc.

[www.oregonrentalhousing.com](http://www.oregonrentalhousing.com)  
503-364-5468

### Rental Housing Alliance Oregon

[www.rhaoregon.org](http://www.rhaoregon.org)  
503-254-4723



## Programa de alquiler de vivienda

La ciudad de Eugene trabaja con propietarios e inquilinos para asegurarse de que la comunidad tenga viviendas de alquiler seguras y habitables. Se adoptó el código de alquiler de vivienda (Código de Eugene 8.425) para establecer normas mínimas de habitabilidad que toda propiedad debe cumplir y para brindar asistencia a los inquilinos y a los propietarios o administradores en caso de tener alguna duda sobre dichas normas.

### Fondos

Los costos del programa se pagan anualmente con una tarifa de \$10 por unidad. El dueño de la propiedad o su agente es responsable por el pago de la tarifa. Los fondos para el programa ayudan a asegurar que la comunidad cuente con viviendas de alquiler seguras y habitables.



### Cómo presentar una queja

Se puede presentar una queja ante el Ayuntamiento de la Ciudad sólo después de que el inquilino haya enviado una notificación por escrito al propietario o administrador de la propiedad. El inquilino debe permitir al propietario 10 días para responder a la queja.

Para presentar una queja relacionada con la integridad estructural, la calefacción, la plomería, la impermeabilización, la seguridad o detección de humo en la propiedad de renta:

- 1 Envíe una notificación por escrito al dueño o el administrador de la propiedad.
- 2 Permita que el dueño o administrador de la propiedad responda en 10 días.
- 3 Si no recibe respuesta, Ud. puede presentar una queja por internet al [www.eugene-or.gov/rentalhousing](http://www.eugene-or.gov/rentalhousing).

La investigación comenzará únicamente después de que se hayan cumplido los pasos anteriores.

**Póngase en contacto con el programa de alquiler de vivienda para mayor información o para obtener ayuda a través del proceso.**



### Contáctenos

[www.eugene-or.gov/rentalhousing](http://www.eugene-or.gov/rentalhousing)  
541-682-8282



## Reglamento de alquiler de vivienda en Eugene

*Ayudando a propietarios e inquilinos a abordar las condiciones de seguridad*



CALEFACCIÓN  
SEGURIDAD  
DETECCIÓN DE HUMO  
INTEGRIIDAD ESTRUCTURAL  
IMPERMEABILIZACIÓN  
PLOMERÍA  
MOHO



## El código del alquiler de vivienda cubre los conceptos básicos.

El código del alquiler de vivienda sólo cubre los estándares de habitabilidad en las propiedades de alquiler. Otro tipo de leyes y códigos de la Ciudad de Eugene plantean cuestiones legales y de derechos humanos para el dueño de la propiedad, los administradores y los arrendatarios.

### CALEFACCIÓN

Debe de existir una fuente de calefacción instalada de forma permanente capaz de proporcionar una temperatura ambiental de 68°F. Los aparatos de calefacción deben cumplir con las leyes aplicables y los aparatos de combustión deben tener una ventilación adecuada.



### DETECCIÓN DE HUMO

Cada unidad debe tener un detector de humo aprobado, que funcione y que haya sido instalado y mantenido de acuerdo con el código de construcción del estado.



### SEGURIDAD

Las puertas y las ventanas deben estar equipadas con herrajes de seguridad que funcionen.



### INTEGRIDAD ESTRUCTURAL

El techo, las paredes y los cimientos, además de todos los componentes estructurales, deben cumplir con el código de construcción.



### IMPERMEABILIZACIÓN

El techo, las paredes exteriores, las ventanas y las puertas deben evitar filtraciones de agua en las zonas habitables; las reparaciones deben ser permanentes y utilizar métodos de construcción aceptados.



### PLOMERÍA

Los sistemas deben estar en condición segura e higiénica, libre de defectos, fugas y obstrucciones; las reparaciones deben ser permanentes y utilizar métodos de plomería aceptados.



*El moho debe tratarse utilizando los estándares de impermeabilización y plomería.*

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## ¿Tiene algunas inquietudes sobre su alquiler?

El objetivo del programa de alquiler de vivienda es el de ayudar a los inquilinos y a los propietarios a comunicarse entre sí para resolver los problemas sin implicar a la ciudad o llegar a alguna acción legal. Si le inquieta que su propiedad de alquiler no esté cumpliendo con el código, Ud. puede:

- Aprender más sobre los estándares del alquiler de vivienda en [www.eugene-or.gov/rentalhousing](http://www.eugene-or.gov/rentalhousing)
- Hable con el administrador de la propiedad acerca de lo que le inquieta; haga un seguimiento por escrito sobre el tema y guarde una copia para sus registros.
- Si la situación persiste, puede presentar una queja a la Ciudad de Eugene - Vea el reverso para obtener más detalles.

## Recursos adicionales para los inquilinos

### Lane County Legal Aid

[www.lclac.org](http://www.lclac.org)  
541-485-1017

### Community Alliance of Tenants

[www.oregoncat.org](http://www.oregoncat.org)

### Renter's Rights Hotline

503-288-0130

### Fair Housing Council of Oregon

[www.fhco.org](http://www.fhco.org)  
503-223-8197

## Recursos para los estudiantes matriculados

### UO: ASUO Legal Services

541-346-4273

### LCC: Student Legal Services

541-463-5365

## Recursos para propietarios y administradores

### Rental Owners Association in Lane County

[www.laneroa.com](http://www.laneroa.com)  
541-485-7368

### Oregon Rental Housing Association, Inc.

[www.oregonrentalhousing.com](http://www.oregonrentalhousing.com)  
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