



Work Session

WS

Milwaukie City Council



MINUTES
 MILWAUKIE CITY COUNCIL
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WORK SESSION
 JANUARY 5, 2016
 City Hall Conference Room

Mayor Gamba called the Work Session to order at 4:00 p.m.

Council Present: Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Assistant to the City Manager Mitch Nieman, Finance Director Casey Camors, Public Works Director Gary Parkin, Planning Director Denny Egner, Engineering Director Chuck Eaton, and Community Development Director Alma Flores

City Council Photo Shoot

The Council participated in a group photo shoot.

Mayor Gamba recessed the Work Session at 4:15 p.m. and announced that Council would meet in Executive Session pursuant to Oregon Revised Statute (ORS) 192.660(2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

Mayor Gamba reconvened the Work Session at 5:04 p.m.

Municipal Court Judge Update

Municipal Court Judge Kimberly Graves discussed dress codes in other jurisdictions and the appropriate amount of respect in courtroom sessions. She liked the policy of requiring people to dress appropriately, and if they were deemed inappropriately dressed, to work with staff on how to proceed, with options to reschedule, change plea with some reduction possible, or wait until the end of the arraignment. She felt that waiting until the end of the session was a good compromise.

The City Council was in agreement with the compromise.

Municipal Court Judge Kimberly Graves discussed the trial court rules related to TriMet citations. She explained the trial court rules would move forward to be adopted on February 1, 2016, and could be amended if necessary.

The group discussed that the Municipal Court updates to Council would be quarterly.

Kellogg Good Neighbor Committee (KGNC) Update

Mr. Parkin and Committee members **Gary Klein** and **Charles Bird** presented the annual KGNC update to Council. **Mr. Parkin** provided an amended work plan prepared by **Mr. Bird**. **Mr. Parkin** highlighted projects from the past year, including the landscaping project, the \$1 million funding for Riverfront Park Phase II, and the enhancement of Kellogg Park with benches and lighting. The odor study was completed at the end of last year, and KGNC was working to push aeration basins up on the priority list.

Councilor Power discussed projects that were prioritized to ensure plant operation. The closure of the bridge was not causing operational issues.

Mr. Parkin commented on the good relationship with Water Environment Services (WES) and the involvement of Milwaukie elected officials.

Mayor Gamba commented on item 3 related to path lighting. **Mr. Bird** discussed some options on the master plan to move the pathway. Right now, KGNC was looking at the existing path, and would not make a recommendation to Council until the odor control was resolved and Kronberg Park improvements finished. **Mr. Parkin** commented on the type of lighting being considered.

Mr. Bird explained that the trees that died were under warranty, but there were trees that a beaver took and some that seemed to disappear which would not be covered by insurance. The group did not have the as-builts to verify the tree locations.

The group discussed the benches and the pads that had already been installed. **Council President Batey** discussed a large muddy patch and commented on the options for the pathway that would need better drainage.

Recreational Marijuana Regulation

Mr. Egner was looking for general direction to draft a proposal to take to the Planning Commission for a public hearing followed by City Council public hearings. The change was about recreational marijuana, not medical. Milwaukie currently had one dispensary, and there was a lot of interest in the topic from the public. In the staff report, Mr. Egner listed some questions to start crafting regulations. The first question was whether the City should apply the same basic rules for medical dispensaries to the recreational stores. The State was not requiring recreational facilities to be separated by 1,000 ft.; Milwaukie had several options. In addition, the City currently did not allow colocation of any business with medical marijuana. This needed clarification, for example, did that include processing with retail or grow site with processing? He discussed different approaches to take when tackling these issues.

Council consensus was that the 1,000 ft. separation was a good idea. **Council President Batey** liked the 1,000 feet separation from parks. **Councilor Power** was concerned about residential zones; she liked the City of Ashland's model. **Mr. Egner** preferred preparing a draft for a public hearing and then going from there.

Mayor Gamba commented that it made sense to allow grow and processing in the same space. **Mr. Egner** stated no grow sites were currently allowed in manufacturing zones, and he discussed the tax allowances. He noted that the City probably needed to make some reasonable methods to allow grow sites. **Councilor Power** was okay with grow sites and small retail together noting it was similar to breweries.

Mr. Egner discussed a table in the staff report that showed the only place the City could allow grow sites was as a conditional use in the General Commercial and Industrial zones. Milwaukie did not have any agricultural zones.

Mayor Gamba asked about requiring standards for grow sites. **Mr. Egner** replied that the standards had to be reasonable; nuisance concerns like smell could be included. He was not certain about renewable energy or other requirements.

Council President Batey would not like to see much square footage go to a grow sites.

Mayor Gamba was interested in number of jobs created and wages. He did not want to create an odor nuisance.

Council President Batey did not want to make these decisions before the study was done on the North Milwaukie Industrial Area (NMIA).

Mr. Egner understood the odor concern and the need for a buffer for grow sites and processing from residential areas.

Council President Batey was concerned about a higher better use of industrial land and the potential for crime.

Councilor Power wanted to go for a small tax. **Mayor Gamba** suggested putting it on the ballot in November. The group discussed taxes and how much could be collected.

Mr. Egner recapped that there was support for 1,000 ft. separation of recreational facilities, some interest in the separation from parks, and some interest in colocation. **Council President Batey** was concerned about scale and size.

Councilor Parks suggested a temporary moratorium in the NMIA but to allow it in other industrial areas.

Council directed Mr. Egner to draft options before going to the Planning Commission. Council supported the concept of a special business tax.

Mayor Gamba recessed the Work Session at 6:08 p.m. and reconvened the Work Session at 7:33 p.m.

Portland-Milwaukie Light Rail (PMLR) Project Close-Out Updates

Mr. Monahan discussed the close out of the PMLR project. He discussed the stormwater treatment obligation by TriMet and fees in lieu of construction (FILOC) to be added to the Capital Improvement Project (CIP). Traffic signal work was underway and involved the County, TriMet, and the railroad to address signal problems and acquire the hardware. Mr. Parkin would provide the status of the punchlist at the February 16, 2016, Work Session. The TriMet field office would close the first week of February.

Mr. Eaton provided information on the vehicle and pedestrian signals. The railroad crossing orders was the major issue upon which all parties had to agree in order to make a revision. The group discussed the signals and the changes that had been made.

Mr. Eaton discussed repair of the bridge. In-water work would not be allowed until after June, and there was no permanent fix for the bridge without working in the water. Costs had increased and the minimum was now at \$200,000.

Councilor Power suggested drafting a letter to the Oregon Marine Board (OMB) to provide an update. **Mr. Eaton** discussed public access and the cost benefit of repairing the bridge. There were still many issues to resolve. **Councilor Power** urged a letter to the Board of County Commissioners (BCC) to make them aware of the situation. This was a public safety risk and a blow to recreation and sports fishing.

Mr. Eaton would provide additional information at the first February meeting to help make a decision on next steps.

The group discussed bridge options and agreed on a letter to the BCC.

Neighborhood District Association (NDA) Leadership Meeting Discussion

Mr. Nieman announced the upcoming NDA leadership meeting on January 27, 2016, that included discussions on the new GIS web mapping software and the Sunday Parkways Event. There was also the possibility of discussing the future of the Street Surface Maintenance Program (SSMP).

Council agreed and commented on the benefits of discussing the SSMP with the NDA Leadership.

Mayor Gamba adjourned the Work Session at 8:00 p.m. and announced that Council would be going into Executive Session and would not be returning to open session.

Respectfully submitted,



Amy Aschenbrenner, Administrative Specialist II

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2016 Work Plan for the Kellogg Good Neighbor Committee

General charge: The Good Neighbor Fund was established for the purpose of mitigating the impact of the Kellogg Treatment Plant on the surrounding neighborhoods.

The Kellogg Good Neighbor Committee (KGNC) was formed to provide a process for developing and prioritizing projects and/or efforts to be undertaken with Good Neighbor Fund monies making recommendations to the City Council for the best use of the Fund.

1. **Item:** Promote the findings of the Odor Study completed for the KGNC in Nov 2014. KGNC will advocate for odor control project funding in the CCSD1 capital improvement budget.

Detail: The Odor Study identifies partial or full odor control at the aeration basins as providing the best value. KGNC will push for CCSD1 consideration in their Capital Improvement program.

Status: Funds contingent on starting by June 2016. The project was committed in the CCSD1 budget this year and is expected to be under contract by March 2016

Activity: Committee to monitor implementation of plan.

Timeframe: Thru 2017.

2. **Item:** Planted screen

Detail: A living screen of vegetation to obscure the plant and to disrupt the air flow from the plant to mix and dilute any smells before they arrive at residential areas.

Status: Phase 1 planting was done in the fall of 2015. Several plants perished, were taken by beaver or are unaccounted for, and must be replaced.

Activity: Monitor the plants, look for and fill any gaps, oversee long term maintenance.

Timeframe: On going.

3. **Item:** Install path lighting along the path through the Kellogg Plant property.

Detail: Lighting could improve safety and enhance utility of the public access property around the plant.

Status: Staff is developing lighting options to consider

Activity: Evaluate public sentiment and options for lighting to develop a plan for council to review.

Timeframe: Design with cost estimate through spring 2016.

4. **Item:** Enhance public facilities in the treatment plant park.

Detail: Install benches, maintain existing picnic tables, add tables and construct ADA path to picnic table.

Status: Three benches are under construction. The concrete pads have been poured. Crushed stone paths are being designed for table access.

Activity: Evaluate path options, propose number and location of facilities.

Timeframe: Benches/pathway – place this spring, purchase/place tables: by summer.

5. **Item:** Kronberg Park .

Detail: A master plan has been developed. The neighborhoods have expressed interest in supporting the park and path connecting Island Station and Historic Milwaukie neighborhoods.

Status: The city is discussing funding needs and sources.

Activity: Evaluate the city's proposals and possible funding commitments and priorities relative to the committee's mandate and the wishes of the neighborhoods.

Timeframe: This winter.

6. **Item:** Keep watch on the Good Neighbor Funds.

Detail: Gather reports from the City and County and track the fund balances. Manage the proposals presented to the City and track their fund impact and disposition.

Status: Acceptable.

Activity: Monitor, audit, report and discuss at each committee meeting

Timeframe: On going.



Memorandum

To: City Council
From: Alma Flores, Community Development Director
CC: Bill Monahan, City Manager
Date: January 5, 2016
Re: Community Development Department Projects - City Council Update for January 5, 2016, Work Session

Community Development/Economic Development

- **Triangle Site RFQ for a Food Cart Pod**
- City Block 14 and Cash Spot sites
- **Urban Renewal Planning**
- Economic Opportunities Analysis/ED Strategy
- Partnerships
- Grants
- **Tools and Incentives/Business Workshops**
- Parklets
- **Wayfinding Systems Plan—Downtown**

Planning

- **Land Use and Development Review**
- Annexations
- Monroe Street Neighborhood Greenway
- **19th Avenue & Sparrow Street Greenway**

Engineering

- **Riverfront Park**
- **17th Avenue Multi-Use Trail**
- **Stanley Avenue Stormwater**

Building

- **IGA**

Community Development/Economic Development

Triangle Site RFQ for a Food Cart Pod

- The RFQ was posted on December 28th. Responses are due Jan. 29, 2016.

Urban Renewal Planning

- On December 15, the Council adopted a resolution directing staff and the City's consultant team to prepare a draft urban renewal plan for the downtown and central Milwaukie area of the City. The planning process will include formation of an advisory committee and a high level of community outreach regarding final boundaries and projects to be funded. City Council is expected to consider adoption of the urban renewal plan in the summer of 2016.

Tools and Incentives/Business Workshops

- A 6-week Business Fundamentals class will start in Milwaukie on February 25 from 5-8 pm. at City Hall and the Pond House. More information will be made available online and through email. The cost of the class will be \$175; the first 10 City of Milwaukie residents could receive a grant of \$25 toward the class.

Wayfinding Systems Plan—Downtown

- The Community Development department sent the request for qualifications to 4 firms for consider. The deadline for submissions is January 8. If responses are not received then a re-posting will need to occur.

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Engineering

Riverfront Park

- North portion of Riverfront Park is closed. Heavy rain and high water caused damage to the footings of the bridge and has eroded part of the fill supporting the roadway. It is now closed to all traffic.

17th Avenue Multi-Use Trail

- Final plans are currently under review by ODOT, Metro, and the City. Construction expected to commence Spring 2016.
- Phase 2 of the waterline relocation work required in preparation for this project is scheduled to begin in January. Traffic will be affected on 17th Avenue during this construction.

Stanley Avenue Stormwater

- Crews have finished work on Stanley Avenue and are proceeding with the work on Lloyd Street. Expect occasional road closures during the last of the work to be performed on Stanley Avenue and Lloyd Street. All paving that has been completed on Stanley Avenue is temporary. Crews will perform the final paving once all pipe work is complete.

Planning

Land Use and Development Review

- City Council:
 - January 19 – In a work session on December 15, 2015, the Council directed staff to initiate a 2½- to 3-year effort to update the City's Comprehensive Plan. The work will include a 6-month-long community visioning process that will set the direction for any needed changes to the plan. Staff will provide a recommendation regarding the scope and timeline of a visioning process.
- Planning Commission:
 - January 12
 - Public hearing for file #MLP-2015-002, a 3-lot partition with a variance request for lot width standard.
 - Worksession on file #ZA-2015-003 Short-term rentals
 - Worksession on the Comprehensive Plan update planned for 2016-2018 Land Use
- Applications¹:
 - Referrals and public notices for DEV-2015-009/NR-2015-009, a proposal to construct a new industrial/office building at 8908 SE 55th Ave, were sent on December 31.
 - Application for CSU-2015-008/CU-2015-002/TFR-2015-001, a Type III Conditional Use, Community Service Use, and Transportation Facilities Review application to build a new office building and transitional shelter at 2316 SE Willard St (Northwest Housing Alternatives) submitted on December 17. In completeness review.

19th Avenue & Sparrow Street Neighborhood Greenway

- On December 14, 2015, staff met with Sparrow Street neighbors to discuss a proposed concept for street improvements. Those in attendance generally support a hard-surface off-street walking path on the south side of the roadway along with stormwater improvements, new stop signs, and a traffic calming feature at the corner of Sparrow Street and SE 22nd Avenue. The options discussed at the meeting can be viewed at the following link: <http://www.milwaukieoregon.gov/planning/19th-avenue-sparrow-street-greenway-design>

Building

- A mutual intergovernmental agreement with Clackamas County was approved by Council at the December 15, 2015, meeting. This improved agreement allows Milwaukie to provide services for Clackamas County as well as Clackamas County helping out Milwaukie. The agreement also allows Milwaukie to acquire the administration of the electrical program so that all permits will now be obtained through the Milwaukie office for better customer service for our residence.

¹ Only those land use applications requiring public notice are listed here.



MILWAUKIE CITY COUNCIL WORK SESSION

City Hall Conference Room
10722 SE Main Street
www.milwaukieoregon.gov

AGENDA JANUARY 5, 2016

A light dinner will be served.

Page #

1. **4:00 p.m. City Council Photo Shoot**
City Hall Council Chambers
2. **4:15 p.m. EXECUTIVE SESSION**
The City Council will meet in Executive Session pursuant to Oregon Revised Statute (ORS) 192.660(2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.
3. **4:45 p.m. Municipal Court Judge Update**
Staff: Casey Camors, Finance Director
4. **5:00 p.m. Kellogg Good Neighbor Committee (KGNC) Update** 1
Staff: Gary Parkin, Public Works Director
5. **5:30 p.m. Recreational Marijuana Regulation** 2
Staff: Denny Egner, Planning Director
6. **5:45 p.m. Adjourn**

Meeting Information

- The time listed for each item is approximate; the actual time each item is considered may change due to the length of time devoted to the previous item. The Council may vote in Work Session on non-legislative issues.
 - Executive Sessions: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660(2).
 - All Executive Session discussions are confidential and those present may disclose nothing.
 - Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed.
 - Executive Sessions may not be held for the purpose of taking final actions or making final decisions.
 - Executive Sessions are closed to the public.
 - For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503-786-7555
- During meetings the Council asks that all pagers and cell phones be set on silent mode or turned off.

2016 Work Plan for the Kellogg Good Neighbor Committee

General charge: The Good Neighbor Fund was established for the purpose of mitigating the impact of the Kellogg Treatment Plant on the surrounding neighborhoods.

The Kellogg Good Neighbor Committee (KGNC) was formed to provide a process for developing and prioritizing projects and/or efforts to be undertaken with Good Neighbor Fund monies making recommendations to the City Council for the best use of the Fund.

1. Promote the findings of the Odor Study completed for the KGNC in November 2014, partial or full odor control at the Aeration Basins for CCSD1 consideration in their Capital Improvement program.
Timeframe: Have a project committed in the CCSD1 budget this year and under design by summer 2017.
2. Continue to advance the planting screen work at the Kellogg Plant as Phase 1 has completed.
Timeframe: Ongoing.
3. Install lighting along the path through the Kellogg Plant property.
Timeframe: Design with cost estimate through spring 2016.
4. Install benches, replace picnic tables, and construct ADA path to picnic table.
Timeframe: Benches/pathway – place this spring, purchase/place tables - by summer.
5. Discuss funding of Kronberg Park needs.
Timeframe: This winter.
6. Track Good Neighbor Fund balance: Ongoing effort.



**MILWAUKIE CITY COUNCIL
STAFF REPORT**

To: Mayor and City Council

Through: Bill Monahan, City Manager
Alma Flores, Community Development Director

Subject: Recreational Marijuana Regulation

From: Denny Egner, Planning Director

Date: December 23, 2015, for the January 5, 2016, Work Session

ACTION REQUESTED

Provide direction for preparation of code amendments regulating recreational marijuana businesses.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

April 7, 2015: The Council adopted zoning amendments to regulate medical marijuana dispensaries. The regulations allow dispensaries in any zone where a pharmacy is permitted and impose the following additional regulations: 1) a 1000 ft buffer is required from schools and from other dispensaries; 2) colocation with another business is prohibited; 3) products are prohibited from being visible from outside the dispensary; and 4) the hours of operation are limited to the hours between 8:00a.m. and 10:00p.m.

February 3, 2015: The Council confirmed a staff code determination that marijuana grow operations are not permitted in the City's industrial zones given that agricultural use is not listed as an allowed use in the zones.

September 2, 2014: In advance of the vote on state Measure 91 to legalize recreational marijuana, the Council imposed a 10% local tax on the sale of recreational marijuana products.

April 15, 2014: The Council extended a temporary ban on the opening of medical marijuana dispensaries to April 30, 2015. The ban was lifted in 2015 with adoption of the zoning provisions for medical marijuana dispensaries.

February 25, 2014: The Council approved a temporary ban on medical marijuana facilities to provide time to develop zoning ordinance regulations.

BACKGROUND

In the 2015 legislative session, the Oregon State Legislature passed a series of bills addressing marijuana businesses, including House Bill 3400, which expands upon the framework of Measure 91 (the voter-approved act legalizing recreational marijuana) and the previous state regulations affecting medical marijuana. In October 2015, the Oregon Liquor Control Commission (OLCC) adopted temporary rules to regulate the recreational marijuana industry in Oregon.

The OLCC has established an application process for marijuana business licenses and will begin taking applications as of January 4, 2016. The OLCC estimates that first recreational retail facilities will be open in the third quarter of 2016 with grow sites and processing facilities opening earlier in the year. Recreational facilities authorized under the new legislation include retail outlets, grow sites, processing, warehousing, and laboratory/testing. Additional background information is provided in the attached background paper.

Given that the OLCC is prepared to begin taking in applications for new recreational marijuana businesses, it is important and timely for the City to determine how it may wish to regulate these businesses. Staff is seeking general direction on the types of code amendments to develop.

DISCUSSION

Key questions for the Council include:

- Should recreational retail outlets be subject to the same requirements as medical marijuana dispensaries? State rules require that medical marijuana dispensaries be separated by 1000 ft while retail outlets are not required to be separated.
- Should there be any regulations on marijuana processing facilities, laboratories, and wholesale facilities that would be different from facilities for other products?
- Should the City modify the code to allow grow sites (production) in the city's industrial zones or in certain areas within the city?
- Should the City move forward to propose a 3% local tax on marijuana products as allowed by state law? State law limits any local tax to a maximum of 3% and the tax must be voter-approved.
- Should a special business license and fee be required for marijuana businesses?

CONCURRENCE

No other departments reviewed the draft report prior to it being issued. The final report has been distributed to the Police Chief, the Finance Director, and the City Attorney for comments.

FISCAL IMPACTS

There are no known fiscal impacts. The short-term impact of allowing marijuana businesses in the city's industrial areas will most likely be positive given that vacant space will be occupied and new equipment will be installed. The long-term impact of marijuana businesses in the city's industrial districts is unknown but it is possible it could have the effect of discouraging some types of businesses from locating in these areas.

WORK LOAD IMPACTS

The work associated with this project is assumed to be within the normal workload capacity of the Planning and Community Development staff.

ALTERNATIVES

No alternative approaches have been explored.

ATTACHMENTS

1. Background Paper : "Regulating Recreational Marijuana"

Regulating Recreational Marijuana Background Paper

Prepared by Drew DeVitis, City of Milwaukie Planning Intern
December 2015

I. Legislative Background

In November 2014, Oregon voters approved Ballot Measure 91, Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act which “allows possession, manufacture, sale of marijuana by/to adults, subject to state licensing, regulation, taxation.”

In the 2015 legislative session, the Oregon State Legislature passed a series of bills regarding recreational and medical marijuana, clarifying Measure 91 and previous medical marijuana legislation. The most significant piece of legislation, House Bill 3400 (the Omnibus Bill), expands upon the framework of Measure 91 and Oregon Medical Marijuana Act (codified at ORS 475.300 through 475.346).

In October 2015, the Oregon Liquor Control Commission (OLCC) adopted temporary rules to regulate the recreational marijuana industry in Oregon. The application process for recreational marijuana business licenses will begin January 4, 2016, and the OLCC estimates that first recreational retail facilities will be open in the third quarter of 2016. Recreational facilities authorized under the new legislation include retail outlets, grow sites, processing, warehousing, and laboratory/testing.

This memo provides an overview of legislative measures and state rules adopted in 2015, and the options these provide the City of Milwaukie to regulate recreational marijuana. Specifically, this memo examines the types of recreational marijuana activities authorized by State statute, the restrictions State law places on each type of activity, and the options the City of Milwaukie has to regulate marijuana facilities.

II. Overview of HB 3400

A. Primary Objectives

1. Sets guidelines for the OLCC to regulate the production, processing, and sale of retail marijuana products.
2. Clarifies the categories of commercial marijuana activity (producer/grower, processor, wholesaler, and retailer) and rules that govern them.
3. Establishes additional rules and processes under the jurisdiction of the Oregon Health Authority (OHA) to regulate the production, processing, and sale of medical marijuana.
4. Does not preempt cities from adopting further regulations on recreational marijuana commercial activity related to taxation, business licensing, and land use.

B. Categories of Recreational Marijuana Establishments

- **Production/Growing** – manufacturing, planting, cultivation, growing or harvesting of marijuana in Oregon.

- **Processing** – processing, compounding or conversion of marijuana into cannabinoid products, concentrates, or extracts; excluding packaging or labeling.
- **Wholesaling** – purchasing and distribution of marijuana items in Oregon for resale to a person other than a consumer in Oregon.
- **Retail Store/Dispensary** – selling marijuana items to a consumer in Oregon.
- **Laboratory** – testing marijuana items for pesticides, solvents or residual solvents, cannabidiol concentration, and for microbiological or other contaminants.

C. Local Opt Out Provision

HB 3400 contains a local "opt out" provision whereby a city may adopt an ordinance to prohibit the establishment of medical marijuana dispensaries, recreational retail sites, producers, processors, and/or wholesalers.

- A city in which at least 55 % of the voters cast a ballot in opposition to Measure 91 can adopt such ordinances at any time, but no later than 180 days after the effective date of the Act, January 1, 2016.
- Cities with less than 55 % of the votes cast in opposition to measure 91 must refer any ordinance the prohibiting commercial marijuana activity to the November 2016 ballot.
- In Milwaukie, only 35.4 % of voters cast a ballot in opposition to Measure 91. This percentage means a city-wide vote would be required in order to prohibit any of the types of marijuana businesses within the city limits.

D. Retail Taxation

House Bill 2041 imposes a 17 % point of sale state tax on recreational marijuana products, which will yield estimated revenue of \$10.7 million in the 2015-17 biennium. Cities will receive 10% of the tax proceeds. The full distribution formula provides 40% to the Common School Fund, 25% to substance abuse treatment and prevention, 15% to the Oregon State Police, and 10% each to cities and counties to help enforce Measure 91.

E. Local Option Tax

Under HB 3400, cities may adopt an ordinance imposing a tax or fee on the sale of marijuana items that are sold in the area subject to the jurisdiction of the city. Such an ordinance must first be referred to the electors of the city on the November 2016 ballot, and the ordinance may not impose a tax or fee in excess of 3%. HB 3400 states that if a city prohibits any type of marijuana business it is not eligible to receive marijuana tax revenues.

IV. OLCC Rules – OAR 845-025

A. Approach

In October 2015, the OLCC adopted temporary administrative rules that establish the state permitting process for businesses involved in the retail sale, production, processing, transportation and delivery of marijuana and marijuana products. The administrative rules place limits on the ability of cities and counties to regulate recreational marijuana facilities and outline “reasonable regulations.” These include time, manner, and place requirements such as the hours of operation and where the facilities may locate.

The OLCC is scheduled to begin the application process for the production, processing, wholesale and retail of recreational marijuana on January 4, 2016. OLCC estimates that recreational marijuana retailers will be open to the public sometime late summer/early fall of 2016.

Prior to acting on an application, the OLCC must receive a land use compatibility statement (LUCS) from a city or county that authorizes land use in the city or county in which the applicant's proposed facility is located. A proposed use must be compatible with the local jurisdiction's comprehensive plan and land use regulations.

B. Land Use and Zoning Provisions for Retail Marijuana

OAR 845-025 details land use requirements regarding each recreational marijuana business category, which are compiled below. These rules do not preempt the City of Milwaukie's ability to place additional land use restrictions on retailers, producers, processors, wholesalers, and/or testing laboratories if it may wish to do so. HB 3400 stipulates that "cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur."

As a general rule, a licensed premise may not be located at the same physical location or address as medical marijuana grow site, medical marijuana processing, medical marijuana dispensary or liquor licensee licensed by OLCC. Two recreational marijuana licensees may co-locate, however. The licensed premises of a processor, wholesaler, laboratory and retailer must be enclosed on all sides by permanent walls and doors.

Producer:

- Marijuana is a crop for the purposes of "farm use" as defined in ORS 215.203; "farm" and "farming practice," both as defined in ORS 30.930; a product of farm use as described in ORS 308A.062; and product of an agricultural activity for purposes of ORS 568.909.

Retailer:

- Retailers may not be located within 1,000 ft 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.
- The OLCC rules do not require a 1,000 ft buffer between recreational marijuana retailers. This is unlike the rules governing medical marijuana under ORS 475, which require a 1,000 ft separation between dispensaries.
- Retailers may not be located in an area that is zoned exclusively for residential use. It is assumed this means that retailers are allowed in mixed-use districts.
- Retailers may only sell to consumers between the hours of 7:00 a.m. and 10 p.m. local time.

Processor:

- The proposed licensed premises of a processor who has applied for an endorsement to process extracts may not be located in an area that is zoned exclusively for residential use.

Wholesaler:

- The proposed licensed premises of a wholesaler applicant may not be located in an area zoned exclusively for residential use.

V. Existing City Zoning Requirements

With adoption of the new GMU (General Mixed Use) and NMU (Neighborhood Mixed Use) zones, the City has 9 zones where marijuana businesses are permitted in some form. The table below outlines where each of the different types of marijuana businesses are allowed in the City.

Where Marijuana Businesses are Permitted Based on Existing Milwaukie Zoning

Zone	Retail¹	Processing	Wholesale	Grow Sites	Laboratory
DMU	P/CU ⁵	P	N	N	P ⁴ /CU ⁵
C-G	P	N	N	CU	P
C-CS	P	N	N	N	P
C-L	P	N	N	CU	P
C-N	CU	N	N	N	N
M	P ²	P	P ²	N	P ²
M-TSA	P ²	P	P	N	P
BI	N	P	P	N	P
GMU	P	P ³	N	N	P ⁴
NMU	P	P ³	N	N	P ⁴

¹ 1,000 ft buffer from schools must be met, and 1,000 ft buffer from medical marijuana dispensaries

² Provided the use is accessory to the primary industrial use

³ Provided the use is accessory to the primary retail use

⁴ Provided the use operates as production-related office use

⁵ Size limitations apply – conditional use over 20,000 sq ft in size

P - Permitted P – Not Permitted CU – Conditional Use

VI. Other Research

While Tigard and Tualatin passed an ordinance regulating recreational marijuana before HB 3400 was signed into law, other cities in Oregon have just begun the process of drafting zoning code amendments that specify regulations for recreational production, retail, wholesale, processing, and laboratory activities. In the appendix are summaries of zoning code amendments to regulate recreational marijuana activities that have either been adopted or proposed by Oregon municipalities.

VI. Issues for Discussion

A. Taxation

If the Milwaukie City Council chooses to levy a tax on recreational marijuana sales, it will have to refer the measure to electors on the November 2016 ballot. If the tax is approved by voters, Milwaukie Municipal Code (MMC) Subsection 5.55 will need to be amended. As detailed in H.B.

3400, a local options tax on recreational marijuana can be no more than 3%. MMC 5.55.025 currently states “every seller engaged in the sale of marijuana and marijuana-infused products shall pay a tax of 10% of the gross sale amount paid to the seller of marijuana and marijuana-infused products”.

Additional analysis may be necessary to determine the cost implementing and administering a 3% tax on recreational marijuana sales. There may be opportunities available for the state to collect the tax on the City’s behalf, since it will already be levying a 17% tax on recreational sales.

B. Recreational Ban

If the City Council chooses to place a temporary ban on any or all recreational marijuana activities, it must do so within 180 days of the effective date of HB 3400 (January 1, 2016), and refer the question to electors on the November 2016 ballot.

C. Regulations

Under HB 3400, OLCC rules, and home rule authority, the city has a number of options for regulating marijuana. The City Council has substantial discretion to choose the best course of action for Milwaukie. Regarding land use, the City Council may adopt restrictions for recreational marijuana activities based on land use compatibility and regulate nuisance aspects of establishments that sell marijuana to consumers. As the land use restrictions outlined by OLCC are not very prescriptive, the Council may consider further action to restrict recreational marijuana activities in certain zones and/or impose additional buffers.

Current MMC regulations for medical marijuana stipulate that a facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector-Campbell school sites. Also, a medical marijuana facility shall not be co-located with another business.

Regarding hours of operation, the MMC sets the hours of operation for medical marijuana facilities to be limited to the hours between 8:00 a.m. and 10:00 p.m. OLCC rules permit recreational marijuana facilities to be open as early as 7:00 a.m. and close as late as 10:00 p.m. Some municipalities in Oregon have restricted retail sales to between 10:00 a.m. and 8:00 p.m.

Regarding store design, the MMC states that the display of marijuana or marijuana products that are visible from outside of the facility is prohibited. This requirement to obscure activity into marijuana facilities does not match the City's storefront window requirements, however, particularly for retail facilities in the DMU and GMU Zones.

D. Business Licenses

The City may also require a special business license for recreational marijuana facilities. Such a course of action is a useful tool for identifying certain types of businesses that are operating within the community. Research has found that some communities in Colorado that allow recreational marijuana activity require local business licenses in addition to state licenses. On a local level, Beaverton requires a medical marijuana facility license application, which has a \$100 fee for the initial application, and \$75 for a renewal.

Appendix – Oregon Regulation Case Studies

Tigard, OR

In May 2015, the City of Tigard preemptively passed an ordinance amending its Development Code to accommodate recreational marijuana for both retail and non-retail uses. The code implemented:

- Prohibits marijuana facilities within the MU-CBD Zone.
- Limits commercial retail activity to the hours between 10:00 am and 8:00 pm.
- Sets a buffer of 2,000 feet between licensed retail or wholesale marijuana facilities within or outside of city limits.
- Sets a buffer of 500 feet from for public libraries, park and recreation for retail facilities.
- Sets a buffer of 500 feet from residential zones, park and recreation zones, and public libraries for all non-retail and wholesale facilities.

Tualatin, OR

In March 2015, the City of Tualatin preemptively passed an ordinance amending its Development Code to accommodate recreational marijuana for both retail and non-retail uses. The code sets the following standards:

- Marijuana facilities cannot be located within 3,000 feet of residential areas, parks, schools, and libraries
- Marijuana facilities cannot be located within 2,000 feet of another marijuana facility
- Marijuana facilities must be located in a permanent building that cannot exceed 3,000 square feet in size
- Retail sales and medical dispensary marijuana facilities cannot co-locate with any other marijuana facility
- Retail sales and medical dispensary marijuana facilities are restricted to operating between of 10:00 a.m. and 8:00 p.m

Bend, OR

The Bend City Council established a Marijuana Technical Advisory Committee, which has recommended adoption of a marijuana ordinance to amend the Bend Development Code. Key provisions of the ordinance include:

- The addition of definitions related to marijuana, including cannabinoid product, marijuana grow sites, marijuana processing, marijuana recreational retailer, etc.
- Designates permitted and conditional uses for recreational marijuana for Commercial, Mixed-Use and Industrial zones. Aside from size square footage requirements, all categories are generally permitted in these zones.
- Prohibits marijuana businesses in residential and neighborhood commercial zones.
- Creates a new section under nonresidential uses which details marijuana businesses. This includes the applicability and procedure for establishing marijuana businesses within the jurisdiction, and the standards that apply to retail sale, production, processing, wholesaling and testing of medical and recreational marijuana.
- For recreational marijuana facilities, the only additional buffer the City of Bend applies is that facilities cannot be within 150 feet of a licensed child care facility.

Hillsboro, OR

The City of Hillsboro Planning Commission is considering the following regulations as part of its development code amendments for recreational marijuana facilities:

- Prohibits producers, processors, wholesalers, and testing laboratories to locate in any Commercial Zone, restricting these activities to Industrial General, Industrial Park, and Industrial Sanctuary.
- Allows retailers in Commercial General, Station Community Commercial, and Industrial General.
- Proposes 1,000 foot buffers from public plazas and active use parks for retail marijuana facilities.
- Proposes 100 foot buffers from Residential, Mixed-Use, Urban Center, and Institutional Zones for production, processing, and wholesale facilities.

Ashland, OR

On December 1, 2015, the City of Ashland adopted a zoning code amendment that regulates recreational retail, growing, processing, testing, and wholesale marijuana facilities. It restricts facilities to a few zones within the city and places moderate buffer requirements on facilities. Specifically, the ordinance:

- Allows marijuana retail sales as a special and conditional use in the Retail Commercial (C-1) and Employment (E-1) zones and allows growing, processing, testing, and wholesale operations as special permitted uses in the E-1, Industrial (M-1), and Croman Mill (CM) zones.

- Sets spacing standard of 1,000 feet between marijuana retail sales establishments and 1,000 feet from a school.
- Requires growing, processing, and laboratory operations to locate 200 feet or more from residential zones.
- Sets a square footage limitation of 5,000 square feet of gross floor area for indoor commercial growing.