City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Agenda - Final

Planning Commission

Monday, September 11, 2017 | **7:00 PM** | **Commission Chambers**

1. Call to Order

2. Public Comments

3. Public Hearing

3a. Variance from OCMC 17.54.110.(C)(1), to locate a marijuana retail dispensary ("The Green Planet") within 250 feet of a public park (Mountainview Cemetery).

Sponsors: Community Development Director Laura Terway

Attachments: Staff Report

Recommended Findings

Vicinity Map

Public Notices

Larry Krause Comments 8.25.2017

Site Photos

Local Government Regulation of Marijuana in Oregon – (Revised Third Edition May 2016), League of Oregon Cities.
ORS 475B - Cannabis Regulation

CC 2016-08-09 Minutes

CC 2016-08-17 Minutes

CC 2016-09-07 Minutes

CC 2016-09-21 Minutes

CC 2016-10-05 Minutes

CC 2016-10-19 Minutes

PC 2016-07-11 Minutes

PC 2016-07-25 Minutes

PC 2016-08-08 Minutes

3b. Abernethy Place Hotel and Mixed Use Development - Planning Files CP-17-0002, DP-17-0003, and NR-17-0004 (Continuance).

Sponsors: Community Development Director Laura Terway

Attachments: Staff Report

Applicant's Supplemental Adjustment Requests

Supplemental Findings

Applicant's Requested Revisions to the Recommended Conditions of Approval
Matheson Comments

Nicita Comments

Nicita Comments and Public Records Request 08.31.2017

4. Communications

5. Adjournment

Public Comments: The following guidelines are given for citizens presenting information or raising issues relevant to the City but not listed on the agenda.

- *Complete a Comment Card prior to the meeting and submit it to the staff member.*
- *When the Chair calls your name, proceed to the speaker table and state your name and city of residence into the microphone.*
- *Each speaker is given 3 minutes to speak. To assist in tracking your speaking time, refer to the timer at the dais.*
- *As a general practice, Oregon City Officers do not engage in discussion with those making comments.*

Agenda Posted at City Hall, Pioneer Community Center, Library, and City Web site(oregon-city.legistar.com).
Video Streaming & Broadcasts: The meeting is streamed live on Oregon City's Web site at www.orcity.org and is available on demand following the meeting.
ADA: City Hall is wheelchair accessible with entry ramps and handicapped parking located on the east side of the building. Hearing devices may be requested from the City staff member prior to the meeting. Disabled individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.

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625 Center Street
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Staff Report

File Number: PC 17-096

Agenda Date: 9/11/2017

Status: Agenda Ready

To: Planning Commission

Agenda #: 3a.

From: Community Development Director Laura Terway

File Type: Land Use Item

SUBJECT:
Variance from OCMC 17.54.110.(C)(1), to locate a marijuana retail dispensary ("The Green Planet") within 250 feet of a public park (Mountainview Cemetery).

RECOMMENDED ACTION (Motion):
Denial.

BACKGROUND:
The proposed application would allow Green Planet to occupy an existing restaurant tenant space on the Property for the use of a recreational marijuana retail business. The proposed use involves the retailing of usable marijuana, marijuana concentrates, marijuana-infused products, immature marijuana plants, accessory products, and administration. This application proposes a Major Variance from the requirement that such a marijuana retailer be located at least two hundred fifty (250) feet from the Cemetery. The Cemetery is considered a park and is approximately 89 feet from the Property. No exterior alterations are proposed to the exterior of the property with this application.

Staff recommends denial because the applicant has not adequately demonstrated compliance with all of the approval criteria for approval of a variance under *OCMC 17.60.030 - Variance-Grounds*. Specifically, the applicant has not shown that the variance will equal or exceed the purpose of the regulation to be modified, which is in part to maintain the overall number of retail locations which could be located in the city, nor that the application will be adequately mitigated.

OREGON CITY

Community Development – Planning

221 Molalla Ave. Suite 200 | Oregon City OR 97045
Ph (503) 722-3789 | Fax (503) 722-3880

TYPE III – VARIANCE
STAFF REPORT AND RECOMMENDATION
July 17, 2017

FILE NUMBER: VR 17-05: Variance

APPLICANT: Travis Moffatt, 6100 SE 111th Ave, Portland, OR 97267

OWNER: Spray Building LLC
1015 Molalla Ave, Oregon City, OR 97045

REPRESENTATIVE: Corinne Celko, Emerge Law Group,
805 SW Broadway, Ste. 2400, Portland, Oregon 97205

REQUEST: Variance from OCMC 17.54.110.(C)(1), to locate a marijuana retail dispensary ("The Green Planet") within 250 feet of a public park (Mountainview Cemetery).

LOCATION: 1015 Molalla Avenue, Oregon City, Oregon 97045
Clackamas County Map 3-2E-05BD, Tax Lot 00402

REVIEWER: Pete Walter, AICP, Planner, (503) 496-1568, Email: pwalter@orcity.org

RECOMMENDATION: Denial

PROCESS: Type III Quasi-Judicial Public Hearing. Pursuant to OCMC 17.50. C. Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not required to be heard by the city commission, except upon appeal. In the event that any decision is not classified, it shall be treated as a Type III decision. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission or the historic review board hearing is published and mailed to the applicant, recognized neighborhood association(s) and property owners within three hundred feet. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission or the historic review board, all issues are addressed. The decision of the planning commission or historic review board is appealable to the city commission, on the record. The city commission decision on appeal from the historic review board or the planning commission is the city's final decision and is appealable to LUBA within twenty-one days of when it becomes final. A city-recognized neighborhood association requesting an appeal fee waiver pursuant to 17.50.290(C) must

officially approve the request through a vote of its general membership or board at a duly announced meeting prior to the filing of an appeal. IF YOU HAVE ANY QUESTIONS ABOUT THIS APPLICATION, PLEASE CONTACT THE PLANNING DIVISION OFFICE AT (503) 722-3789.

I. BACKGROUND:

Recreational marijuana retail stores are permitted in the Mixed Use Corridor MUC-1 zone (and certain other commercial zones) subject to the Marijuana Business regulations which were adopted by the City in 2016 (Ordinance No. 16-1008). These regulations were adopted following passage of Ballot Measure 3-508 which referred to the voters of Oregon City the question of whether or not to continue the City's local ban on Marijuana Businesses within the city. The ballot measure was not approved and marijuana businesses are now permitted within the City subject to applicable state and local laws.

Oregon City Municipal Code ("OCMC") section 17.54.110 provides a variety of local restrictions for the siting of marijuana businesses, such as separation requirements between retailers and 17.54.110(C)(1) requires that a marijuana retailer shall not locate within two hundred fifty feet (250') of any public park, licensed child care and day care facilities, and public transit centers. This distance is measured as a straight line from the closest points between property lines of the affected properties under OCMC section 17.54.110(C)(5).

The subject Property is approximately eighty-five (85) feet from the property line of Mountain View Cemetery ("the Cemetery"). The Cemetery is designated as the City's official cemetery and a public park under OCMC chapter 12.20, as authorized by Oregon City Ordinance No. 01-1011.

The City's marijuana business regulations, including buffers, went before the Planning Commission and City Commission on the dates listed below. Minutes, reports, and videos of these meetings are available at https://oregon-city.legistar.com/Calendar.aspx.

Planning Commission
July 11, 2016
July 25, 2016
August 8, 2016

City Commission
August 9, 2016
August 17, 2016
September 7, 2016
September 21, 2016
October 5, 2016
October 19, 2016

The minutes of the hearings are attached as Exhibits to this report.

1. Existing Conditions

Photographs of the property from Molalla Avenue, Harris Lane, and from the Cemetery are provided in the attached exhibits.

The zoning for the Property is Mixed-Use Corridor 1 (MUC1). Adjacent property to the north, south, east, and west is of the same zoning designation. Adjacent property to the north and west is developed with retail sales and service and office uses, including a salon, gas station, tax preparer,

and vehicle service station. Adjacent property to the south is used for professional offices. Adjacent property to the east is developed with multifamily row housing.

The Property is developed with existing retail, parking, and landscaping. Current tenants include a Mexican restaurant, drywall company, and a motorsports sales and service shop.



Figure 1. Vicinity Map



Figure 2: Existing Conditions – Aerial Image

2. Project Description

The proposed application would allow Green Planet to occupy an existing restaurant tenant space on the Property for the use of a recreational marijuana retail business (the "Proposed Use,", "Use"). The proposed use involves the retailing of usable marijuana, marijuana concentrates, marijuana-infused products, immature marijuana plants, accessory products, and administration. This application proposes a Major Variance from the requirement that such a marijuana retailer be located at least two hundred fifty (250) feet from the Cemetery. The Cemetery is considered a park and is approximately 89 feet from the Property. No exterior alterations are proposed to the exterior of the property with this application.

3. Municipal Code Standards and Requirements: The following sections of the Oregon City Municipal Code are applicable to this land use approval:

- 17.29 – Mixed Use Corridor District
- 17.50 - Administration and Procedures
- 17.54.110 – Marijuana Businesses
- 17.60 – Variances

The City Code Book is available on-line at www.orcity.org.

4. Permits and Approvals: The applicant is responsible for obtaining approval and permits from each applicable governmental agency and department at Oregon City including but not limited to the Engineering and Building Divisions. In this case, the Oregon Liquor Control Commission (OLCC) has regulatory authority for final permitting of Marijuana Businesses under state law. The City's local land use regulations apply in addition to OLCC regulations, but do not supersede them.

The applicant submitted all of the following required items for business licensing within the 90-day business license period required by the City:

- Documentation from OLCC that a complete application has been submitted.
- A Signed Land Use Compatibility Statement (LUCS).
- Documentation that a complete permit application for an air filtration and ventilation system certified by an Oregon Licensed Mechanical Engineer and associated fees have been submitted to the Building Division.
- Documentation that complete building permits required to operate the business have been submitted (change of occupancy, etc.).

Subsequently, the applicant has been issued a conditional Business License pending the Planning Commission's determination for this variance application. If the variance is not approved, the business will not be permitted to open.

5. Notice and Public Comment

Notice of the proposal was sent to various City departments, affected agencies, property owners within 300 feet, and the Barclay Hills Neighborhood Association. Notice was provided in the Oregon City News / Clackamas Review. Additionally, the subject property was posted with signs identifying that a land use action was occurring on the property.

Written public comment was received from Larry Krause on August 25, 2017. Mr. Krause opposes approval of the variance for a variety of reasons (See Exhibit). Mr. Krause argues that the purpose of protecting grieving individuals from "severely prohibitive" nature of retail marijuana businesses is

not served by allowing this use. Further, Mr. Krause asserted that a practicable alternative has been identified by an alternate location, ostensibly for for a marijuana retail use further down Molalla Avenue. Mr. Krause notes concern over the precedent granting such a variance could set.

Mr. Krause's statement that "Our proposal, to build a new commercial Retail Store Building further down Molalla Ave, has already been approved by the Oregon City Planning Department…" is incorrect. A pre-application conference does not constitute land use approval.

No comments were received from the Public Works Department.

II. ANALYSIS AND FINDINGS:

The applicant provided detailed code responses and a narrative. Staff's findings of compliance with the applicable code sections is detailed in the findings below.

CHAPTER 17.29 "MUC" MIXED USE CORRIDOR

17.29.020 - Permitted uses.

A. Banquet, conference facilities and meeting rooms;
B. Bed and breakfast and other lodging facilities for up to ten guests per night;
C. Child care centers and/or nursery schools;
D. Indoor entertainment centers and arcades;
E. Health and fitness clubs;
F. Medical and dental clinics, outpatient; infirmary services;
G. Museums, libraries and cultural facilities;
H. Offices, including finance, insurance, real estate and government;
I. Outdoor markets, such as produce stands, craft markets and farmers markets that are operated on the weekends and after six p.m. during the weekday;
J. Postal services;
K. Parks, playgrounds, play fields and community or neighborhood centers;
L. Repair shops, for radio and television, office equipment, bicycles, electronic equipment, shoes and small appliances and equipment;
M. Residential units, multi-family;
N. Restaurants, eating and drinking establishments without a drive through;
O. Services, including personal, professional, educational and financial services; laundry and dry-cleaning;
P. Retail trade, including grocery, hardware and gift shops, bakeries, delicatessens, florists, pharmacies, specialty stores, marijuana pursuant to Section 17.54.110, and similar, provided the maximum footprint for a stand-alone building with a single store or multiple buildings with the same business does not exceed sixty thousand square feet;
Q. Seasonal sales, subject to OCMC Section 17.54.060;
R. Assisted living facilities; nursing homes and group homes for over fifteen patients;
S. Studios and galleries, including dance, art, photography, music and other arts;
T. Utilities: Basic and linear facilities, such as water, sewer, power, telephone, cable, electrical and natural gas lines, not including major facilities such as sewage and water treatment plants, pump stations, water tanks, telephone exchanges and cell towers;
U. Veterinary clinics or pet hospitals, pet day care;
V. Home occupations;
W. Research and development activities;
X. Temporary real estate offices in model dwellings located on and limited to sales of real estate on a single piece of platted property upon which new residential buildings are being constructed;
Y. Residential care facility;
Z. Transportation facilities;

AA. Live/work units, pursuant to Section 17.54.105—Live/work units.

Finding: Complies as proposed. The proposed use involves the retailing of usable marijuana, marijuana concentrates, marijuana-infused products, immature marijuana plants, accessory products, and administration. The proposed use is retail trade, permitted under OCMC 17.29.020(P), with a footprint under 60,000 square feet. The use is permitted subject to the specific standards in Section 17.54.110., as adopted in Ordinance No 16-1008, which include a requirement to located at least 250 feet from any public park, as measured between the closest property lines. The applicant has requested a variance from the 250-foot separation requirement. See findings below regarding the variance.

17.29.030 - Conditional uses.

The following conditional uses are permitted when authorized and in accordance with the standards contained in Chapter 17.56:

A. Ancillary drive-in or drive-through facilities;
B. Emergency service facilities (police and fire), excluding correctional facilities;
C. Gas stations;
D. Outdoor markets that do not meet the criteria of Section 17.29.020H.;
E. Public utilities and services including sub-stations (such as buildings, plants and other structures);
F. Public and/or private educational or training facilities;
G. Religious institutions;
H. Retail trade, including gift shops, bakeries, delicatessens, florists, pharmacies, specialty stores and any other use permitted in the neighborhood, historic or limited commercial districts that have a footprint for a stand alone building with a single store in excess of sixty thousand square feet in the MUC-1 or MUC-2 zone;
I. Hotels and motels, commercial lodging;
J. Hospitals;
K. Parking structures and lots not in conjunction with a primary use;
L. Passenger terminals (water, auto, bus, train).

Finding: Not applicable. The applicant has not proposed any of the above uses and the proposed retail use will not exceed 60,000 square feet. No conditional use permit is required.

17.29.040 - Prohibited uses in the Mixed Use Corridor zoning district.

The following uses are prohibited in the MUC district:

A. Distributing, wholesaling and warehousing;
B. Outdoor storage;
C. Outdoor sales that are not ancillary to a permitted use on the same or abutting property under the same ownership;
D. Correctional facilities;
E. Heavy equipment service, repair, sales, storage or rentals (including but not limited to construction equipment and machinery and farming equipment);
F. Kennels;
G. Motor vehicle and recreational vehicle sales and incidental service;
H. Motor vehicle and recreational vehicle repair/service;
I. Self-service storage facilities.

Finding: Not applicable. The applicant has not proposed any of the prohibited uses listed above.

17.29.050 - Dimensional standards.

A. Minimum lot area: None.

Finding: Not applicable. No new lots are proposed.

B. Maximum building height: Maximum building height: Forty feet or three stories, whichever is less.

Finding: Not applicable. The applicant has not proposed any changes to the height of the existing building.

C. Minimum required setbacks if not abutting a residential zone: None.

Finding: Not applicable. The site does not abut a residential zone. No changes are proposed to the existing building setbacks.

D. Minimum required interior and rear yard setbacks if abutting a residential zone: Twenty feet, plus one foot additional yard setback for every one foot of building height over thirty-five feet.
Finding: Not applicable. The site does not abut a residential zone. No changes are proposed to the existing building setbacks.

E. Maximum Allowed Setbacks.
1. Front yard setback: Five feet (may be extended with Site Plan and Design Review (Section 17.62.055).
Finding: Not applicable. The proposed use will take place wholly within an existing tenant space of the existing building on the subject property. No changes are proposed to the existing building setbacks.

2. Interior side yard setback: None.
Finding: Not applicable. The proposed use will take place wholly within an existing tenant space of the existing building on the subject property. No changes are proposed to the existing building setbacks.

3. Corner side yard setback abutting street: Thirty feet provided the Site Plan and Design Review requirements of Section 17.62.055 are met.
Finding: Not applicable. The proposed use will take place wholly within an existing tenant space of the existing building on the subject property. No changes are proposed to the existing building setbacks.

4. Rear yard setback: None.
Finding: Not applicable. The proposed use will take place wholly within an existing tenant space of the existing building on the subject property. No changes are proposed to the existing building setbacks.

F. Maximum site coverage of building and parking lot: Eighty percent
Finding: Not applicable. The proposed use will take place wholly within an existing tenant space of the existing building on the subject property. No changes are proposed to the existing building lot coverage.

G. Minimum landscaping requirement (including parking lot): twenty percent.
Finding: Not applicable. The proposed use will take place wholly within an existing tenant space of the existing building on the subject property. No changes are proposed to the existing landscaping.

CHAPTER 17.60 – VARIANCE

17.60.020 - Variances—Procedures.
A. A request for a variance shall be initiated by a property owner or authorized agent by filing an application with the city recorder. The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development. When relevant to the request, building plans may also be required. The application shall note the zoning requirement and the extent of the variance requested. Procedures shall thereafter be held under Chapter 17.50. In addition, the procedures set forth in subsection D. of this section shall apply when applicable.
B. A nonrefundable filing fee, as listed in Section 17.50.[0]80, shall accompany the application for a variance to defray the costs.
C. Before the planning commission may act on a variance, it shall hold a public hearing thereon following procedures as established in Chapter 17.50. A Variance shall address the criteria identified in Section 17.60.030, Variances — Grounds.

Finding: This application was initiated by an authorized agent of the property owner. It was accompanied by the required filing fee. The public hearing required under subsection C will be held before the planning commission acts on this Application. The criteria for review of the variance are addressed below.

D. Minor variances, as defined in subsection E. of this section, shall be processed as a Type II decision, shall be reviewed pursuant to the requirements in Section 17.50.030B., and shall address the criteria identified in Section 17.60.030, Variance — Grounds.
E. For the purposes of this section, minor variances shall be defined as follows:
1. Variances to setback and yard requirements to allow additions to existing buildings so that the additions follow existing building lines;
2. Variances to width, depth and frontage requirements of up to twenty percent;
3. Variances to residential yard/setback requirements of up to twenty-five percent;
4. Variances to nonresidential yard/setback requirements of up to ten percent;
5. Variances to lot area requirements of up to five;
6. Variance to lot coverage requirements of up to twenty-five percent;
7. Variances to the minimum required parking stalls of up to five percent; and
8. Variances to the floor area requirements and minimum required building height in the mixed-use district.
Finding: Not applicable. This request exceeds the given thresholds for a minor variance. The separation distances required for marijuana businesses under OCMC 17.54.110.(C)(1) are not applicable for a Type II Variance.

17.60.030 – Variance - Grounds.
A variance may be granted only in the event that all of the following conditions exist:
A. That the variance from the requirements is not likely to cause substantial damage to adjacent properties by reducing light, air, safe access or other desirable or necessary qualities otherwise protected by this title;
Finding: Complies as proposed. The requested variance is from a standard adopted specifically for the maintenance of a distance buffer between marijuana retailers and certain sensitive uses, in this case city parks.

The applicant maintains that, for the reasons below, reduction to the required distance buffer in this instance will not cause substantial damage to adjacent properties or create additional impacts to light, air, safe access, or other desirable qualities protected by the Oregon City Code.

First, the applicant states that Green Planet will utilize an existing retail space to meet the needs of its use and the requirements for premises licensure as imposed by the Oregon Liquor Control Commission ("OLCC"). No exterior alterations will be made that would lead to substantial damage or negative impacts to adjacent properties.

Second, the applicant states that the tenant space that Green Planet intends to occupy is located on the opposite side of the building from the Cemetery. Therefore, the entrance to the proposed tenant space and any signage for the use will not be visible from the Cemetery.

Furthermore, the applicant states that the presence of the proposed use will likely increase safety and security in the area. As required by the OLCC, the proposed recreational marijuana retail store will be equipped with commercial-grade locks, an alarm system, and surveillance cameras at every access point. The lighting and surveillance cameras at the property will be a deterrent to crime and will increase safety in the area.

With respect to the applicant's first point, staff concurs that the proposed use will replace an existing restaurant use with minimal exterior alterations to the site or the existing building. No alterations to parking, landscaping, or exterior building materials are proposed. If the use is approved, the applicant may request sign permits for the new business, which are regulated by the

Sign code under OCMC 15.28 and are not part of any land use action. Aesthetic screening of new mechanical equipment, including exterior HVAC vents, if proposed, is processed through a Type I Minor Site Plan and Design Review process.

With respect to the applicant's second point, that the tenant space that Green Planet intends to occupy is located on the opposite side of the building from the Cemetery and though the building will be visible from the cemetery, the tenant space will not. The building is separated from the cemetery by two fences, vegetation and a parking lot. The portion of the cemetery closest to the proposed use is planned for future expansion of the cemetery and currently has no grave monuments.

With respect to the applicant's final point that that the presence of the proposed use will likely increase safety and security in the area, staff can neither confirm or deny this assertion.

B. That the request is the minimum variance that would alleviate the hardship;

Finding: Complies as proposed. This application seeks to reduce the required minimum separation distance from two hundred fifty (250) feet to eight-nine (89) feet. Staff notes that the applicant has chosen to be a tenant within an existing building and has not proposed any alternative building location. The proposed tenant space is geographically furthest from the cemetery than other tenant spaces on the subject site. The proposed variance represents the distance on the existing site that would alleviate the applicant's perceived hardship based on the measurement standard as provided by OCMC 17.54.110(C)(5).

C. Granting the variance will equal or exceed the purpose of the regulation to be modified.

Finding: Does not Comply. The purpose and specific intent of the buffer is not specifically stated in the city code, although it can be broadly inferred.

The applicant states that the general purpose of the required 250-park buffer is to prevent a marijuana retailer from being located near a location where children tend to congregate to avoid distribution of marijuana to minors. An additional purpose is to keep street crimes caused by all-cash transactions from occurring near minors.

The existing buffer was included in the City's code based partly upon the guidance of the League of Oregon Cities document "Local Government Regulation of Marijuana in Oregon – (Revised Third Edition May 2016) (See Exhibits), which clearly states on P. 76:

> *Keeping in mind that state law allows for the licensing of marijuana retailers, wholesalers, processors, producers and laboratories, cities may want to impose restrictions on where marijuana businesses and facilities can locate in relation to other zones or specified locations and based upon the specific type of marijuana business. For example, a city could impose limits on the distance of marijuana businesses or facilities from:*
>
> - *A residential zone or a multi-use zone which includes residences;*
> - *Places where children congregate;*
> - *A public elementary, private elementary, secondary, or career school attended primarily by individuals under the age of 21;*
> - *A public library;*
> - *A public park, public playground, recreation center, or facility;*
> - *A licensed child care facility;*
> - *A public transit center;*
> - *Any game arcade where admission is not restricted to persons aged 21 or older;*
> - *Another licensed medical marijuana facility licensed by the Oregon Health Authority or a*

recreational marijuana facility licensed by the OREGON LIQUOR CONTROL COMMISSION;

- *Any public property, not including the right of way; or*
- *Any combination of the above.*

The League of Oregon Cities also provided a complete model code with language as follows:

1. Restrictions on Location: Marijuana Dispensary or Retailer. A marijuana retailer shall not locate:
    1. Within a residence or mixed-use property that includes a residence.
    2. Within _____ zone(s).
    3. Within _____ [*distance*] of _____ [*certain zones*, *types of properties*, *schools*, *parks*, *licensed day care facilities*, *parks*, *public transit centers*, *game arcades no restricted to persons age 21 and older*, *any public property*, *any other recreational or medical marijuana facilities*, *etc.*]

Based on this guidance, staff modified the suggested code language that the League of Oregon Cities provided and the City ultimately adopted the 250' buffer from parks, licensed childcare facilities and transit centers, along with a 1000' separation requirement between licensed marijuana retailers.

The overall intent of the state law is much broader, in that the rules are those that the Oregon Liquor Control Commission "considers necessary to protect the public health and safety". The OLCC in turn is charged under the state's regulations (ORS 475B.025 General powers and duties; rules. See Exhibits) with the following powers:

> *(f) To adopt rules regulating and prohibiting marijuana producers, marijuana processors, marijuana wholesalers and marijuana retailers from advertising marijuana items in a manner:*
> *(A) That is appealing to minors;*
> *(B) That promotes excessive use;*
> *(C) That promotes illegal activity; or*
> *(D) That otherwise presents a significant risk to public health and safety.*

The applicant elaborated various reasons why granting this requested variance will equal or exceed the purpose of the buffer regulation.

First, the applicant states that it is reasonable to expect children to congregate at a typical city park, which contains a playground, ball fields, and other recreational activities. However, while the Cemetery is managed by the Department of Parks and Recreation and included in Oregon City's parks inventory, it is not a typical city park. The Cemetery has no playground, no ball fields, and no recreational activities of any kind. Notably, OCMC 12.20 (City Cemetery) is a separate and distinct municipal code section from OCMC 12.16 (Public Parks), and contains different rules and regulations for its use. Under the provisions of OCMC 12.20.010, the Cemetery "shall be used solely for the maintenance of burial plots, a mausoleum, general cemetery purposes and the administration thereof." Given the express uses of the Cemetery, and the lack of any recreational activities, children would not be expected to regularly congregate there.

Second, the applicant states that the State's rigorous regulatory system, as administered through the OLCC, requires retailers to verify that no minors are on the licensed premises and to verify age prior to completing the sale of a marijuana item to a customer. The State also requires that all marijuana items offered for sale by a retailer must be stored in such a manner that the items are only accessible to authorized representatives until final sale of the item to the customer is completed. In practice, this means that IDs are checked immediately upon entering the store and again at the point of sale, and that marijuana items are contained in areas that make shoplifting difficult.

Furthermore, as described above, the security measures that Green Planet will undertake to comply with OLCC regulations will increase safety in the area and help to reduce crime. Notably, Green Planet allows for credit card transactions, which reduces the amount of cash at the business and the temptation for cash-based street crimes.

Lastly, the applicant indicates that that fencing surrounding the Cemetery prevents direct access from the Cemetery to the Property. In order to walk or drive from the Cemetery to the Property, a person would need to travel from the Cemetery's entrance in Hillcrest Lane to the Property on Molalla Avenue, which is over 1,000 feet away.

Though a variety of valid points are provided above, the applicant has failed to address that the marijuana spacing requirements, as separated from parks and from each other, serve a critical function of limiting the number of marijuana related business within the city. This purpose for the regulation has not been addressed. During the process of developing the regulations, , the Planning Commission and City Commission reviewed the totality of all requirements as a whole. In particular, a series of maps were created for all five marijuana uses based on the proposed zoning districts. Through this mapping process, the Planning Commission and City Commission discussed displaying the results of the availability for retailers to locate throughout Oregon City with varying distances from parks, daycares, other retailers. In each case, the City reviewed the overall effect and the likely number of retailers that would result. The City Commission rejected the idea of imposing larger spacing buffers as the result would leave too few options for retailers to locate. Throughout the process, the City balanced regulations to determine an optimal number of locations and spacing throughout the City in which marijuana retailers could operate. Too few locations would restrict the opportunity for retail locations, while too many locations may result in a greater number of marijuana retailers than desired. This optimal number of retail uses and spacing was struck in the adopted regulations.

The applicant has not identified how allowing the proposed Variance would maintain the overall number of retail locations which could be located in the City.

D. Any impacts resulting from the adjustment are mitigated.

Finding: Does not comply. The Cemetery borders the adjacent property to the north of the Property. This property line is both fenced and covered by vegetative screening. The only portion of the subject property that could potentially be seen from the Cemetery, over two fences, would be the parking lot used by the existing motorsports shop. Green Planet will face Molalla Avenue, and no portion of the business or signage will be visible from the Cemetery. The closest point of physical access from the Cemetery to the Property would be through the Cemetery entrance on Hillcrest Lane, approximately seven hundred twenty-five (725) feet from the Property when measured in a straight line and approximately one thousand (1,000) feet when measured along the public right-of-way.

Since potential visual or physical access impacts will be mitigated by site arrangement features and landscaping already existing on the Property and adjacent properties, any impacts to the quiet and respectful nature of the Cemetery are mitigated.

Staff took photos of the property from the Cemetery as well as from the abutting public streets, which are attached as exhibits.

Regardless of the distances and visual separations described above, the applicant did not identify how approval of the proposed Variance would maintain the overall number of retail locations which

could be located in the City, and how the resulting increase in marijuana retail locations is mitigated. Therefore staff finds that this standard is not met.

E. No practical alternatives have been identified which would accomplish the same purpose and not require a variance.

Finding: Complies as proposed. The applicant has not identified any practical alternatives beyond the proposed site. With the possible exception of wireless communication providers, which are required to prove that they cannot co-locate on an existing tower or support structure prior to proposing a new location pursuant to OCMC 17.80, the City does not have a precedent for requiring that an applicant consider other property to accommodate their proposal before getting a variance.

F. The variance conforms to the comprehensive plan and the intent of the ordinance being varied.

Findings: The following Goals and Policies of the Comprehensive Plan are pertinent to this variance request.

Goal 2.1 Efficient Use of Land

Ensure that property planned for residential, commercial, office, and industrial uses is used efficiently and that land is developed following principles of sustainable development.

Policy 2.1.2 Encourage the vertical and horizontal mixing of different land-use types in selected areas of the city where compatible uses can be designed to reduce the overall need for parking, create vibrant urban areas, reduce reliance on private automobiles, create more business opportunities and achieve better places to live.

Finding: Complies as proposed. The application proposes to repurpose an existing tenant space within a commercial development for a business that will provide a product not previously available in the area. The property is conveniently located along a mixed use commercial corridor, near other general and specialty retail uses, and close to the residential areas that these businesses serve. The location is also convenient to pedestrian, bicycle, and bus routes along Molalla Avenue, which will help reduce the overall need for parking and reliance on private automobiles.

Goal 2.3 Corridors

Focus transit-oriented, higher intensity, mixed-use development along selected transit corridors.

Policy 2.3.1 Ensure planning for transit corridors includes facilities and access management, aesthetics (including signage and building facade improvements), infill and redevelopment opportunities, high-density residential development, and business assistance to existing businesses.

Finding: Complies as proposed. The proposed use will redevelop an existing tenant space adjacent to Molalla Avenue in which multiple Tri-Met bus routes are located, such as 99 and 32. The development should not detrimentally impact or disproportionately use the available transit corridor or facilities, being of a similar impact as the previous restaurant use. The exterior of the tenant space will be maintained in the same clean, professional, and attractive manner.

Goal 2.4 Neighborhood Livability

Provide a sense of place and identity for residents and visitors by protecting and maintaining neighborhoods as the basic unit of community life in Oregon City while implementing the goals and policies of the other sections of the Comprehensive Plan.

Policy 2.4.1 Develop local neighborhood plans to strengthen and protect residential neighborhoods and historic areas from infill development; such as development along linear commercial corridors.

Policy 2.4.2 Strive to establish facilities and land uses in every neighborhood that help give vibrancy, a sense of place, and a feeling of uniqueness; such as activity centers and points of interest.

Finding: Complies as proposed. The proposed use will utilize an existing developed site and add activity to an established retail area. Reuse of an existing space will prevent the need for further development within this area and will retain the character of the neighborhood while providing goods and services not previously offered in the neighborhood. The presence of a new marijuana retail facility in this location will increase the overall number of retail locations for marijuana sale in the city.

Goal 2.5 Retail and Neighborhood Commercial

Encourage the provision of appropriately scaled services to neighborhoods.

Policy 2.5.1 Encourage the redevelopment of linear commercial corridors in ways that encourage expansion of existing businesses and infill development, and at the same time reduces conflicting traffic movements, improves the aesthetic character of these commercial areas, and encourages trips by transit, bicycling and walking.

Policy 2.5.2 Allow and encourage the development of small retail centers in residential neighborhoods that provide goods and services for local residents and workers. Generally, these centers should be located at the intersections of two or more streets that are classified as neighborhood collectors or higher.

Policy 2.5.4 Encourage the development of successful commercial areas organized as centers surrounded by higher density housing and office uses, rather than as commercial strips adjacent to low-density housing.

Finding: Complies as proposed. The proposed use will re-purpose existing development for a new retail use along the commercial corridor of Molalla Avenue. The commercial corridor provides non-automobile transportation options to individuals travelling by foot, bicycle, or bus. The proposed use will offer a product not previously available in the neighborhood, and through this will encourage residents to visit the area more frequently, visiting other local retailers while there. This may help encourage further infill development along the commercial corridor, which serves higher density housing types located nearby.

Goal 5.3 Historic Resources

Encourage the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.

Policy 5.3.4 Support the preservation of Oregon City's historic resources through public information, advocacy and leadership within the community, and the use of regulatory tools and incentive programs

Policy 5.3.7 Encourage property owners to preserve historic structures in a state as close to their original construction as possible while allowing the structure to be used in an economically viable manner.

Policy 5.3.8 Preserve and accentuate historic resources as part of an urban environment that is being reshaped by new development projects.

Finding: Not Applicable. The subject site or Mountain View Cemetery are not a designated historic landmark. The proposed use will not directly impact Mountain View Cemetery, and as stated above, any potential visual impact will be mitigated.

Goal 6.1 **Air Quality**

Promote the conservation, protection and improvement of the quality of the air in Oregon City.

Policy 6.1.2 Ensure that development practices comply with or exceed regional, state, and federal standards for air quality.

Finding: Complies as proposed. Theapplicant is proposing to utilize an existing site and building. The existing air handler and ductwork at the Property will be sufficient to provide air circulation throughout the proposed use. This system will be upgraded with additional filtration equipment to ensure that no potentially objectionable odors from the Use will be allowed to emanate to nearby public spaces, properties, businesses, or residences. The upgraded ventilation system will be fully compliant with OCMC 17.54.110(D)(5), which provides higher standards than those imposed by the state.

Goal 8.1 Developing Oregon City's Park and Recreation System

Maintain and enhance the existing park and recreation system while planning for future expansion to meet residential growth.

Policy 8.1.1 Provide an active neighborhood park-type facility and community park-type facility within a reasonable distance from residences, as defined by the Oregon City Park and Recreation Master Plan, to residents of Oregon City.

Policy 8.1.10 Identify revenue-producing opportunities for inclusion in existing and future parks to offset operational costs.

Policy 8.1.12 Identify and protect land for parks and recreation within the Urban Growth Boundary.

Finding: Complies as proposed. The proposed use will not have no impact on the development of the Park System except through the possible payment of new System Development Charges with a building permit, and sales and property taxes.

Goal 9.1 Improve Oregon City's Economic Health

Provide a vital, diversified, innovative economy including an adequate supply of goods and services and employment opportunities to work toward an economically reasonable, ecologically sound and socially equitable economy.

Policy 9.1.1 Attract high-quality commercial and industrial development that provides stable, high-paying jobs in safe and healthy work environments, that contributes to a broad and sufficient tax base, and that does not compromise the quality of the environment.

Finding: Complies as proposed. The proposed use will serve to advance Goal 9.1, although it will replace the current restaurant space, by generating additional business within Oregon City in a new and rapidly growing industry, and by increasing revenue distributions from Oregon City's local marijuana tax and Oregon's marijuana tax that are partially based on the number of licensed retailers in proportion to the total number statewide. The applicant states that the proposed use will also provide additional jobs in a growing industry that typically pays workers above the state minimum wage, and that these jobs provide a safe and healthy work environment where employees receive additional regulatory compliance training over and above what would be typical of most other retail employees serving other markets.

Goal 9.5 Retail Service

Allow a variety of retail outlets and shopping areas to meet the needs of the community and nearby rural areas.

Policy 9.5.1 Develop local neighborhood or specific plans, when appropriate, to blend infill development along linear commercial areas into existing neighborhoods.

Finding: Complies as proposed. The proposed use will offer goods and services not previously offered in the neighborhood. This will help prevent local residents from having to travel to other areas to purchase the goods offered, and will encourage rural residents from outside the area to travel to the neighborhood to make purchases from the proposed use as well as other nearby businesses. Policy 9.5.1 is directed towards actions of the city and is not an approval criterion.

Chapter 17.54 - SUPPLEMENTAL ZONING REGULATIONS AND EXCEPTIONS

17.54.110 –Marijuana Businesses
For the purpose of zoning regulation pursuant to this section, recreational and medical marijuana facilities are considered the same by Oregon City.
A. Applicability
Finding: Applicable. This application proposes a retail marijuana business serving both recreational and medical customers. The ordinance applies to the current Application.

B. These standards apply to all marijuana businesses in Oregon City. Restrictions on Location - Zoning
1. Please refer to individual zone districts elsewhere in this title to determine whether marijuana businesses including production, laboratories, processing, wholesale, and retail use are permitted, prohibited or otherwise regulated.
2. Marijuana businesses are prohibited abutting any "R" residentially zoned area, except that this provision shall not apply where the subject property abuts a road that has a freeway, expressway, major arterial, minor arterial, or collector functional classification as shown on Figure 8, Multi-Modal Street System, of the Oregon City Transportation System Plan and;
3. Home Occupation. A marijuana business may not be operated as a home occupation and;
4. The sale or distribution of marijuana is prohibited for mobile vendors and at all special events and outdoor markets.
Finding: Complies as proposed. The subject property is within the mixed use corridor MUC-1 zone, which permits the proposed use subject to the operational standards of the code. The site does not abut any "R" residentially zoned area. No home occupation is proposed as part of this Application. No marijuana sale or distribution will be carried out via mobile vendor or at special events or outdoor markets. These standards are met.

C. Restrictions on Location: Marijuana Dispensary or Retailer. A marijuana retailer shall not locate:
1. Within 250 feet of any public parks, licensed child care and day care facilities, and public transit centers.
2. Within 1000 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), or the property located at Clackamas County Map 3-2E-09C, Tax Lot 800.
Finding: See variance. The subject property is approximately 89 feet from Mountain View Cemetery, a public park. The variance sought through this application seeks to reduce the minimum required distance.

3. Within 1000 feet of another marijuana retailer.
Finding: Complies. At this time, there is no other licensed marijuana retailer operating within 1000 feet of the subject property. Should this variance be approved and a business license issued for the proposed use, no other marijuana retailer will be permitted within 1000 feet of the subject property.

4. If a new protected property or use described in this section should be established within the aforementioned separation distance of an existing legally established marijuana dispensary or retailer, the existing marijuana dispensary or retailer may remain in place and the separation requirement shall not be applied.
Finding: Not applicable. This standard provides protection for an existing marijuana retailer and accordingly provides no review standard for the current application.

5. The spacing distance specified in this section is a straight line measurement from the closest points between property lines of the affected properties.
Finding: Complies as proposed. This standard provides the basis of calculation for the measurement in responses 1-3, above. As measured, the subject site is 89 feet from the closest property line for the cemetery. The applicant correctly measured the spacing distance.

D. Standards of Operation
1. Compliance with Other Laws. All marijuana businesses shall comply with all applicable laws and regulations, including, but not limited to, the development, land use, zoning, building and fire codes.
Finding: Complies as proposed. An application has been submitted to OLCC to legally operate the proposed use. The applicant has been working with the Oregon City Business Licensing, Planning, and Building Departments to ensure that all business licensing, zoning, building, and specialty code standards are met. To the extent that it is required, the applicant may be required to obtain a food establishment license from the Oregon Department of Agriculture. Any other permits or licenses required for the proposed use will be obtained as necessary. This standard will be met.

2. Registration and Compliance with State Law. The marijuana business's state license or authority shall be in good standing with the Oregon Health Authority or Oregon Liquor Control Commission and the marijuana business shall comply with all applicable laws and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.

Finding: Complies as proposed. As referenced above, the applicant has applied for an OLCC license for the proposed use. The license will be obtained prior to operation and will be maintained in good standing throughout the life of the business. The applicant has demonstrated through obtaining OLCC licenses at other locations that it can obtain such license. Compliance with all OLCC marijuana retailer license requirements is required prior to the proposed use opening for business.

3. No portion of any marijuana business shall be conducted outside, including but not limited to outdoor storage, production, processing, wholesaling, laboratories and retail sale, except for temporary ingress and egress of vehicles, persons and materials associated with the permitted use.

Finding: Complies. The applicant has indicated that the proposed use will take place wholly within the existing building and tenant space. Doors will be open only as long as necessary for ingress and egress of persons and materials associated with the permitted use. This standard will be met.

4. Hours of Operation. Operating hours for a marijuana business shall be in accordance with the applicable license issued by the OLCC or OHA.

Finding: Complies. The business will not be open before 7:00 a.m. or after 10:00 p.m., the hours of operation currently allowed under OLCC rules. This standard will be met.

5. Odors. A marijuana business shall use an air filtration and ventilation system that is certified by an Oregon Licensed mechanical engineer to ensure that all odors associated with the marijuana is confined to the licensed premises to the extent practicable. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.

Finding: Complies as proposed. A mechanical permit application for upgrade to the existing ventilation system for purposes of odor control has been submitted (Permit # BM-17-0310). The required odor control system will be installed and operational prior to commencement of the proposed use. This standard will be met.

6. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.

Finding: Complies as proposed. Windows will not be opened in conjunction with the proposed use. Doors will be equipped with self-closing hardware to ensure that they are open only for the minimum length of time needed to allow people to ingress or egress the building. This standard will be met.

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

Finding: Complies as proposed. The applicant's permit requires that marijuana remnants or by-products will be stored in a secured waste disposal area until removed by a waste hauler. This standard will be met.

8. Drive-Through, Walk-Up. A marijuana business may not have a walk-up window or a drive-through.

Finding: Not applicable. The applicant has not proposed to utilize a walk-up window or drive-through. Compliance with this standard is also a condition of obtaining and maintaining an OLCC marijuana retailer license.

9. The facility shall maintain compliance with all applicable security requirements of the OLCC including alarm

systems, video surveillance, and a restriction on public access to certain facilities or areas within facilities.
Finding: Complies as proposed. Security and surveillance equipment will be installed to comply with OLCC requirements. Compliance with such requirements will be confirmed by an OLCC inspector prior to their issuing a license for the proposed use. This standard will be met.

CHAPTER 17.50 - ADMINISTRATION AND PROCEDURES

17.50.050 Preapplication Conference
A. Preapplication Conference. Prior to submitting an application for any form of permit, the applicant shall schedule and attend a preapplication conference with City staff to discuss the proposal. To schedule a preapplication conference, the applicant shall contact the Planning Division, submit the required materials, and pay the appropriate conference fee. At a minimum, an applicant should submit a short narrative describing the proposal and a proposed site plan, drawn to a scale acceptable to the City, which identifies the proposed land uses, traffic circulation, and public rights-of-way and all other required plans. The purpose of the preapplication conference is to provide an opportunity for staff to provide the applicant with information on the likely impacts, limitations, requirements, approval standards, fees and other information that may affect the proposal. The Planning Division shall provide the applicant(s) with the identity and contact persons for all affected neighborhood associations as well as a written summary of the preapplication conference. Notwithstanding any representations by City staff at a preapplication conference, staff is not authorized to waive any requirements of this code, and any omission or failure by staff to recite to an applicant all relevant applicable land use requirements shall not constitute a waiver by the City of any standard or requirement.
B.A preapplication conference shall be valid for a period of six months from the date it is held. If no application is filed within six months of the conference or meeting, the applicant must schedule and attend another conference before the city will accept a permit application. The community development director may waive the preapplication requirement if, in the Director's opinion, the development does not warrant this step. In no case shall a preapplication conference be valid for more than one year.
Finding: Complies as proposed. The applicant scheduled and attended the required pre-application conference on Friday, July 14, 2017 and included the notes of the conference (PA 17-37) in their formal land use application.

17.50.055 Neighborhood Association Meeting
The purpose of the meeting with the recognized neighborhood association is to inform the affected neighborhood association about the proposed development and to receive the preliminary responses and suggestions from the neighborhood association and the member residents.
1. Applicants applying for annexations, zone change, comprehensive plan amendments, conditional use, planning commission variances, subdivision, or site plan and design review (excluding minor site plan and design review), general development master plans or detailed development plans applications shall schedule and attend a meeting with the city-recognized neighborhood association in whose territory the application is proposed. Although not required for other projects than those identified above, a meeting with the neighborhood association is highly recommended.
2. The applicant shall send, by certified mail, return receipt requested letter to the chairperson of the neighborhood association and the citizen involvement committee describing the proposed project. Other communication methods may be used if approved by the neighborhood association.
3. A meeting shall be scheduled within thirty days of the notice. A meeting may be scheduled later than thirty days if by mutual agreement of the applicant and the neighborhood association. If the neighborhood association does not want to, or cannot meet within thirty days, the applicant shall hold their own meeting after six p.m. or on the weekend, with notice to the neighborhood association, citizen involvement committee, and all property owners within three hundred feet. If the applicant holds their own meeting, a copy of the certified letter requesting a neighborhood association meeting shall be required for a complete application. The meeting held by the applicant shall be held within the boundaries of the neighborhood association or in a city facility.
4. If the neighborhood association is not currently recognized by the city, is inactive, or does not exist, the applicant shall request a meeting with the citizen involvement committee.

5. To show compliance with this section, the applicant shall submit a sign-in sheet of meeting attendees, a summary of issues discussed, and letter from the neighborhood association or citizen involvement committee indicating that a neighborhood meeting was held. If the applicant held a separately noticed meeting, the applicant shall submit a copy of the meeting flyer, a sign in sheet of attendees and a summary of issues discussed.

Finding: Complies as proposed. A meeting of the Barclay Hills Neighborhood Association (BHNA) was held by the applicant on Monday, July 24, 2017, 7:00 p.m., at 515 Molalla Avenue. Notice was sent to the Neighborhood Association chair and Community Involvement Coordinator, as well as all property owners within 300 feet of the subject property. Notes are included with the application. The applicant also attended a second regular meeting of the BHNA on August 8, 2017 at 445 Warner Rd.

17.50.090 - Public notices.

All public notices issued by the city with regard to a land use matter, announcing applications or public hearings of quasi-judicial or legislative actions, shall comply with the requirements of this section.

B. Notice of Public Hearing on a Type III or IV Quasi-Judicial Application. Notice for all public hearings concerning a quasi-judicial application shall conform to the requirements of this subsection. At least twenty days prior to the hearing, the city shall prepare and send, by first class mail, notice of the hearing to all record owners of property within three hundred feet of the subject property and to any city-recognized neighborhood association whose territory includes the subject property. The city shall also publish the notice in a newspaper of general circulation within the city at least twenty days prior to the hearing. Pursuant to Section 17.50.080H., the applicant is responsible for providing an accurate and complete set of mailing labels for these property owners and for posting the subject property with the city-prepared notice in accordance with Section 17.50.100. Notice of the application hearing shall include the following information:

1. The time, date and location of the public hearing;

2. Street address or other easily understood location of the subject property and city-assigned planning file number;

3. A description of the applicant's proposal, along with a list of citations of the approval criteria that the city will use to evaluate the proposal;

4. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing and that a staff report will be prepared and made available to the public at least seven days prior to the hearing;

5. A statement that any issue which is intended to provide a basis for an appeal to the city commission must be raised before the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the city and all parties to respond to the issue;

6. The notice shall state that a city-recognized neighborhood association requesting an appeal fee waiver pursuant to Section 17.50.290C. must officially approve the request through a vote of its general membership or board at a duly announced meeting prior to the filing of an appeal.

7. A statement that the application and all supporting materials and evidence submitted in support of the application may be inspected at no charge and that copies may be obtained at reasonable cost at city hall during normal business hours; and

8. The name and telephone number of the planning staff person responsible for the application or is otherwise available to answer questions about the application.

Finding: Complies as proposed. Public notice was provided in accordance with this section. A copy of all the required public notices is attached to the Staff Report.

CONCLUSION AND RECOMMENDATION:

Based on the analysis and findings as described above, Staff concludes that the proposed variance for a site located at 1015 Molalla Avenue, Oregon City, Oregon 97045, Oregon City, Oregon 97045 and identified as Clackamas County Map 3-2E-05BD, Tax Lot 00402, cannot meet the requirements as described in the Oregon City Municipal Code in this report and should be denied.

Therefore, the Community Development Director recommends the Planning Commission **deny** file VR 17-05, based upon the findings and exhibits contained in this staff report.

EXHIBITS:

1. Vicinity Map
2. Application, Narrative and Plans
3. Public Notices
4. Larry Krause Comments
5. Site Photos
6. *Local Government Regulation of Marijuana in Oregon* – (Revised Third Edition May 2016), League of Oregon Cities.
7. ORS Chapter 475B — Cannabis Regulation (2015 Edition).
8. Planning Commission and City Commission Minutes

VR-17-0005



Legend

- Taxlots
- Taxlots (Outside UGB)
- Unimproved ROW
- City Limits
- UGB
- Basemap

Notes

Overview Map



The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, surveying or navigation purposes. Notification of any errors is appreciated.

Map created 7/27/2017

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City of Oregon City
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OR 97045
(503) 657-0891
www.orcity.org

OREGON CITY

Community Development – Planning

221 Molalla Ave. Suite 200 | Oregon City OR 97045
Ph (503) 722-3789 | Fax (503) 722-3880

NOTICE OF PLANNING COMMISSION PUBLIC HEARING ON LAND USE APPLICATION

Mailed on August 4, 2017

COMMENT DEADLINE:	On Monday, **September 11, 2017,** the **City of Oregon City - Planning Commission** will conduct a public hearing at 7:00 p.m. in the Commission Chambers at City Hall, 625 Center Street, Oregon City 97045 on the following Type III Land Use Application. Any interested party may testify at the public hearing or submit written testimony at or prior to the close of the Planning Commission hearing. Written comments on these Type III Land Use Application must be received by the Oregon City Planning Division, no later than 3:30 p.m. on August 28, 2017 to be included in the Staff Report. Comments received after this date will be provided to the Planning Commission at the hearing. The public record will remain open until the Planning Commission closes the public hearing.
FILE NUMBER:	VR 17-05: Variance
APPLICANT:	Travis Moffatt, 6100 SE 111th Ave, Portland, OR 97267
OWNER:	Denis Sweeten, 1015 Molalla Ave, Oregon City, OR 97045
REPRESENTATIVE:	Corinne Celko, Emerge Law Group, 805 SW Broadway, Ste. 2400, Portland, Oregon 97205
REQUEST:	Variance from OCMC 17.54.110.(C)(1), to locate a marijuana retail dispensary ("The Green Planet") within 250 feet of a public park (Mountainview Cemetery).
WEBSITE:	https://www.orcity.org/planning/project/vr-17-10005
LOCATION:	1015 Molalla Avenue, Oregon City, Oregon 97045 Clackamas County Map 3-2E-05BD, Tax Lot 00402
CONTACT PERSON:	Pete Walter, AICP, Planner (503) 496-1568, Email: pwalter@orcity.org
NEIGHBORHOOD ASSOCIATION:	Barclay Hills Neighborhood Association
CRITERIA:	Administration and Procedures are set forth in Chapter 17.50, "MUC" - Mixed Use Corridor in Chapter 17.29, Marijuana Businesses in Chapter 17.54.110, and Variances in Chapter 17.60 of the Oregon City Municipal Code. The City Code Book is available on-line at www.orcity.org.

The application and all documents submitted by or on behalf of the applicant are available for inspection at no cost and copies will be provided at reasonable cost at the Oregon City Planning Division, 221 Molalla Avenue, Oregon City, Oregon 97045, from 8:30 a.m. to 3:30 p.m. Monday thru Friday. The staff report, with all the applicable approval criteria, will also be available for inspection seven days prior to the hearing. Copies of these materials may be obtained for a reasonable cost in advance. Please be advised that any issue that is intended to provide a basis for appeal must be raised before the close of the Planning Commission hearing, in person or by letter, with sufficient specificity to afford the Planning Commission and the parties an opportunity to respond to the issue. Failure to raise an issue with sufficient specificity will preclude any appeal on that issue. The decision of the Planning Commission may be appealed to the City Commission by parties with standing within fourteen (14) calendar days of the notice of decision. Any appeal will be based on the record. The procedures that govern the hearing will be posted at the hearing and are found in OCMC Chapter 17.50 and ORS 197.763.

A city-recognized neighborhood association requesting an appeal fee waiver pursuant to OCMC 17.50.290(C) must officially approve the request through a vote of its general membership or board at a duly announced meeting prior to the filing of an appeal.

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AFFIDAVIT OF PUBLICATION

State of Oregon, County of Clackamas, SS

I, Charlotte Allsop, being the first duly sworn, depose and say that I am Accounting Manager of ***Clackamas Review/Oregon City News and Estacada News***, a newspaper of general circulation, published at Clackamas, in the aforesaid county and state, as defined by ORS 193.010 and 193.020, that

City of Oregon City
Notice of Public Hearing on Land Use Application
VR17-05 Variance
CLK12233

a copy of which is hereto annexed, was published in the entire issue of said newspaper for
1
week in the following issue:
August 9, 2017

Charlotte Allsop
Charlotte Allsop (Accounting Manager)

Subscribed and sworn to before me this
August 9, 2017.

Sherryl R Anderson
NOTARY PUBLIC FOR OREGON

PO: PETE WALTER
Acct #500291
Attn: Pete Walter
City of Oregon City
PO Box 3040
Oregon City, OR 97045-0304

OFFICIAL STAMP
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NOTARY PUBLIC - OREGON
COMMISSION NO. 953783
MY COMMISSION EXPIRES AUGUST 25, 2020

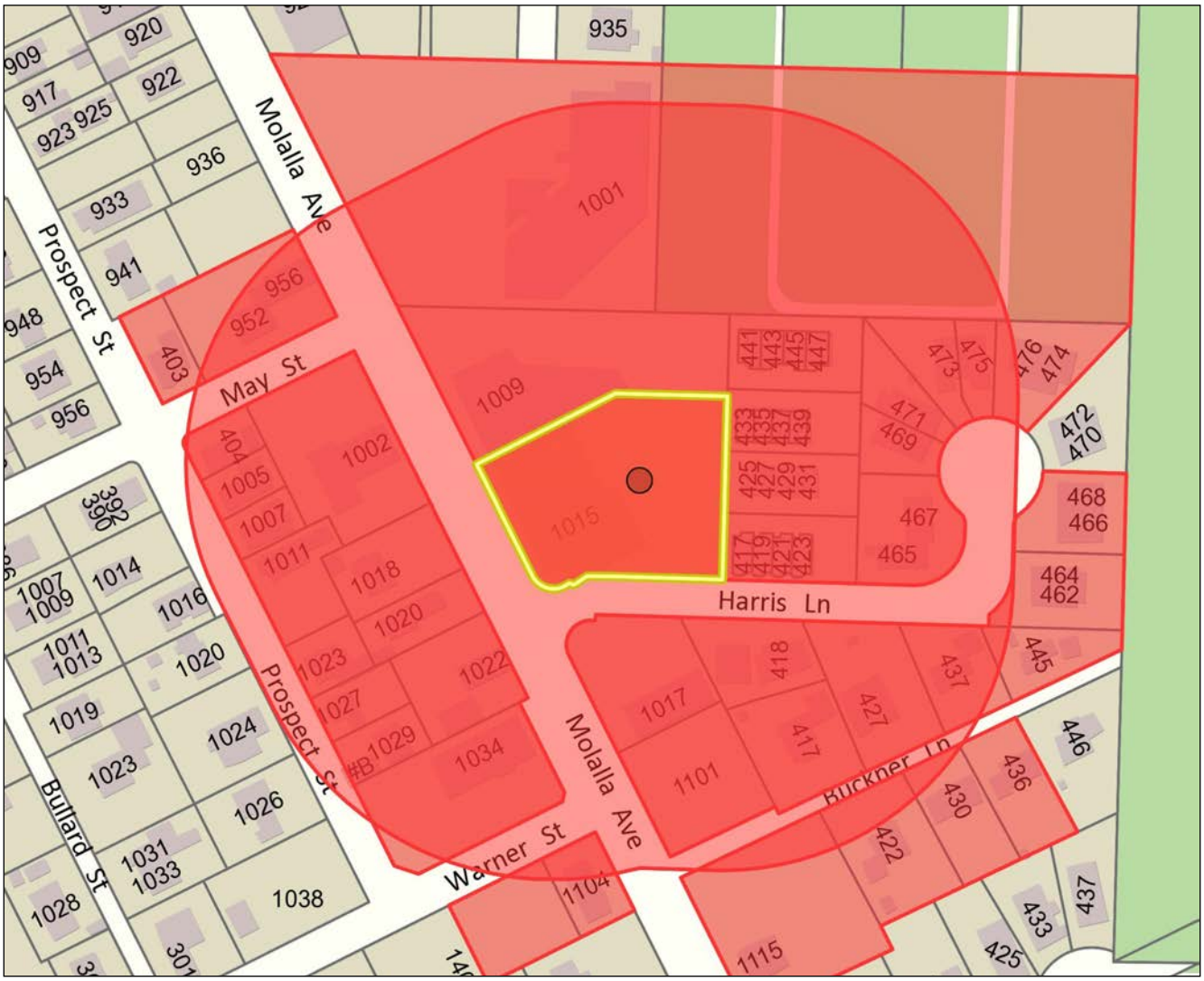
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NOTICE OF PLANNING COMMISSION
PUBLIC HEARING ON LAND USE APPLICATION

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Publish 08/09/2017. CLK15912233

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Sort order:	By Name
Output format:	Pdf
Notify Neighborhood Associations?	Yes
# Taxlots used to create labels:	55
# Labels generated:	44 (includes 1 Neighborhood Association label)

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2KLR INVESTMENTS LLC
11438 SW WOODLEE HEIGHTS CT
PORTLAND, OR 97219

ALEJANDRO SAUCEDO
1918 DENTON AVE UNIT F
SAN GABRIEL, CA 91776

ALLEN E JOHANSON
404 MAY ST
OREGON CITY, OR 97045

ARTHUR N WELDON
421 WARNER ST
OREGON CITY, OR 97045

B RENO JOESON
417 HARRIS LN
OREGON CITY, OR 97045

BEAUTY SCHOOL BUILDING LLC
375 W CLACKAMAS BLVD
GLADSTONE, OR 97027

CITY OF OREGON CITY
PO BOX 3040
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DALE J ISZLER
427 BUCKNER LN
OREGON CITY, OR 97045

DALE SECORD
2638 5TH AVE
WEST LINN, OR 97068

DOUGLAS J & DEBORAH TAPLIN
437 BUCKNER LN
OREGON CITY, OR 97045

EARL STEVEN CLAUS
38954 PROCTOR BLVD #325
SANDY, OR 97055

ELDON & DORIS J CLARK
14861 S THAYER RD
OREGON CITY, OR 97045

ELDON R & DORIS J CLARK
14861 S THAYER RD
OREGON CITY, OR 97045

ELDON R CLARK
14861 S THAYER RD
OREGON CITY, OR 97045

EMILY AUGUSTIN
445 BUCKNER LN
OREGON CITY, OR 97045

HIGHLAND PROPERTIES LLC
PO BOX 809
OREGON CITY, OR 97045

IRMA M MAXIAN
422 BUCKNER LN
OREGON CITY, OR 97045

JOHN J NOGUEIRA
30300 NE CANTER LN
SHERWOOD, OR 97140

KANDAS R & WESLEY YOUNG
475 HARRIS LN
OREGON CITY, OR 97045

LEATHERS LIMITED PARTNERSHIP
255 DEPOT ST
FAIRVIEW, OR 97024

LEROY GAY
1007 PROSPECT ST
OREGON CITY, OR 97045

LORA L JANSMA
436 BUCKNER LN
OREGON CITY, OR 97045

M LYNNE DELMORE
465 HARRIS LN
OREGON CITY, OR 97045

MATTHEW & VICTORIA LAWER
417 BUCKNER LN
OREGON CITY, OR 97045

MELVYN N & WENDY M HALDORS
21076 S SUMMIT RIDGE LN
OREGON CITY, OR 97045

MILBRADT DONALD A TRUSTEE
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MILBRADT DONALD A TRUSTEE
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OREGON CITY, OR 97045

MILBRADT LOVING TRUST
PO BOX 809
OREGON CITY, OR 97045

MINH Q DUONG
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OREGON CITY, OR 97045

NANCY J RIPP
473 HARRIS LN
OREGON CITY, OR 97045

NANCY L DARBY
468 HARRIS LN
OREGON CITY, OR 97045

THOMAS C & SHARLENE WHEELER
2435 SW DAKOTA ST
PORTLAND, OR 97239

PAMELA K KRETSCHMER
430 BUCKNER LN
OREGON CITY, OR 97045

THOMAS S LOVELL
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OREGON CITY, OR 97045

PATRICIA E WHITE
462 HARRIS LN
OREGON CITY, OR 97045

YOWELL JIMMY L TRUSTEE
474 HARRIS LN
OREGON CITY, OR 97045

PATRICIA L OLSON
403 MAY ST
OREGON CITY, OR 97045

Barclay Hills NA Chair
463 Mountainview St
Oregon City, OR 97045

RETZLAFF M CO-TRUSTEE
12415 NE 43RD AVE
VANCOUVER, WA 98686

SCHAEFF 20 PIZZA & WINGS LLC
13811 SE GANNON DR
CLACKAMAS, OR 97015

SOHAIL J KHAN
3385 QUAIL RIDGE CT
WEST LINN, OR 97068

SPRAY BUILDING LLC
1015 MOLALLA AVE
OREGON CITY, OR 97045

STEVEN N DVM MILNER
18299 S BOGYNSKI RD
OREGON CITY, OR 97045

SUMMIT SUITES LLC
PO BOX 631
WEST LINN, OR 97068

OREGON CITY

Community Development – Planning

221 Molalla Ave. Suite 200 | Oregon City OR 97045
Ph (503) 722-3789 | Fax (503) 722-3880

AFFIDAVIT - POSTING OF NOTICE FOR LAND USE APPLICATION

Applicant:
Travis Moffatt
6100 SE 111th Ave
Portland, OR 97267

Owner:
SPRAY BUILDING LLC
1015 Molalla Ave
Oregon City, OR 97045

Representative:
Corinne Celko
805 SW Broadway, Ste. 2400
Portland, OR 97205

Project:
VR 17-05: The Green Planet
Variance from OCMC 17.54.110 - Marijuana businesses.
Subsection (C).1. - 250-foot Separation Requirement from a Public Park (Mountain View Cemetery)

Planning Commission Public Hearing:
September 11, 2017

Good Afternoon,

Your Planning application requires the posting of a sign on the subject site that provides a brief description of your development and requests comments from the public. The sign shall be mounted on a sturdy backing (such as plywood), and posted within 10 to 15 feet of the street for clear visibility. The notice shall not be posted on trees or utility poles. It is your responsibility to post the sign and assure it remains posted as required. Failure to do so by the date specified will result in the automatic extension of the public comment period.

The sign shall be posted by **August 22, 2017** so it is clearly visible along the street fronting the property. A map is enclosed with the location the sign should be posted. Please remove the sign after the last hearing. If you have any questions please contact me at (503) 496-1568.

Pete Walter, AICP, Planner
City of Oregon City - Planning Division
221 Molalla Avenue, Suite 200
Oregon City, Oregon 97045

PLEASE SIGN AND RETURN THIS NOTICE TO THE PLANNING DIVISION

I hereby certify that on (date) 8-11-17, I posted the required sign on the subject site in accordance with the requirement of the Oregon City Municipal Code. If there is any delay in the city's land use process caused by the applicant's failure to correctly post the subject property for the required period of time and in the correct location, the applicant agrees to extend the one-hundred-twenty-day period in a timely manner.

Applicant

8-11-17
Date

VR-17-0005



Legend

- Taxlots
- Taxlots (Outside UGB)
- Unimproved ROW
- City Limits
- UGB
- Basemap

Notes

Overview Map



The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, surveying or navigation purposes. Notification of any errors is appreciated.

Map created 7/27/2017

N

0 100 200 Feet

1: 1,200

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PO Box 3040
625 Center St
Oregon City
OR 97045
(503) 657-0891
www.orcity.org

VR-17-0005



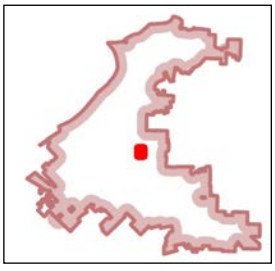
Legend

- Taxlots
- Taxlots (Outside UGB)
- Unimproved ROW
- City Limits
- UGB
- Basemap

Notes

SIGN LOCATIONS

Overview Map



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N

0 100 Feet

1: 1,200

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Oregon City
OR 97045
(503) 657-0891
www.orcity.org

Map created 8/8/2017

VR-17-0005

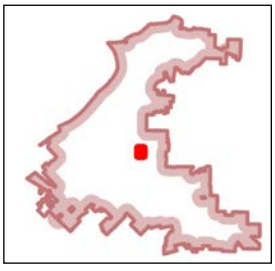


Legend

- Taxlots
- Taxlots (Outside UGB)
- Unimproved ROW
- City Limits
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Notes

Overview Map



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N

0 100 Feet

1: 1,200

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OR 97045
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Map created 8/8/2017

OREGON CITY

Community Development – Planning

221 Molalla Ave. Suite 200 | Oregon City OR 97045
Ph (503) 722-3789 | Fax (503) 722-3880

LAND USE APPLICATION TRANSMITTAL

August 4, 2017

DISTRIBUTION OF APPLICATION

- Building Official
- Development Services
- Public Works Operations
- City Engineer
- Public Works Director
- Parks Manager
- Community Services Director
- Police
- Economic Development Manager
- Traffic Engineer
- Natural Resource Committee
- City Manager's Office
- Oregon City Neighborhood Associations
- Clackamas County Transportation
- Clackamas County Planning
- Clackamas Fire District #1
- ODOT – Division Review
- Oregon City School District
- Tri-Met
- Metro
- PGE
- South Fork Water Board
- Hamlet of Beavercreek
- Holcomb Outlook CPO
- Central Point / Leland Road / New Era CPO
- Other – See Email List

NOTICE OF THE APPLICATION MAILED TO

- All Properties within 300 feet

COMMENTS DUE BY:	Comments may be submitted until the close of the public hearing. See Separate Public Notice.
HEARING BODY:	__Staff Review; _XX__PC; ___ _HRB; ___CC Hearing Date: September 11, 2017
FILE # & TYPE:	VR 17-05: Variance
PLANNER:	Pete Walter, AICP, Planner (503) 496-1568, Email: pwalter@orcity.org
APPLICANT:	Travis Moffatt, dba The Green Planet
REQUEST:	Variance from OCMC 17.54.110.(C)(1), to locate a marijuana retail dispensary ("The Green Planet") within 250 feet of a public park (Mountainview Cemetery).
WEBSITE:	https://www.orcity.org/planning/project/vr-17-10005
ZONING:	"MUC" Mixed Use Corridor
LOCATION:	1015 Molalla Avenue, Oregon City, Oregon 97045 Clackamas County Map 3-2E-05BD, Tax Lot 00402

Use this form to inform the Planning Division of your recommendations and suggestions when reviewing this proposal. If you wish to have your comments considered and incorporated into the staff report, please return the attached copy of this form and comment ensure prompt consideration of your recommendations. Please check the appropriate spaces below.

◯	The proposal does not conflict with our interests.
◯	The proposal conflicts with our interests for the reasons attached.
◯	The proposal would not conflict our interests if the changes noted below are included.

Comments (attach separate letter if needed) :

Signature: _____

Notice of Public Comment

Mr. Larry Krause
28415 Paradise Rd
Eagle Creek, OR 97022

Re: Type III Land Use Application - File No. VR 17-05 Variance
OPPOSED Location: 1015Molalla Ave., Oregon City, Oregon 97045
Clackamas County Map 3-2E-05BD, Tax Lot 00402

My interest in **this matter of "Variance-Opposition,"** is as follows:

I am requesting that this hearing body refuse to grant this variance request. In accordance with the applicable guidelines set forth in the **Oregon City Municipal Code, Section 17.60.030 - Variance Grounds. which states that all the included criteria must be met for the variance to be granted;**

I find specifically that under subsections:

"granting the variance will equal or exceed the purpose of the regulation to be modified"- is violated due to the severely prohibitive nature of the business for which the applicant has **requested a license to operate a **retail marijuana dispensary...close to a nearby Cemetery**, whereby people often grieve... with the passing of loved-ones. (**Liquor Stores & Taverns should be "precluded," as well).

The various State, County and City regulations governing such an establishment are clear:

No such dispensary may be located within 250' of a public park (in this case a Cemetery) ... the application's site plan clearly shows this minimum setback distance will be reduced by well over half the required 250' separation to approximately 80'.

"any impacts resulting from the adjustment are mitigated" - obviously, **there can be no mitigation of this impact**; the violation will remain unmitigated for as long as the business continues in operation, this close to a local Cemetery/Memorial Ground.

**** A practical alternative has been identified (our new commercial Retail Building) which would accomplish the same purpose, and not require a Variance – which would create a "dangerous-legal-**

precedent," for future City development!

"the variance conforms to the comprehensive plan and the intent of the ordinance being varied"- **the granting of this variance would not conform to the comprehensive plan nor fulfill the intent of the ordinance to be varied.**

The proposed Variance, directly violates both the letter and he intent of the plans which were established after lengthy and stringent study, that was deemed both appropriate and necessary concerning business operations of this proposed type.

To the best of my knowledge, and with tentative confirmation by the City's planning staff, the approval of a variance of any kind relative to the business of marijuana sales has never before granted under any circumstances. The nature of this type of business and the obvious adherent problems that can surround it are certainly serious enough in scope to preclude any consideration for this application being approved.

Our proposal, to build a new commercial Retail Store Building -- further down Molalla Ave, has already been approved by the Oregon City Planning Department -- via a Pre-App Conference with the City Planning Department -- would provide several significant benefits to both the City, and the Barclay Hills Neighborhood as well.

The addition of our proposed-new, leasable, commercial tenant space ... that meets the City's new Design Standards for this area, and located blocks away from the local Cemetery, will enhance the property values of Home-Owners, and livability too, while offering new businesses updated facilities, which are badly needed in the Barclay Hills area.

Additionally, **the Building Code "upgrades" required by City Planners, for our "proposed-development" of a new commercial Retail-Building, will be in line with the current Molalla Avenue Corridor improvements;** which importantly, helps set a "new-standard and goal" for the future -- which in turn will provide increased enjoyment of --and connection to-- a vibrant and sustainable neighborhood environment!


TAQUERIA
OPEN


APEX
ENTRANCE & PARKING
AROUND BACK
OPEN


ISUZU
DRYWALL
(503) 550-1163

1331 MOLALLA AVE
SUITE 102
TAQUERIA
STOP
MOLALLA AV
HILLTOP TAX SERVICE


DEAD END
Harris Ln
TAQUERIA
HARRIS
LANE
TOWNHOMES
1017

TAQUERIA

32
EL PAPALOTE
MEXICAN RESTAURANT


OREGON CITY
Community Development – Planning
NOTICE OF PROPOSED LAND USE ACTION
Oregon City Planning Division
503-722-3789

















LEAGUE OF OREGON CITIES

LOCAL GOVERNMENT REGULATION OF MARIJUANA IN OREGON

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.

> 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.

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 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 and ending point) for local government officials to understand this topic so that eventually they can spot issues and further analyze and develop local solutions.

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.[1] Under Dillon's Rule, if there is a reasonable doubt about whether a power has been conferred to a local government, then the power has not been conferred. Although many states follow Dillon's Rule, Oregon does not.

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

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

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

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.[2]

---

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

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

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.[3] Along the same lines, a local ordinance can operate concurrently with state law even if the local ordinance imposes greater or different requirements than the state law.[4]

Where the Legislature's intent to preempt local governments is not express, and where the local and state law can operate concurrently, there is no preemption 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.[5] For example, where legislation "authorizes" a local government to regulate in a particular manner, a court will not read into that legislation that the specific action authorized is to the exclusion of other regulatory alternatives, unless the Legislature makes it clear that the authorized regulatory form is to be the exclusive means of regulating.

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

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

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

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.[6] 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.[7] 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.

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

[7] 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*
Medical Regulated Activities	**Marijuana Grow Site**: Location for planting, cultivating, growing, trimming, or harvesting marijuana or drying marijuana leaves or flowers *Register with OHA* *ORS 475B.420; OAR 333-008-010 to 333-008-0750*	**Marijuana Processing Site**: Location for compounding or converting marijuana into medical products, concentrates or extracts *Register with OHA* *ORS 475B.435; OAR 333-008-1600 to 333-oo8-2200*	**Wholesaler**:** Purchase marijuana items for resale to a person other than a consumer. *License with OLCC* *SB 1511, §4 (2016)*	**Dispensary**: Transfer usable marijuana, immature marijuana plants, seed, and medical products, concentrates and extracts to patients and caregivers.*** *Register with OHA* *ORS 475B.450; OAR 333-008-1000 to OAR 333-008-1248*	**Laboratories**: Conducts testing of recreational and medical marijuana items. *Obtain license under ORS 475B.560 and OAR 845-025-5000 to 845-025-5075.* *Obtain accreditation from OHA* *ORS 475B.565*
Recreational Regulated Activities**	**Producers**: Manufacture, plant, cultivate, grow, harvest *Obtain license from OLCC* *ORS 475B.070; OAR 845-025-2000 to OAR 845-025-2080*	**Processors**: Process, compound or convert marijuana into products, concentrates or extracts, but does not include packaging or labeling *Obtain license from OLCC* *ORS 475B.090; OAR 845-025-3200 to OAR 845-025-3290*	**Wholesalers**: Purchase marijuana items for resale to a person other than a consumer *Obtain license from OLCC* *ORS 475B.100; OAR 845-025-3500*	**Retailers**: Sell marijuana items to a consumer *Obtain license from OLCC* *ORS 475B.110; OAR 845-025-2800 to OAR 845-025-2890*	**Researchers:** Public or private research of medical and recreational marijuana, including medical and agricultural research *Certification from OLCC* *ORS 475B.235 and OAR 845-025-5300 to 845-025-5350*

*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).[8] 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:

[8] 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.[9]

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:

[9] 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.

Appendix A

Early Sales Opt Out

APPENDIX A

Early Sales Opt Out

As of July 1, 2015, people aged 21 and older may possess certain amounts of recreational marijuana under Oregon law. However, the Oregon Liquor Control Commission, which is the state agency charged with licensing the retail sale of recreational marijuana, does not expect to begin licensing retail stores until sometime in 2016. To address the gap between the date when people can possess recreational marijuana under Oregon law and the date when people will be able to purchase recreational marijuana from a retail store, the Legislature enacted Senate Bill 460 in 2015, as amended by SB 1511 in 2016, which allows for limited sales of recreational marijuana from medical marijuana dispensaries starting October 1, 2015. Under SB 460 and section 21 of SB 1511, cities can adopt an ordinance prohibiting those limited recreational sales. Although not required by the statute, the League recommends the city submit its early sales opt out ordinance to Oregon Health Authority so that they may aid in any enforcement of the ban.

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

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

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

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

Whereas, the Legislature enacted Senate Bill 460 (2015), as amended by Senate Bill 1511 (2016) to allow medical marijuana dispensaries to sell limited marijuana retail product starting October 1, 2015;

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

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

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

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

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

ENFORCEMENT. {Cities need to think about how to enforce a ban, with mechanisms such as revocation or suspension of a business license, revocation of a marijuana activities registration, injunction, or civil penalty. Cities that consider imposing a criminal penalty should work closely with their city attorney to assess their ability to do so under SB 460 and ORS chapter 475B.}

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

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

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

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

Appendix B

Opt Out by Voter Referral

APPENDIX B

Opt Out by Voter Referral

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

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

Medical marijuana dispensaries are grandfathered and are able to operate despite a ban if they: (1) have applied to be registered by July 1, 2015 or were registered prior to the date on which the ordinance is adopted by the city council, and (2) successfully completed the land use application process (if applicable). Medical marijuana processors are grandfathered and are able to operate despite a ban if they: (1) were registered under ORS 475.300 to 475.346 (now ORS 475B.400 to 475B.525) and were processing usable marijuana on or before July 1, 2015; or (2) are registered under section 85 of HB 3400 (now ORS 475B.435, as amended by HB 4014) prior to the date on which the ordinance is adopted by the governing bod; and (3) have successfully completed a local land use application process (if applicable).

Cities that adopt an ordinance prohibiting the establishment of medical or recreational marijuana businesses are not eligible to receive a distribution of state marijuana tax revenues or to impose a local tax under section ORS 475B.800.

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

****

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

Whereas, ORS 475B.400 to 475B.525 provides that the Oregon Health Authority will register medical marijuana processing sites and medical marijuana dispensaries;

Whereas, ORS 475B.005 to 475B.399 directs the Oregon Liquor Control Commission to license the production, processing, wholesale, and retail sale of recreational marijuana;

Whereas, ORS 475B.800 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city;

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

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

DEFINITIONS.

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

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

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

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

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

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

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

BAN DECLARED. As described in sectionORS475B.800, the City of {Name} hereby prohibits the establishment {and operation}[1] of the following in the area subject to the jurisdiction of the city {select desired options from the list below}:

(a) Marijuana processing sites;
(b) Medical marijuana dispensaries;
(c) Marijuana producers;

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

(d) Marijuana processors;
(e) Marijuana wholesalers;
(f) Marijuana retailers.

EXCEPTION. The prohibition set out in this ordinance does not apply to a marijuana processing site or medical marijuana dispensary that meets the conditions set out in ORS 475B.800(6).

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

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

****

A RESOLUTION APPROVING REFERAL TO THE ELECTORS OF THE CITY OF {NAME} THE QUESTION OF BANNING {MEDICAL MARIJUANA PROCESSING SITES, MEDICAL MARIJUANA DISPENSARIES, RECREATIONAL MARIJUANA PRODUCERS, RECREATIONAL MARIJUANA PROCESSORS, RECREATIONAL MARIJUANA WHOLESALERS, AND/OR RECREATIONAL MARIJUANA RETAILERS} WITHIN THE CITY[2]

Whereas, section ORS 475B.800 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city;

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

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

MEASURE. A measure election is hereby called for the purpose of submitting to the electors of the CITY OF {NAME} a measure prohibiting the establishment of certain marijuana activities in the area subject to the jurisdiction of the city, a copy of which is attached hereto as "Exhibit 1," and incorporated herein by reference.[3]

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

DELEGATION. The CITY OF {NAME} authorizes the {City Manager, City Administrator, City Recorder, or other appropriate city official} or the {City Manager, City Administrator, City

[2] Some cities approve the ballot title, question, summary, and explanatory statement by adopting an ordinance, rather than by adopting a separate resolution.
[3] Exhibit 1 should include the question and summary.

Recorder, or other appropriate city official} designee, to act on behalf of the city and to take such further action as is necessary to carry out the intent and purposes set forth herein, in compliance with the applicable provisions of law.

PREPARATION OF BALLOT TITLE. The City Attorney is hereby directed to prepare the ballot title for the measure, and deposit the ballot title with the {city elections officer} within the times set forth by law.[4]

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

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

FILING WITH COUNTY ELECTIONS OFFICE. The {city elections officer} shall deliver the Notice of Measure Election to the county clerk for {name of county} County for inclusion on the ballot for the {date} election.[5]

EFFECTIVE DATE. This resolution is effective upon adoption.

****

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

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

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

QUESTION
A question which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure
20-word limit under ORS 250.035(1)(b)

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

[4] Alternatively, the council may prepare the ballot title and attach it to the resolution for approval. In that case, this section might say, "The ballot title for the measure set forth as Exhibit {number} to this resolution is hereby adopted." A city's local rules may dictate who will prepare the ballot title.
[5] The Notice of Measure Election is a form provided by the Oregon Secretary of State where cities provide the ballot title, question, summary, and explanatory statement. The form can be found on the Secretary of State's website at www.sos.oregon.gov.

SUMMARY

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

17- word limit under ORS 250.035(1)(c)

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

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

Approval of this measure would prohibit the establishment {and operation}[6]of {medical marijuana processors, medical marijuana dispensaries, recreational marijuana producers, processors, wholesalers, and retailers} within the area subject to the jurisdiction of the city {provided that state law allows for continued operation of medical marijuana processors and medical marijuana dispensaries already registered—or in some cases, that have applied to be registered—and that have successfully completed a local land use application process}.

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

****

EXPLANATORY STATEMENT

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

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

Approval of this measure would prohibit the establishment {and operation}[7] of certain marijuana activities within the city.

ORS 475B.400 to 475B.525 provides that the Oregon Health Authority will register medical marijuana processors and medical marijuana dispensaries. Medical marijuana processors compound or convert marijuana into concentrates, extracts, edible products, and other products intended for human consumption and use. Medical marijuana dispensaries facilitate the transfer of marijuana and marijuana products between patients, caregivers, processors, and growers. ORS 475B.005 to 475B.399 provides that the Oregon Liquor Control Commission will license

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

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

recreational marijuana producers (those who manufacture, plant, cultivate, grow or harvest marijuana), processors, wholesalers, and retailers.

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

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

Approval of this measure has revenue impacts. Currently, ten percent of state marijuana tax revenues will be distributed to cities to assist local law enforcement in performing their duties under ORS 475B.760(2). If approved, this measure would make the city ineligible to receive distributions of state marijuana tax revenues.

Currently, under ORS 475B.345, a city may impose up to a three percent tax on the sale of marijuana items by a marijuana retailer in the city. However, a city that adopts an ordinance prohibiting the establishment of medical marijuana processors, medical marijuana dispensaries, or recreational marijuana producers, processors, wholesalers, or retailers may not impose a local tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. Approval of this measure would therefore prevent a city from imposing a local tax on those activities.

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

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

Appendix C

Opt In by Voter Referral

APPENDIX C

Opt In by Voter Referral

Under sections 30 and 31 of HB 4014, cities may repeal an earlier ordinance prohibiting the establishment of marijuana businesses but may do so only by a new ordinance repealing the old ordinance and referral of the repeal ordinance to the city's voters at a statewide general election, meaning an election in November of an even-numbered year. Cities should consult the secretary of state's referral manual and work with the city recorder or similar official to determine the procedures necessary to refer an ordinance to the voters. The process will be similar to the referral process utilized to prohibit marijuana businesses described in Appendix B above.

Once adopted, the city must submit the ordinance to the Oregon Health Authority (if the ordinance being repealed relates to medical marijuana businesses) and/or the Oregon Liquor Control Commission (if the ordinance being repealed relates to recreational marijuana businesses). Each agency has a form for submitting the ordinances.

If the referral repealing the prohibition of marijuana businesses is approved by the voters, the Oregon Liquor Control Commission or the Oregon Health Authority (depending upon whether a recreational marijuana or medical marijuana business is involved) will begin licensing businesses on January 1 following the November election. This should provide cities with an opportunity to update its ordinances and codes to add any needed time, manner or place restrictions.

Any referral election to opt-in or opt-out must be held at the next statewide general election. For most cities and counties, this would be November 6, 2018. The model below uses this date. However, certain cities which are located in a county in which not less than 55 percent of votes cast were in opposition to Ballot Measure 91 and which were thereby able to enact a ban of marijuana businesses by council ordinance on or before December 24, 2015 may be able to opt-in at the November 8, 2016 general election. Consult your city attorney if this applies to you.

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

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

Whereas, the city electors approved a ban on {medical marijuana processing sites, medical marijuana dispensaries, recreational marijuana producers, recreational marijuana processors, recreational marijuana wholesalers, and/or recreational marijuana retailers} on [_____];

Whereas, sections 30 and 31 of HB 4014 provide that a city council may adopt an ordinance to be referred to the electors of the city repealing ordinances that prohibit the establishment of marijuana related businesses in the area subject to the jurisdiction of the city;

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

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

DEFINITIONS.

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

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

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

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

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

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

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

BAN REPEALED. As described in sections 30 and 31 of House Bill 4014 (2016), the City of {Name} hereby repeals its ordinance{s} {list ordinance by name/number/date} prohibiting the establishment {and operation of the following in the area subject to the jurisdiction of the city {select desired options from the list below}:

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

(f) Marijuana retailers.

REFERRAL. This ordinance shall be referred to the electors of the city of {name} at the next statewide general election on {date – Tuesday, November 6, 2018 is the next statewide general election}.

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

****

A RESOLUTION APPROVING REFERAL TO THE ELECTORS OF THE CITY OF {NAME} THE QUESTION OF REPEALING ITS BAN ON {MEDICAL MARIJUANA PROCESSING SITES, MEDICAL MARIJUANA DISPENSARIES, RECREATIONAL MARIJUANA PRODUCERS, RECREATIONAL MARIJUANA PROCESSORS, RECREATIONAL MARIJUANA WHOLESALERS, AND/OR RECREATIONAL MARIJUANA RETAILERS} WITHIN THE CITY[1]

Whereas, sections 30 and 31 of HB 4014 provide that a city council may adopt an ordinance to be referred to the electors of the city repealing its ordinance prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city;

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

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

MEASURE. A measure election is hereby called for the purpose of submitting to the electors of the CITY OF {NAME} a measure repealing its ordinance prohibiting the establishment of certain marijuana activities in the area subject to the jurisdiction of the city, a copy of which is attached hereto as "Exhibit 1," and incorporated herein by reference.[2]

ELECTION CONDUCTED BY MAIL. The measure election shall be held in the CITY OF {NAME} on {date – November 6, 2018 or the next general election}. As required by ORS 254.465, the measure election shall be conducted by mail by the County Clerk of {county name} County, according to the procedures adopted by the Oregon Secretary of State.

DELEGATION. The CITY OF {NAME} authorizes the {City Manager, City Administrator, City Recorder, or other appropriate city official} or the {City Manager, City Administrator, City Recorder, or other appropriate city official} designee, to act on behalf of the city and to take such

[1] Some cities approve the ballot title, question, summary, and explanatory statement by adopting an ordinance, rather than by adopting a separate resolution.
[2] Exhibit 1 should include the question and summary.

further action as is necessary to carry out the intent and purposes set forth herein, in compliance with the applicable provisions of law.

PREPARATION OF BALLOT TITLE. The City Attorney is hereby directed to prepare the ballot title for the measure, and deposit the ballot title with the {city elections officer} within the times set forth by law.[3]

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

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

FILING WITH COUNTY ELECTIONS OFFICE. The {city elections officer} shall deliver the Notice of Measure Election to the county clerk for {name of county} County for inclusion on the ballot for the {date} election.[4]

EFFECTIVE DATE. This resolution is effective upon adoption.

****

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

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

Repeals Marijuana Business Prohibitions

QUESTION
A question which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure
20-word limit under ORS 250.035(1)(b)

Shall {city} repeal its prohibition of {medical marijuana processors, medical marijuana dispensaries, recreational marijuana producers, processors, wholesalers, retailers} in {city}?

[3] Alternatively, the council may prepare the ballot title and attach it to the resolution for approval. In that case, this section might say, "The ballot title for the measure set forth as Exhibit {number} to this resolution is hereby adopted." A city's local rules may dictate who will prepare the ballot title.
[4] The Notice of Measure Election is a form provided by the Oregon Secretary of State where cities provide the ballot title, question, summary, and explanatory statement. The form can be found on the Secretary of State's website at www.sos.oregon.gov.

SUMMARY

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

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

State law allows that a city council may adopt an ordinance to be referred to the voters to repeal a previously voter approved prohibition of registered medical marijuana processors, medical marijuana dispensaries and licensed recreational marijuana producers, processors, wholesalers, and retailers. Approval of this measure would repeal the city's ordinance which prohibits the establishment of {medical marijuana processors, medical marijuana dispensaries, recreational marijuana producers, processors, wholesalers, and retailers} within the area subject to the jurisdiction of the city {provided that state law allows for continued operation of medical marijuana processors and medical marijuana dispensaries already registered—or in some cases, that have applied to be registered—and that have successfully completed a local land use application process}.

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

****

EXPLANATORY STATEMENT

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

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

Approval of this measure would repeal an existing prohibition on the establishment of certain marijuana activities within the city.

The Oregon Medical Marijuana Act, ORS chapter 475B, provides that the Oregon Health Authority will register medical marijuana processors and medical marijuana dispensaries. Medical marijuana processors compound or convert marijuana into concentrates, extracts, edible products, and other products intended for human consumption and use. Medical marijuana dispensaries facilitate the transfer of marijuana and marijuana products between patients, caregivers, processors, and growers. ORS chapter 475B further provides that the Oregon Liquor Control Commission will license recreational marijuana producers (those who manufacture, plant, cultivate, grow or harvest marijuana), processors, wholesalers and retailers.

Under Oregon law, a city council which has adopted an ordinance prohibiting the establishment of any of those activities within the city, referred the ordinance to the voters at a statewide general election, and received the approval of the voters for the prohibition, now allows cities to

repeal the ordinance prohibiting the activities described above. The CITY OF {NAME} city council has adopted an ordinance repealing the prohibition within the city and, as a result, has referred this measure to the voters.

If approved, this measure would repeal the city's prohibition of {medical marijuana processors, medical marijuana dispensaries, and/or recreational marijuana producers, processors, wholesalers, and/or retailers} within the city. If approved, the effect of the approval would be to allow {medical marijuana processors, medical marijuana dispensaries and/or recreational marijuana producers, processors, wholesalers, and/or retailers within the city. Approval of this measure has revenue impacts. Currently, ten percent of state marijuana tax revenues will be distributed to cities to assist local law enforcement in performing their duties under ORS chapter 475B. If approved, this measure would make the city eligible to receive distributions of state marijuana tax revenues.

ORS chapter 475B.345 provides that a city may impose up to a three percent tax on the sale of marijuana items by a marijuana retailer in the city upon the approval of city voters at a statewide general election. Approval of this measure would therefore allow the city to impose a local tax on those activities. This would require a separate ordinance, referral to and approval by city voters to improve the local tax.

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

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

Appendix D

Local Tax by Voter Referral

APPENDIX D

Local Tax by Voter Referral

ORS 475B.345 allows cities to 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.[1]

However, ORS 475B.800, which provides a mechanism for prohibiting the establishment of certain marijuana businesses, states that a city that adopts a prohibition under those sections may not impose a tax or fee on the production, processing or sale or marijuana or any product into which marijuana has been incorporated. As a result, if a city refers a local tax ordinance to the voters at the same election that it refers a prohibition ordinance to the voters, the city will want to consult its attorney regarding the effect of those two ordinances. The sample below includes wording for cities that put both ordinances on that same ballot. However, a city planning to refer both measures to the ballot should work closely with its city attorney on preparing those ordinances and referral documents.

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

****

AN ORDINANCE OF THE CITY OF {NAME} IMPOSING A {UP TO THREE} PERCENT TAX {OR FEE} ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING ORDINANCE[2]

Whereas, ORS 475B.345 provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

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

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

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

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

DEFINITIONS.

Marijuana item has the meaning given that term in ORS 475B.015(16).

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

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

TAX IMPOSED. As described in ORS 475B.345 the City of {Name} hereby imposes a tax {or fee} of {up to three} percent on the retail sale price of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city.

COLLECTION. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.[3]

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

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A RESOLUTION APPROVING REFERAL TO THE ELECTORS OF THE CITY OF {NAME} THE QUESTION OF IMPOSING A {UP TO THREE} PERCENT TAX {OR FEE} ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER WITHIN THE CITY[4]

Whereas, ORS 475B.345 provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

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

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

MEASURE. A measure election is hereby called for the purpose of submitting to the electors of the city of {name} a measure imposing a {up to three} percent tax on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city, a copy of which is attached hereto as "Exhibit 1," and incorporated herein by reference.[5]

[3] Cities may want to include information about where, how, and when the tax must be remitted.
[4] Some cities approve the ballot title, question, summary, and explanatory statement by adopting an ordinance, rather than by adopting a separate resolution.
[5] Exhibit 1 should include the question and summary.

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

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

PREPARATION OF BALLOT TITLE. The City Attorney is hereby directed to prepare the ballot title for the measure, and deposit the ballot title with the {city elections officer} within the times set forth by law.[6]

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

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

FILING WITH COUNTY ELECTIONS OFFICE. The {city elections officer} shall deliver the Notice of Measure Election to the county clerk for {name of county} County for inclusion on the ballot for the {date} election.[7]

EFFECTIVE DATE. This resolution is effective upon adoption.

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

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

QUESTION
A question which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure
20-word limit under ORS 250.035(1)(b)

[6] Alternatively, the council may prepare the ballot title and attach it to the resolution for approval. In that case, this section might say, "The ballot title for the measure set forth as Exhibit {number} to this resolution is hereby adopted." A city's local rules may dictate who will prepare the ballot title.
[7] The Notice of Measure Election is a form provided by the Oregon Secretary of State where cities provide the ballot title, question, summary, and explanatory statement. The form can be found on the Secretary of State's website at www.sos.oregon.gov.

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

SUMMARY

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

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

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

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

{Under state law, a city that adopts an ordinance that prohibits the establishment in the area subject to the jurisdiction of the city of a medical marijuana processor, medical marijuana dispensary, or recreational marijuana producer, processor, wholesaler, or retailer may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. This measure would become operative only if the measure proposing to prohibit the establishment of any of those marijuana entities does not pass by a majority of votes.}[8]

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EXPLANATORY STATEMENT

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

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

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

Under Measure 91, adopted by Oregon voters in November 2014, codified in ORS chapter 475B and amended by the Legislature in 2016, the Oregon Liquor Control Commission must license the retail sale of recreational marijuana. ORS 475B.345 provides that a city council may adopt an ordinance imposing up to a three percent tax on the sale of marijuana items (which include marijuana concentrates, extracts, edibles, and other products intended for human consumption

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

and use) by retail licensees in the city, but the council must refer that ordinance to the voters at a statewide general election. The City of {name} city council has adopted an ordinance imposing a {up to three} percent tax on the sale of marijuana items by a retail licensee in the city, and, as a result, has referred this measure to the voters.

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

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

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

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

Appendix E

Sample Time, Place and Manner Restrictions on Marijuana Businesses

APPENDIX E

Sample Time, Place and Manner Restrictions on Marijuana Businesses

Scope

The sample wording below is designed to address both medical marijuana as well as recreational marijuana. It is based on the assumption that a city will treat both types of marijuana activities similarly. As Oregon moves towards a combined system, state law largely treats medical marijuana the same as recreational marijuana. The commentary below notes where there are differences (i.e. buffer requirements) or where a city might desire to treat medical marijuana differently from recreational marijuana activities

How to Use this Model

This document is not a substitute for legal advice.

This document is not intended to be a complete or comprehensive code chapter on marijuana businesses. A city should not adopt the sample wording in its entirety. Rather, this document, much like a restaurant menu, covers various subjects, which a city may or may not want to include in a marijuana time, place, and manner ordinance, and provides different options under each of those subjects. Consequently, this document is organized by subject area and includes a discussion of the subject followed by sample text on the following:

- Findings
- Definitions
- Rulemaking
- Licenses / Registration
    - License/Registration Required
    - License/Registration Application
    - Issuance of License/Registration
    - Fees
    - Display of License/Proof of Registration
    - Term, Renewal and Surrender
    - Transferability
    - Indemnification
- Criminal Background Checks
- Standards of Operation
    - Registration and Compliance with Administrative Rules

  - Compliance with Other Laws
  - Hours of Operation
  - Public View
  - Odors
  - Lighting
  - Sales
  - On-Site Use
  - On-Site Manufacturing
  - Outdoor Storage
  - Secure Disposal
  - Home Occupation
  - Drive-Through, Walk-Up
  - Labeling
  - Accounting Systems
  - Accounting Records
- Location
- Signs
- Examination of Books, Records and Premises
- Civil Enforcement
- Public Nuisance
- Criminal Enforcement
- Confidentiality
- Emergency Clause

Findings

Discussion

Findings provide the background and purpose of the legislation. Cities should consider how the sample findings below need to be modified to reflect their unique circumstances.

In preparing the findings, as well as other provisions of the ordinance, cities should keep in mind that marijuana remains an illegal drug under the federal Controlled Substances Act. To avoid allegations that city officials are violating federal law by authorizing the commission of a federal offense, the sample findings make clear that the authorization to operate a marijuana business comes from state law, and not local law. As such, the sample has been drafted in a manner to be restrictive rather than permissive. To illustrate that point, this sample includes wording for cities that desire to create a local licensing program as a way to implement their time, place and manner regulations. The sample's wording is drafted with care, however, to indicate that the source of authority to operate a marijuana business derives from state law and that the local license is a means to impose restrictions on the operator and is not intended to be a separate source of authority. Consequently, the wording of the following sample text carefully avoids terms that would affirmatively "allow" or "authorize" marijuana businesses.

ORS 475B now contains provisions relating to recreational marijuana businesses and medical marijuana dispensaries, processors and growers. The model ordinance relates to recreational marijuana businesses, of which there are several categories: producer, processor, wholesaler, retailer and laboratory. A city may choose to permit the operation of none, some or all of these categories within the city. The ordinance should be crafted to reflect this choice.

Sample Text

1. State law authorizes the operation of medical and recreational marijuana businesses and provides those businesses with immunity from state criminal prosecution.

2. Although the State of Oregon has passed legislation authorizing marijuana businesses and providing criminal immunity under state law, the operation of those businesses remains illegal under federal law.

3. The city council has home rule authority to decide whether, and under what conditions, certain commercial conduct should be regulated within the city and subject to the general and police powers of the city, except when local action has been clearly and unambiguously preempted by state statute.

4. Whether a certain business should operate within a local jurisdiction is a local government decision, and local governments may enforce that decision through the general and police powers of that jurisdiction.

5. [*If using an existing or creating a new license/registration system for a marijuana business*] The city's licensing [*or registration*] and regulatory system should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other license or regulatory requirement imposed by any other provisions of city ordinance or local, regional, state or federal law.

6. The city council wants to regulate the operation of marijuana businesses in the city in ways that protect and benefit the public health, safety and welfare of existing and future residents and businesses in the city.

7. The ordinance is intended to impose restrictions, not provide authorizations.

8. The ordinance is intended to apply only to recreational marijuana businesses, and not to medical marijuana businesses or to personal possession, growing or use of marijuana as authorized by the state in ORS 475B.245 to ORS 475B.255. [*Use this provision only if the city does not want to combine its medical marijuana ordinance with this ordinance or wants to address medical marijuana as part of a separate ordinance.]*

9. [*If the city intends to refer a local sales tax option to its citizens to approve a sales tax of up to 3 percent pursuant to ORS 475B.345, the following finding could be added.]* Upon approval of city voters, the city shall impose a local sales tax of ___% *[up to 3 percent]* on the sales of recreational marijuana by marijuana retailers in order to recover its costs incurred in connection with the city's recreational marijuana licensing program.

10. The operation of a marijuana business without proper authority from either the Oregon Liquor Control Commission or the Oregon Liquor Control Commission (OREGON LIQUOR CONTROL COMMISSION) is prohibited within the city.

Definitions

Discussion

Definitions should be used to clarify intent and avoid ambiguity. The specific terms defined in a marijuana ordinance will depend on the provisions of that ordinance. The terms listed here are offered as examples and cover some of the most commonly-used terms in state law relating to marijuana businesses. Recreational marijuana businesses can include producers, processors, wholesalers and retailers. A city may or may not allow all of these separate categories of marijuana business to operate within the city. The definitions need to reflect only those types of marijuana businesses permitted in a city. In addition, depending on the needs of a particular city, it may be useful or necessary to include additional definitions not listed below.

It is important to note that when interpreting ordinances that contain specific references to state law, the courts will use the version of the state statute that was in effect at the time that the ordinance was adopted. Put differently, if the Legislature amends a state statute, a city ordinance that references that statute is not automatically updated to reflect the legislative change. Consequently, if using statutory cites, the city will need to periodically review and update their ordinances if the city wants the benefit of the new statutory wording. As a result, the model ordinance does not refer to specific sections of the Oregon Revised Statutes.

Sample Text

1. Licensee means a person who holds a license issued by the city to engage in a marijuana business in accordance with this chapter.

2. Licensee representative means an owner, director, officer, manager, employee, agent or other representative of a licensee, to the extent that the person acts in a representative capacity.

3. Marijuana means all parts of the plant cannabis family moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative,

mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

4. Marijuana business means (1) any business licensed by the Oregon Liquor Control Commission to engage in the business of producing, processing, wholesaling, or selling marijuana or marijuana items, or (2) any business registered with the Oregon Health Authority for the growing, processing, or dispensing of marijuana or marijuana items.

   Alternative Approach: This model assumes similar treatment of both medical as well as recreational activities. If a city desires to set separate standards of operation either between medical and recreational businesses, or among license types within the medical or recreational system, then the city will need to separately define medical growers, medical processors, medical dispensaries, recreational producers, recreational processors, wholesalers, and recreational retailers. Both state law and the administrative rules provide a basis for creating such definitions

5. Marijuana items means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

Rulemaking

Discussion

Depending on the size and structure of the city, a city may want to provide the city manager/administrator or that person's designee, or another appointed city official such as the chief of police, with authority to adopt administrative rules to implement and enforce the city's medical marijuana ordinances.

Sample Text

1. Rulemaking. The city manager [*administrator*] or the city manager's [*administrator's*] designee [*or some other designated public official, such as "chief of police"*] has authority to adopt administrative rules and procedures necessary for the proper administration and enforcement of this chapter [*or if not creating a new chapter, "ordinances relating to the operation of a marijuana business"*].

Licenses / Registration

License/Registration Required

Discussion

Cities that want to regulate marijuana businesses can do so in a number of ways. Many cities, particularly those with larger staffs, have decided to regulate marijuana businesses through a license or permit system. Even those cities that are using a licensing system are imposing differing levels of regulation, from basic registration and tracking to extensively restricting the activities of marijuana businesses. Because a licensing approach allows cities to both track and regulate marijuana businesses, with multiple enforcement mechanisms, the sample

wording provides for a licensing system. Although this sample only requires a marijuana business license, a city could also require the employees of marijuana businesses to get licenses.

As explained above, to avoid conflicts with federal law, the sample text is drafted to make clear that the authority for marijuana businesses to operate comes from state, and not local, law. Although the sample text uses the word "license," the text is intended to clarify that the license operates as a registration system, and not as a grant of authority to violate federal law. Cities that want to further emphasize that point may want to avoid the use of the word "license" and instead convert the sample text to "registration."

Cities that adopt a licensing/registration system will have to determine where to incorporate that system into their code. For example, cities with police protection licenses may want to add marijuana businesses to those licensing provisions.

Sample Text

1. Local License Required. Marijuana businesses must possess a valid license issued under this chapter to operate within the city. The license required by this chapter facilitates the registration and the city's oversight of a marijuana business. The license required by this chapter should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other regulatory or license requirement imposed by any other provision of city ordinance or local, regional, state or federal law.

2. State Registration Required. To be eligible to apply for a license under this chapter, marijuana businesses must be either registered with the Oregon Health Authority or licensed by the Oregon Liquor Control Commission and otherwise authorized by state law to operate a marijuana business.

License/Registration Application

Discussion

Cities using a licensing/registration system will have to decide what information to request in an application. The sample list of information provided below is a compilation of application requirements from different city ordinances. Cities may determine that they want to require less, more or different information from applicants.

In addition, although this sample requires the same information for both an initial and renewal application, cities may want to use a less intensive or otherwise different process for license renewals.

This sample also provides the city with the option to inspect the proposed licensed premises as part of the application process and thereafter. More information regarding inspections is found in the section "Civil Enforcement."

Sample Text

1. Application/Renewals. Applications for new and renewed licenses must be submitted to _____ [*designated public official or city department*] on a form provided by the city. A separate application must be submitted for each proposed marijuana business. The initial or renewal application must include the following information:

a. Certification that the proposed marijuana business is licensed at that location as a marijuana business with the Oregon Health Authority or the Oregon Liquor Control Commission.

b. The applicant's name, residence address, and date of birth. [*A city may want to require photo identification, such as a driver's license or other government-issued identification*.]

c. The names and residence addresses of:

   i. Any person or legal entity that has an ownership interest in the marijuana business, including all principals of the applicant;

   ii. Any person or legal entity with a financial interest that has loaned or given money or real or personal property to the applicant, or principal of the applicant, for use by the proposed marijuana business within the preceding year;

   iii. Any person or legal entity that has leased real property to the applicant for use by the marijuana business and any person who manages that property; and

   iv. Any person who is anticipated at the time of the application to be an employee or volunteer at the proposed facility.

d. The business name.

e. The address and telephone number of the proposed marijuana business.

f. The mailing address for correspondence about the license.

g. A detailed description of the type, nature and extent of the business, including a description of the category of marijuana business to be operated.

h. The proposed days and hours of operation.

i. A detailed description of the proposed accounting and inventory system of the marijuana business.

j. Certification that the licensed premises for the proposed marijuana business has met all applicable requirements of the city development and sign code.

k. Certification that all applicable taxes and fees have been paid.

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

   Alternative Sample Text on Criminal Background: A statement whether the applicant, principals, persons with a financial interest, employees or volunteers have been convicted of a misdemeanor within the past ____ [*time period*] that relates to _____, [*relevant crimes, such as fraud, theft, manufacture or delivery of a Schedule I controlled substance*] or have ever been convicted of a felony. (See below for a more full discussion on background checks.)

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

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

o. Other information deemed necessary by _____ [*designated public official*] to complete review of the application or renewal.

p. The city may inspect the proposed licensed premises prior to issuing a license and at any time during normal business hours following the issuance of a license. If, during the inspection, the city determines that the applicant or the licensed premises are not in compliance with this chapter or any other chapter of the city's building, development, zoning, nuisance or other city ordinance or code, the applicant will be provided with a notice of the failed inspection and that the requirements of this chapter have not been met. *[If the city chooses, a process for an additional inspection or hearing following a failed inspection could be added to this provision.]*

2. Continuing obligation to update information. All information provided in an initial or renewal application must be kept current at all times, including after a license is issued. Each licensee shall notify _____ [*designated public official or department*] in writing within _____ [*time period, such as ten business days*] of any change in the information provided to obtain the license.

Issuance of License/Registration

Discussion

Each city that adopts a licensing/registration system will have to determine the process for issuing licenses, the criteria for issuing or denying a license, and who within the city will apply those criteria. Cities may want to look to how other local licenses, such as business licenses, are issued in crafting a process for issuing medical marijuana facility licenses.

If a city wants to cap the number of licenses that it will issue, the city could address that issue in this section. If a city takes that approach, it should consider what method it will use to determine which applicants will receive licenses when the number of applications exceeds the cap.

Sample Text

1. Determination. Within ____ [*time period*] after receiving a complete [*initial or renewal*] application and license fee for a medical marijuana business license, the _____ [*designated public official or department*] will issue the license if _____ [*designated public official or department*] finds that the facility is licensed as a marijuana business with the Oregon Health Authority or the Oregon Liquor Control Commission and that all other requirements under this chapter have been met. The city license will list the specific category of marijuana business license being issued.

2. Denial. In addition to denial for failure to meet the requirements of this chapter, the _____ [*designated public official or department*] may deny a license if:

    a. The applicant made an untrue, misleading, or incomplete statement on, or in connection with, the application for the license or a previous application for a license;

    b. Notwithstanding the federal Controlled Substances Act, the applicant fails to meet all requirements of local, state, and federal laws and regulations, including, but not limited to, other permitting or licensing requirements and land use regulations; or

c. The _____ [*applicant, principals, employees, volunteers, persons with a financial interest in the facility*] have been convicted of _____ [*specified crimes*].

3. Notice of denial. The city shall issue a notice of denial to an applicant in writing specifying the reasons for the denial. *[The city may add any appeal or hearing rights it wishes to provide to an applicant or cross reference to another portion of the city code that relates to appeals and hearings.]*

Fees

Discussion

Cities adopting a licensing system may want to charge a one-time initial license application fee, an annual license fee, or both. Cities may want to look at how their other licensing fees are structured when setting the marijuana business license fee. Some cities prorate the license fee for licenses that are issued after a certain point in the licensing year. For example, if all licenses expire on December 31 each year, a city might prorate the fees for licenses issued after June 30 of that year. Some cities also provide that license fees are not refundable.

Sample Text

1. Fee. An initial license application or renewal application must be accompanied by a license fee. The fee amount will be established by _____ [*method for setting fees, commonly through council resolution; alternatively, fee amount may be set by ordinance*].

Display of License/Proof of Registration

Sample Text

1. Display. When requested, the licensee shall show the license issued under this chapter to any person with whom the licensee is dealing as part of the licensed activity or to _____ [*designated public official*].

   Alternative Sample Text: The license issued under this chapter must be prominently displayed at all times in an easily visible location inside the licensed premises.

Term, Renewal and Surrender

Discussion

Cities with licensing/registration systems will need to set a term and create a renewal process. The two options in the first subsection below provide different means of tracking expiration and renewal. The first option would put all renewals at one time of year and the second option would put renewals on a rolling basis. Cities may want to consider schedules for other local license and renewal processes to determine whether to align

marijuana business licenses with those other processes. In addition, cities may want to provide a process for surrendering a license/registration.

Sample Text

1. Termination. A license terminates automatically _____ [*on month and day of each year/certain years or some time period from the date of issuance*], unless a license renewal application has been approved.
2. Renewal. A license may be renewed for additional _____ [*duration*] terms as provided by this chapter.
3. Renewal Application. Renewal applications shall be submitted, with the required license fee, to _____ [*designated public official or department*] not less than _____ [*days, months*] prior to the expiration date of the existing license.
4. Termination Due to Change in Law. A license terminates automatically if federal or state statutes, regulations or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the marijuana business under this ordinance.
5. Termination Due to Suspension, Revocation or Termination by State Authority. A license terminates automatically upon the suspension, revocation, surrender or termination of an Oregon Health Authority registry or an Oregon Liquor Control Commission issued marijuana business license for any reason.
6. Surrender. A licensee may surrender a marijuana business license by delivering written notice to the city that the licensee thereby surrenders the license. A licensee's surrender of a license under this section does not affect the licensee's civil or criminal liability for acts the licensee committed before surrendering the license.

Transferability

Discussion

Cities should consider whether they want to allow licensees to transfer their license, and, if so, the process for allowing such a transfer. For example, under certain circumstances, a city might allow the license to be transferred if the business is sold. The alternative sample text below provides for a license transfer. Cities that allow for transfer might consider creating a transfer application, which could require an accompanying fee, to ensure that the new licensee is eligible to hold the license. ORS chapter 475B does not specifically address the issue of transferability. ORS 475B allows the OLLC to issue temporary authority to operate a licensed marijuana business to a trustee, the receiver of an insolvent or bankrupt licensed business, the personal representative of a deceased licensee, or a person holding a security interest in the business for a reasonable period of time to allow an orderly disposition of the business.

Sample Text

1. Transferability. Licenses issued under this chapter shall not be transferred to any other person by operation of law or otherwise.

   Alternative Sample Text: Licenses issued under this chapter may be transferred to another person upon determination by _____ [*designated public official*] that the person receiving the license meets the requirements of this chapter for licensees.

Indemnification

Sample Text

1. Waiver. By accepting a marijuana business license issued under this chapter, the licensee waives and releases the city, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of a marijuana business owner or operator, principal, person or legal entity with a financial interest in the marijuana business, person or entity that has leased real property to the marijuana business, employee, volunteer, client or customer for a violation of federal, state or local laws and regulations.
2. Indemnification. By accepting a marijuana business or license issued under this chapter, the licensee(s), jointly and severally if there is more than one, agree to indemnify and hold harmless the city, its officers, elected officials, employees, volunteers, and agents, insurers, and self-insurance pool against all liability, claims, and demands on account of any injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the marijuana business that is the subject of the license.

Criminal Background Checks

Discussion

Under ORS chapter 475B an individual may be required by the Oregon Health Authority and Oregon Liquor Control Commission to submit to a criminal background check. Generally speaking, persons convicted within the last two years of manufacture or deliver of a controlled substance, having more than one conviction of manufacture or delivery of a controlled substance, or (with respect to recreational licenses) any conviction or delivery of a control substance to a person under 21, are not eligible for state licensing or registration. Cities may want to require additional background checks for licensees, owners, employees, volunteers or other individuals associated with a marijuana business and may want to include additional disqualifying convictions. Alternatively, cities could require license applicants and others associated with licensed facilities to self-report that information as part of the application process, as provided in the License Application alternative sample text above.

Alternatively, some cities may want to use their licenses solely for tracking purposes, without limiting who is eligible to receive a license or work at a licensed facility. In that case, a city may not want to require criminal background checks.

Sample Text

1. Background Check Required / Disqualification. All _____ [*applicants, principals, employees, volunteers, persons with a financial interest in the marijuana business*] must submit to a criminal background check performed by _____ [*designated public official*] before _____ [*a license will be issued; beginning employment at a facility; etc.*]. A person who has been convicted of _____ [*specified crimes*] may not be _____ [*a licensee, employee, volunteer, etc.*].

Standards of Operation

Discussion

The topics covered in this section are examples of some of the many issues that a city may want to address in regulating medical marijuana facilities, but the list is not exhaustive. In drafting provisions for a section covering standards of operation, there are at least four considerations to keep in mind.

First, state law provides that time, place and manner regulations need to be "reasonable," however the statute does not define that term. As noted above, the preemptive effect of SB 1531(now codified in ORS 475B.340) is currently the subject of litigation. Nonetheless, until that litigation is resolved, regulations that exceed what others think are needed to meet public health, welfare and safety concerns could face legal challenge as being "unreasonable." Consequently, a city will be better positioned against a potential legal challenge if it makes specific findings as to why the regulations serve public health, welfare and safety concerns.

Second, as a reminder, a city should consider drafting ordinances to restrict, rather than authorize, certain activities in an effort to avoid conflicts with federal law. For example, rather than providing that a medical marijuana facility *may* operate between the hours of 8:00 a.m. and 5:00 p.m., the ordinance should provide that a facility *may not* operate between the hours of 5:00 p.m. and 8:00 a.m. If the city does not want to restrict activity, it should simply remain silent on that issue, rather than affirmatively authorizing conduct that is illegal under federal law.

Third, when deciding what restrictions to impose, cities should become familiar with the conditions the state is placing on marijuana businesses by reviewing the most recent version of OAR 845-025-1000 to OAR 845-025-8080. After reviewing those conditions, cities should consider whether they want to impose additional requirements or whether they want to include similar requirements in their code so that they can independently enforce those provisions of state law through local enforcement mechanisms.

Fourth, when considering operational restrictions, cities might consider drafting an ordinance that segregates the restrictions by the category of marijuana business. For example, certain restrictions might apply to processors and not producers, wholesalers or retailers. *[Consider adding a prefatory phrase such as, "For marijuana processors," followed by a list of operating restrictions that apply to processors.]*

Fifth, cities should consider what restrictions might already be in place based on existing zoning or other ordinances of general applicability. For example, because many cities have existing fencing, sign, and noise ordinances, those matters are not specifically addressed in this model. However, if a city wants to treat marijuana businesses differently than that of other businesses, it will need to specifically do so in this section. For example, "A marijuana business in a residential district shall not produce or emit a sound that is detectible at the property line. A marijuana business operating in any other zone shall comply with the city's noise ordinance at _____."

Finally, because this is an emerging industry with evolving technologies, cities are better served drafting ordinances to address the effects of the industry, rather than the means to achieve those effects. For example, rather than drafting an odor provision that requires a specific air cleaning technology, it is preferable to draft an ordinance that provides that requires the business to have an air filtration system certified by an engineer to ensure marijuana odor cannot be detected outside of the property lines or enclosed structure.

Sample Text

1. Registration and Compliance with State Law. The marijuana business's state license or authority must be in good standing with the Oregon Health Authority or Oregon Liquor Control Commission and the marijuana business must comply with all applicable laws and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.

2. Compliance with Other Laws. The facility must comply with all applicable laws and regulations, including, but not limited to, the development, land use, zoning, building and fire codes.

3. Hours of Operation. Operating hours for a marijuana business must be as follows: (i) for a business engaged in sales or transfer of marijuana or marijuana products to a consumer: no earlier than _____ and no later than _____ on the same day. *[consider using same time period as allowed under any applicable ordinance relating to liquor stores]*; for all other medical business activities: no earlier than _____ and no later than _____on the same day: for processor: no earlier than _____ and no later than _____ on the same day. *[Note, existing land use ordnances may already prohibit activities at certain times using same time period as allowed under any applicable ordinance relating to liquor stores]*

4. Public View. All doorways, windows and other openings shall be located, covered or screened in such a manner to prevent a view into the interior from any exterior public or semipublic area.

5. Odors. The marijuana business must use an air filtration and ventilation system which is certified by an Oregon Licensed mechanical engineer to ensure, to the greatest extent feasible, odor is confined all objectionable odors associated with the marijuana to the licensed premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.

6. Lighting. Facilities must maintain adequate outdoor lighting over each exterior exit.

7. Sales. Sales or any other transfers of marijuana must occur inside the licensed premises and must be conducted only between the marijuana business and individuals 21 years of age and older.

8. On-Site Use. Marijuana and tobacco products must not be smoked, ingested, consumed or otherwise used on the licensed premises.

9. On-Site Manufacturing. With the exception of marijuana processors, manufacturing or processing of any extracts, oils, resins or similar derivatives of marijuana is prohibited at any licensed premises. Marijuana processors may engage in processing in industrial zones only.

10. Outdoor Storage. Outdoor storage of merchandise, raw materials or other material associated with the marijuana business is prohibited.

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

12. Home Occupation. A marijuana business may not be operated as a home occupation.

13. Drive-Through, Walk-Up. A marijuana business may not have a walk-up window or a drive-through.

14. Labeling. All products containing marijuana intended to be ingested (i.e. edibles) must be labeled with the product's serving size and the amount of tetrahydrocannabinol in each serving in accordance with Oregon Health Authority and Oregon Liquor Control Commission rules.

15. Accounting Systems. The marijuana business must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash and sufficient to maintain detailed, auditable financial records. If the _____ *[designated public official]* finds the books and records of the facility are deficient in any way or if the marijuana business's accounting system is not auditable, the marijuana business must modify the accounting system to meet the requirements of the _____ *[designated public official]*.

16. Accounting Records. Every marijuana business must keep and preserve, in an accounting format established by _____ *[designated public official]*, records of all sales made by the marijuana business and such other books or accounts as may be required by the _____ *[designated public official]*. Each marijuana business must keep and preserve for a period of at least _____ *[time period]* records containing at least the following information:

    a. Daily wholesale purchases (including grow receipts) if licensed as a marijuana wholesaler and retail sales, if licensed as a retailer, including a cash receipts and expenses journal;

    b. State and federal income tax returns;

    c. State quarterly sales tax returns for retail sales;

    d. True names and any aliases of any owner, operator, employee or volunteer of the marijuana business;

    e. True names and addresses and any aliases of persons that have, or have had within the preceding year, a financial interest in the marijuana business; and

    f. _____ *[designated public official]* may require additional information as he or she deems necessary.

Location

Discussion

A city can regulate the location of a marijuana business either through amendments to its zoning code, made in accordance with local and statutory land use procedures, or by imposing conditions on the marijuana business license. Cities should consult their city attorney to discuss the benefits, risks and timelines associated with each approach.

Keeping in mind that state law allows for the licensing of marijuana retailers, wholesalers, processors, producers and laboratories, cities may want to impose restrictions on where marijuana businesses and facilities can locate in relation to other zones or specified locations and based upon the specific type of marijuana business. For example, a city could impose limits on the distance of marijuana businesses or facilities from:

- A residential zone or a multi-use zone which includes residences;
- Places where children congregate;
- A public elementary, private elementary, secondary, or career school attended primarily by individuals under the age of 21;
- A public library;
- A public park, public playground, recreation center, or facility;
- A licensed child care facility;
- A public transit center;
- Any game arcade where admission is not restricted to persons aged 21 or older;
- Another licensed medical marijuana facility licensed by the Oregon Health Authority or a recreational marijuana facility licensed by the OREGON LIQUOR CONTROL COMMISSION;
- Any public property, not including the right of way; or
- Any combination of the above.

Cities that impose those types of distance restrictions should consider how those provisions will operate if one of the protected properties, such as a school, locates within a restricted area of an existing marijuana business. An ordinance could provide that the marijuana business may remain in place, that the license will be revoked, or that the license will no longer be eligible for renewal. Cities should work closely with their city attorney to evaluate the risks and benefits of those options. In addition, cities may want to look to the state regulations for guidance.

In addition, cities should consult their city attorney if they are imposing restrictions that are more stringent than those imposed under state law, by, for example, requiring facilities to locate 2,000 feet from other medical marijuana businesses. Note, however, that state law does restrict cities from imposing a buffer requirement on recreational retailers. Specifically, cities cannot restrict retailers from locating more than 1,000 feet from

another recreational retailer. See ORS 475B.340(2). Consequently, a standard buffer of 1,000 feet will work for both medical as well as recreational facilities. However, anything greater than a 1,000 feet requirement can only apply to Medical dispensaries. Although the courts have generally upheld local authority to impose more stringent requirements than those imposed by state law, a city should consult its city attorney regarding the risks associated with taking a more restrictive approach. That is true particularly if the regulations have the effect of prohibiting marijuana businesses within the city. However, a city that takes that route should work closely with its legal counsel to follow current court cases in this area and be prepared to defend its regulations against a legal challenge.

Cities that adopt distance restrictions will also need to consider how the distance will be measured. For example, one city provided that the distance would be measured in a straight line from the closest edge of each property line, while another city provided that the distance would be measured from the property line of the affected property, such as a school, to the closest point of space occupied by the medical marijuana facility. Another city provided that the distance would be measured between the closest points of the respective lot lines.

In addition to distance restrictions, some cities have imposed restrictions on what types of businesses can collocate with marijuana businesses. For example, some cities have prohibited collocation with tobacco smoking lounges, marijuana social clubs, and retail marijuana businesses. Some cities have also required marijuana businesses to be located at fixed, permanent locations. For example, an ordinance might provide, "A marijuana business or facility may not be located at a temporary or mobile site. No person shall locate, operate, own, allow to be operated or aid, abet or assist in the operation of any mobile marijuana business which transports or delivers, or arranges transportation or delivery, of marijuana to a person."

As noted above, restrictions may need to be segregated by the category of marijuana business involved. For example, restrictions that relate to marijuana producers might not apply to marijuana retailers, processors or wholesalers.

Sample Text

1. Restrictions on Location: Marijuana Dispensary or Retailer. A marijuana retailer shall not locate:
    a. Within a residence or mixed-use property that includes a residence.
    b. Within _____ zone(s).
    c. Within _____ [*distance*] of _____ [*certain zones, types of properties, schools, parks, licensed day care facilities, parks, public transit centers, game arcades no restricted to persons age 21 and older, any public property, any other recreational or medical marijuana facilities, etc.*]
    d. On the same property or within the same building with _____ [*other types of facilities, such as marijuana social clubs*].

2. Restrictions on Location: Marijuana Wholesaler. A marijuana wholesaler shall not locate:
    a. Within a residence or mixed-use property that includes a residence.
    b. Within _____ zone(s).
    c. Within _____ [*distance*] of _____ [*certain zones, types of properties, medical marijuana facilities, etc.*]

d. On the same property or within the same building with _____ [*other types of facilities,*].

3. Restrictions on Location: marijuana producer. A marijuana producer shall not locate:
   a. Within a residence or mixed-use property that includes a residence.
   b. Within _____ zone(s).
   c. Within _____ [*distance*] of _____ [*certain zones, types of properties, medical marijuana facilities, etc.*]
   d. On the same property or within the same building with _____ [*other types of marijuana businesses*].
4. Restrictions on Location: marijuana processor. A marijuana processor shall not locate:
   a. Within a residence or mixed-use property that includes a residence.
   b. Within _____ zone(s).
   c. Within _____ [*distance*] of _____ [*certain zones, types of properties, medical or recreational marijuana business, etc.*]
   d. On the same property or within the same building with _____ [*other types of marijuana businesses*].
5. Distances. For purposes of this section, all distances shall be measured _____ [*method for measuring distance*].

Signs

Discussion

No sample text is provided because cities that want to regulate the signs on marijuana businesses or facilities should consider applying their existing sign code. If a city does not have a sign code, the League has "A Guide for Drafting a Sign Code," which includes a sign code template, available in the Library on the League's website (www.orcities.org). Cities that want to impose sign restrictions on medical marijuana facilities other than those already in the city sign code should consult their city attorney about possible free speech implications.

Examination of Books, Records and Premises

Discussion

Cities regulating marijuana businesses and facilities should consider who will enforce those regulations and how. One aspect of that decision is whether a city will provide for inspections, and, if so, what those inspections will entail and who will conduct them. In addition, cities that provide for inspection of a licensed

premises and its records may want to specify which records a marijuana business or facility must keep, and for how long. Sample text on records retention is provided in the Standards of Operation section above.

Sample Text

1. Examination of Books, Records and Premises. To determine compliance with the requirements of this chapter and other chapters of _____ [*city's code*], a licensee shall allow _____ [*designated public official*] to examine or cause to be examined by an agent or representative designated by _____ [*designated public official*], at any reasonable time, the licensed premises, including wastewater from the facility, and any and all marijuana business financial, operational and licensed premises information, including books, papers, payroll reports, and state and federal income tax returns, and quarterly sales tax returns for marijuana retailers. Every licensee is directed and required to furnish to _____ [*designated public official*] the means, facilities and opportunity for making such examinations and investigations.

2. Compliance with Law Enforcement. As part of investigation of a crime or a violation of this chapter which law enforcement officials reasonably suspect has taken place on the facility's premises or in connection with the operation of the marijuana business, the _____ [*designated public official*] shall be allowed to view surveillance videotapes or digital recordings at any reasonable time. Without reducing or waiving any provisions of this chapter, the _____ [*law enforcement department*] shall have the same access to the licensed premises, its records and its operations as allowed to state inspectors.

   Alternative Sample Text: The marijuana business shall be open for inspection and examination by _____ [*public official charged with enforcement*] during all operating hours.

Civil Enforcement

Discussion

A licensing system allows a city multiple methods of enforcement. As included in the sample text below, the city can deny, suspend or revoke a license, but it may also impose penalties on a facility owner that does not comply with local ordinances.

If a city adopts a license suspension and revocation provision like the one listed below, a city may want to consider whether to address additional issues such as:

- Will the ordinance list all possible reasons for revocation, or will it include a more general revocation provision based on noncompliance with this chapter, as provided in the sample?
- Will the ordinance provide the form and timing of the suspension or revocation? For example, "Any denial, suspension or revocation under this section shall be in writing, including the reasons for the denial, suspension or revocation, and sent by first-class mail at least _____ [*time period*] prior to the effective date of the denial, suspension or revocation." If the licensee is given advanced notice of the pending suspension or revocation, as is the case in this sample language, the city may want to give the licensee a period of time within which to correct the problem to avoid suspension or revocation.

- Will the ordinance allow for an appeal, and, if so, can that decision be appealed? For example, "A denial, suspension, or revocation under this section may be appealed to _____ [*designated public official*]. The findings of _____ [*designated public official*] shall be final and conclusive." In addition, if the ordinance allows for an appeal, the city may want to include in the ordinance whether the appeal stays the pending enforcement action.
- Will the ordinance put limitations on how soon after revocation a person or entity can apply for a new license? For example, "A person or entity who has had a license revoked may not apply for a new license until _____ [*time period*] from the date of the revocation."

Cities may also want to review their existing city codes to see if there are other violation provisions that they want to incorporate by reference here.

Sample Text

1. Enforcement. _____ [*designated public official*] may deny, suspend or revoke a license issued under this chapter for failure to comply with this chapter [*and rules adopted under this chapter*], for submitting falsified information to the city or the OREGON LIQUOR CONTROL COMMISSION, or for noncompliance with any other city ordinances or state law.
2. Civil Penalty. In addition to the other remedies provided in this section, any person or entity, including any person who acts as the agent of, or otherwise assists, a person or entity who fails to comply with the requirements of this chapter or the terms of a license issued under this chapter, who undertakes an activity regulated by this chapter without first obtaining a license, who fails to comply with a cease and desist order issued pursuant to this chapter, or who fails to comply with state law shall be subject to a civil penalty not to exceed _____ [*amount*] per violation.
3. Other Remedies. In addition to the other remedies provided in this section, the city may institute any legal proceedings in circuit court necessary to enforce the provisions of this chapter. Proceedings may include, but are not limited to, injunctions to prohibit the continuance of a licensed activity, and any use or occupation of any building or structure used in violation of this chapter.
4. Remedies not Exclusive. The remedies provided in this section are not exclusive and shall not prevent the city from exercising any other remedy available under the law, nor shall the provisions of this chapter prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under city ordinance or state law.

Public Nuisance

Discussion

Public nuisance ordinances provide a means for cities to take action to protect the public in general. Adding a public nuisance provision to a marijuana business or facility ordinance provides the city with another means of enforcing its local regulations. A city that has a municipal court might also consider working with its legal counsel to determine whether it can provide for private nuisance actions in municipal court.

Sample Text

1. Public Nuisance. Any premises, house, building, structure or place of any kind where marijuana is grown, processed, manufactured, sold, bartered, distributed or given away in violation of state law or this chapter, or any place where marijuana is kept or possessed for sale, barter, distribution or gift in violation of state law or this chapter, is a public nuisance.

2. Action to Remedy Public Nuisance. The city many institute an action in circuit court in the name of the city to abate, and to temporarily and permanently enjoin, such nuisance. The court has the right to make temporary and final orders as in other injunction proceedings. The city shall not be required to give bond in such an action.

Criminal Enforcement

Discussion

As noted, cities generally cannot criminalize what state law expressly allows. However, it is an open question whether a city can impose criminal penalties for violating a law of general applicability that reaches conduct expressly authorized under state law. For example, it is an open question whether a city can impose criminal penalties on a marijuana business that operates without a business license, in violation of local law, because state law does not expressly provide that a marijuana business is exempt from criminal prosecution for operating without a business license. Therefore, cities that want to impose criminal penalties should work closely with their city attorney to determine whether the city can impose criminal penalties for failure to comply with the city's licensing provisions or other provisions of general applicability.

Confidentiality

Sample Text

1. Confidentiality. Except as otherwise required by law, it shall be unlawful for the city, any officer, employee or agent to divulge, release or make known in any manner any financial or employee information submitted or disclosed to the city under the terms of this chapter. Nothing in this section shall prohibit the following:

    a. The disclosure of names and facility addresses of any licensee under this chapter or of _____ [*other individuals associated with a marijuana business, such as other owners*];

    b. The disclosure of general statistics in a form which would prevent identification of financial information regarding a business [*or marijuana business operator*];

    c. The presentation of evidence to a court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the city under this chapter;

    d. The disclosure of information to and upon request of a local, state or federal law enforcement official or by order of any state or federal court; or

e. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures [*or when such disclosure is ordered under the Oregon Public Records Law*].

Emergency Clause

Discussion

The League's model charter, available on the Library page under Publications on the League's website (www.orcities.org), provides that ordinances normally take effect on the 30th day after adoption, or on a later day provided in the ordinance. The model charter provides an exception to that general rule and allows an ordinance to take effect as soon as adopted, or on another date less than 30 days after adoption, if it contains an emergency clause. Cities that want their ordinance to have immediate effect should review their charter and talk to their city attorney about whether an emergency clause is needed.

Sample Text

This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect on _____ [*date*].

Chapter 475B — Cannabis Regulation

ORS sections in this chapter were amended or repealed by the Legislative Assembly during its 2016 regular session. See the table of ORS sections amended or repealed during the 2016 regular session: 2016 A&R Tables

Uncodified sections printed in this chapter were amended or repealed by the Legislative Assembly during its 2016 regular session. See the table of uncodified sections amended or repealed during the 2016 regular session: 2016 A&R Tables

New sections of law were added by legislative action to this ORS chapter or to a series within this ORS chapter by the Legislative Assembly during its 2016 regular session. See sections in the following 2016 Oregon Laws chapters: 2016 Session Laws 0023; 2016 Session Laws 0024; 2016 Session Laws 0083; 2016 Session Laws 0091

New sections of law were enacted by the Legislative Assembly during its 2016 regular session and pertain to or are likely to be compiled in this ORS chapter. See sections in the following 2016 Oregon Laws chapters: 2016 Session Laws 0023; 2016 Session Laws 0024; 2016 Session Laws 0083; 2016 Session Laws 0097

2015 EDITION

CANNABIS REGULATION

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475B.240 Marijuana Control and Regulation Fund

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475B.755 Applicability of tax laws to ORS 475B.700 to 475B.760

475B.760 Suspense account; payment of expenses; crediting balance to Oregon Marijuana Account

AUTHORITY OF CITIES AND COUNTIES TO PROHIBIT ESTABLISHMENT OF CANNABIS-RELATED BUSINESSES

475B.800 Adoption of ordinances; referral to electors for approval

TASK FORCES

(Temporary provisions relating to task forces are compiled as notes following ORS 475B.800)

RECREATIONAL USE OF CANNABIS

(Generally)

475B.005 Purposes of ORS 475B.010 to 475B.395. (1) The People of the State of Oregon declare that the purposes of ORS 475B.010 to 475B.395 are:

(a) To eliminate the problems caused by the prohibition and uncontrolled manufacture, delivery and possession of marijuana within this state;

(b) To protect the safety, welfare, health and peace of the people of this state by prioritizing this state's limited law enforcement resources in the most effective, consistent and rational way;

(c) To permit persons licensed, controlled and regulated by this state to legally manufacture and sell marijuana to persons 21 years of age and older, subject to the provisions of ORS 475B.010 to 475B.395;

(d) To ensure that the State Department of Agriculture issues industrial hemp licenses and agricultural hemp seed production permits in accordance with state law; and

(e) To establish a comprehensive regulatory framework concerning marijuana under existing state law.

(2) The People of the State of Oregon intend that the provisions of ORS 475B.010 to 475B.395, together with other provisions of state law, will:

(a) Prevent the distribution of marijuana to persons under 21 years of age;

(b) Prevent revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;

(c) Prevent the diversion of marijuana from this state to other states;

(d) Prevent marijuana activity that is legal under state law from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

(e) Prevent violence and the use of firearms in association with the cultivation and distribution of marijuana;

(f) Prevent drugged driving and the exacerbation of other adverse public health consequences associated with the use of marijuana;

(g) Prevent the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and

(h) Prevent the possession and use of marijuana on federal property. [2015 c.1 §1; 2015 c.614 §35]

475B.010 Short title. ORS 475B.010 to 475B.395 shall be known and may be cited as the Control and Regulation of Marijuana Act. [2015 c.1 §3; 2015 c.614 §37]

475B.015 Definitions for ORS 475B.010 to 475B.395. As used in ORS 475B.010 to 475B.395:

(1) "Consumer" means a person who purchases, acquires, owns, holds or uses marijuana items other than for the purpose of resale.

(2) "Cannabinoid" means any of the chemical compounds that are the active constituents of marijuana.

(3) "Cannabinoid concentrate" means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process;

(b) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol;

(c) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or

(d) Any other process identified by the Oregon Liquor Control Commission, in consultation with the Oregon Health Authority, by rule.

(4) "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.

(5) "Cannabinoid extract" means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane;

(b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses high heat or pressure; or

(c) Any other process identified by the commission, in consultation with the authority, by rule.

(6)(a) "Cannabinoid product" means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers.

(b) "Cannabinoid product" does not include:

(A) Usable marijuana by itself;

(B) A cannabinoid concentrate by itself;

(C) A cannabinoid extract by itself; or

(D) Industrial hemp, as defined in ORS 571.300.

(7)(a) "Financial consideration" means value that is given or received either directly or indirectly through sales, barter, trade, fees, charges, dues, contributions or donations.

(b) "Financial consideration" does not include:

(A) Homegrown marijuana that is given or received when nothing is given or received in return; or

(B) Homemade cannabinoid products or cannabinoid concentrates that are given or received when nothing is given or received in return.

(8) "Homegrown" or "homemade" means grown or made by a person 21 years of age or older for noncommercial purposes.

(9) "Household" means a housing unit and any place in or around a housing unit at which the occupants of the housing unit are producing, processing, or storing homegrown marijuana or homemade cannabinoid products or cannabinoid concentrates.

(10) "Housing unit" means a house, an apartment or a mobile home, or a group of rooms or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building and that has direct access from the outside of the building or through a common hall.

(11) "Immature marijuana plant" means a marijuana plant that is not flowering.

(12) "Licensee" means a person who holds a license issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110.

(13) "Licensee representative" means an owner, director, officer, manager, employee, agent or other representative of a licensee, to the extent that the person acts in a representative capacity.

(14)(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

(15) "Marijuana flowers" means the flowers of the plant genus Cannabis within the plant family Cannabaceae.

(16) "Marijuana items" means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

(17) "Marijuana leaves" means the leaves of the plant genus Cannabis within the plant family Cannabaceae.

(18) "Marijuana processor" means a person who processes marijuana items in this state.

(19) "Marijuana producer" means a person who produces marijuana in this state.

(20) "Marijuana retailer" means a person who sells marijuana items to a consumer in this state.

(21) "Marijuana wholesaler" means a person who purchases marijuana items in this state for resale to a person other than a consumer.

(22) "Mature marijuana plant" means a marijuana plant that is not an immature marijuana plant.

(23) "Noncommercial" means not dependent or conditioned upon the provision or receipt of financial consideration.

(24)(a) "Premises" or "licensed premises" includes the following areas of a location licensed under ORS 475B.070, 475B.090, 475B.100 or 475B.110:

(A) All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;

(B) All areas outside a building that the commission has specifically licensed for the production, processing, wholesale sale or retail sale of marijuana items; and

(C) For a location that the commission has specifically licensed for the production of marijuana outside a building, the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, leases or has a right to occupy.

(b) "Premises" or "licensed premises" does not include a primary residence.

(25)(a) "Processes" means the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts.

(b) "Processes" does not include packaging or labeling.

(26)(a) "Produces" means the manufacture, planting, cultivation, growing or harvesting of marijuana.

(b) "Produces" does not include:

(A) The drying of marijuana by a marijuana processor, if the marijuana processor is not otherwise producing marijuana; or

(B) The cultivation and growing of an immature marijuana plant by a marijuana processor, marijuana wholesaler or marijuana retailer if the marijuana processor, marijuana wholesaler or marijuana retailer purchased or otherwise received the plant from a licensed marijuana producer.

(27) "Propagate" means to grow immature marijuana plants or to breed or produce the seeds of the plant Cannabis family Cannabaceae.

(28) "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and areas used in connection with public passenger transportation.

(29)(a) "Usable marijuana" means the dried leaves and flowers of marijuana.

(b) "Usable marijuana" does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana. [2015 c.1 §5; 2015 c.614 §1]

475B.020 Construction of ORS 475B.010 to 475B.395. ORS 475B.010 to 475B.395 may not be construed:

(1) To amend or affect state or federal law pertaining to employment matters;

(2) To amend or affect state or federal law pertaining to landlord-tenant matters;

(3) To prohibit a recipient of a federal grant or an applicant for a federal grant from prohibiting the manufacture, delivery, possession or use of marijuana to the extent necessary to satisfy federal requirements for the grant;

(4) To prohibit a party to a federal contract or a person applying to be a party to a federal contract from prohibiting the manufacture, delivery, possession or use of marijuana to the extent necessary to comply with the terms and conditions of the contract or to satisfy federal requirements for the contract;

(5) To require a person to violate a federal law;

(6) To exempt a person from a federal law or obstruct the enforcement of a federal law; or

(7) To amend or affect the Oregon Medical Marijuana Act. [2015 c.1 §4; 2015 c.614 §38]

(Powers and Duties of Oregon Liquor Control Commission)

475B.025 General powers and duties; rules. (1) The Oregon Liquor Control Commission has the powers and duties specified in ORS 475B.010 to 475B.395 and the powers necessary or proper to enable the commission to carry out the commission's duties, functions and powers under ORS 475B.010 to 475B.395. The jurisdiction, supervision, duties, functions and powers of the commission extend to any person who buys, sells,

produces, processes, transports or delivers any marijuana items within this state. The commission may sue and be sued.

(2) The duties, functions and powers of the commission in ORS 475B.010 to 475B.395 include the following:

(a) To regulate the purchase, sale, production, processing, transportation and delivery of marijuana items in accordance with the provisions of ORS 475B.010 to 475B.395.

(b) To grant, refuse, suspend or cancel licenses for the sale, processing or production of marijuana items, or other licenses in regard to marijuana items, and to permit, in the commission's discretion, the transfer of a license between persons.

(c) To investigate and aid in the prosecution of every violation of the statutory laws of this state relating to marijuana items and to cooperate in the prosecution of offenders before any state court of competent jurisdiction.

(d) To adopt, amend or repeal rules as necessary to carry out the intent and provisions of ORS 475B.010 to 475B.395, including rules that the commission considers necessary to protect the public health and safety.

(e) To exercise all powers incidental, convenient or necessary to enable the commission to administer or carry out the provisions of ORS 475B.010 to 475B.395 or any other law of this state that charges the commission with a duty, function or power related to marijuana. Powers described in this paragraph include, but are not limited to:

(A) Issuing subpoenas;

(B) Compelling the attendance of witnesses;

(C) Administering oaths;

(D) Certifying official acts;

(E) Taking depositions as provided by law;

(F) Compelling the production of books, payrolls, accounts, papers, records, documents and testimony; and

(G) Establishing fees in addition to the application, licensing and renewal fees described in ORS 475B.070, 475B.090, 475B.100 and 475B.110, provided that any fee established by the commission is reasonably calculated not to exceed the cost of the activity for which the fee is charged.

(f) To adopt rules regulating and prohibiting marijuana producers, marijuana processors, marijuana wholesalers and marijuana retailers from advertising marijuana items in a manner:

(A) That is appealing to minors;

(B) That promotes excessive use;

(C) That promotes illegal activity; or

(D) That otherwise presents a significant risk to public health and safety.

(g) To regulate the use of marijuana items for scientific, pharmaceutical, manufacturing, mechanical, industrial and other purposes.

(3) Fees collected pursuant to subsection (2)(e)(G) of this section shall be deposited in the Marijuana Control and Regulation Fund established under ORS 475B.240. [2015 c.1 §7; 2015 c.614 §2]

475B.030 Authority to purchase, possess, seize or dispose of marijuana items. The Oregon Liquor Control Commission may purchase, possess, seize or dispose of marijuana items as is necessary for the commission to ensure compliance with and enforce the provisions of ORS 475B.010 to 475B.395 and any rule adopted under ORS 475B.010 to 475B.395. [2015 c.614 §3]

475B.033 Powers related to decedents and insolvent or bankrupt persons. The Oregon Liquor Control Commission may, by order, provide for the manner and conditions under which:

(1) Marijuana items left by a deceased, insolvent or bankrupt person or licensee, or subject to a security interest, may be foreclosed, sold under execution or otherwise disposed.

(2) The business of a deceased, insolvent or bankrupt licensee may be operated for a reasonable period following the death, insolvency or bankruptcy.

(3) A secured party, as defined in ORS 79.0102, may continue to operate a business for which a license has been issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110 for a reasonable period after default on the indebtedness by the debtor. [2015 c.1 §25(2); 2015 c.614 §5(2)]

475B.035 Authority to limit quantity of marijuana items purchased by consumer. The Oregon Liquor Control Commission may limit the quantity of marijuana items purchased at any one time by a consumer so as

effectually to prevent the resale of marijuana items. [2015 c.1 §15]

(Application Process and Licenses)

475B.040 Application process for all licensees; rules. (1) An applicant for a license or renewal of a license under ORS 475B.010 to 475B.395 shall apply to the Oregon Liquor Control Commission in the form required by the commission, showing the name and address of the applicant, location of the place of business that is to be operated under the license and other pertinent information required by the commission. The commission may not grant or renew a license until the applicant has complied with the provisions of ORS 475B.010 to 475B.395 and the rules of the commission.

(2) The commission may reject any application that is not submitted in the form required by rule. The commission shall give applicants an opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

(3) Except as provided in subsection (2) of this section, a revocation of, or a refusal to issue or renew, a license under ORS 475B.010 to 475B.395 is subject to the requirements for contested case proceedings under ORS chapter 183. [2015 c.1 §28; 2015 c.614 §7]

475B.045 Grounds for refusing to issue license. (1) The Oregon Liquor Control Commission may not license an applicant under the provisions of ORS 475B.010 to 475B.395 if the applicant is under 21 years of age.

(2) The commission may refuse to license an applicant under the provisions of ORS 475B.010 to 475B.395 if the commission has reasonable ground to believe that the applicant:

(a) Is in the habit of using alcoholic beverages, habit-forming drugs, marijuana or controlled substances to excess.

(b) Has made false statements to the commission.

(c) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(d) Has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license.

(e) Is not of good repute and moral character.

(f) Does not have a good record of compliance with ORS 475B.010 to 475B.395 or any rule of the commission adopted under ORS 475B.010 to 475B.395.

(g) Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business that have not been disclosed.

(h) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.

(i) Is unable to understand the laws of this state relating to marijuana or the rules of the commission relating to marijuana.

(3) Notwithstanding subsection (2)(d) of this section, in determining whether the commission may refuse to license an applicant, the commission may not consider the prior conviction of the applicant or any owner, director, officer, manager, employee, agent or other representative of the applicant for:

(a) The manufacture of marijuana, if:

(A) The date of the conviction is two or more years before the date of the application; and

(B) The person has not been convicted more than once for the manufacture or delivery of marijuana;

(b) The delivery of marijuana to a person 21 years of age or older, if:

(A) The date of the conviction is two or more years before the date of the application; and

(B) The person has not been convicted more than once for the manufacture or delivery of marijuana; or

(c) The possession of marijuana. [2015 c.1 §29; 2015 c.614 §8]

475B.050 Authority to require fingerprints of applicants and other individuals. For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the Oregon Liquor Control Commission may require the fingerprints of any individual listed on an application submitted under ORS 475B.040. [2015 c.614 §10]

475B.055 Properties of license. A license granted under ORS 475B.010 to 475B.395:

(1) Is a purely personal privilege.

(2) Is valid for the period stated in the license.

(3) Is renewable in the manner provided in ORS 475B.040, except for a cause that would be grounds for refusal to issue the license under ORS 475B.045.

(4) Is revocable or suspendible as provided in ORS 475B.210.

(5) Is transferable from the premises for which the license was originally issued to another premises subject to the provisions of ORS 475B.010 to 475B.395, applicable rules of the Oregon Liquor Control Commission and applicable local ordinances.

(6) Expires upon the death of the licensee, except as provided in ORS 475B.033.

(7) Does not constitute property.

(8) Is not alienable.

(9) Is not subject to attachment or execution.

(10) Does not descend by the laws of testate or intestate devolution. [2015 c.1 §25(1); 2015 c.614 §5(1)]

475B.060 Duties of Oregon Liquor Control Commission with respect to issuing licenses. (1) The Oregon Liquor Control Commission shall approve or deny an application to produce, process and sell marijuana under ORS 475B.070, 475B.090, 475B.100 and 475B.110. Upon receiving an application, the commission may not unreasonably delay processing, approving or denying the application or, if the application is approved, issuing the license.

(2) The licenses described in ORS 475B.070, 475B.090, 475B.100 and 475B.110 must be issued by the commission, subject to the provisions of ORS 475B.010 to 475B.395 and the rules adopted under ORS 475B.010 to 475B.395.

(3) The commission may not license a premises that does not have defined boundaries. A licensed premises does not need to be enclosed by a wall, fence or other structure, but the commission may require that a licensed premises be enclosed as a condition of issuing or renewing a license. The commission may not license mobile premises. [2015 c.1 §18; 2015 c.614 §11]

475B.063 Duty to request land use compatibility statement. (1) Prior to the issuance of a license under ORS 475B.070, 475B.090, 475B.100 or 475B.110, the Oregon Liquor Control Commission shall request a land use compatibility statement from the city or county that authorizes the land use. The land use compatibility statement must demonstrate that the requested license is for a land use that is allowable as a permitted or conditional use within the given zoning designation where the land is located. The commission may not issue a license if the land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.

(2) A city or county that receives a request for a land use compatibility statement under this section must act on that request within 21 days of:

(a) Receipt of the request, if the land use is allowable as an outright permitted use; or

(b) Final local permit approval, if the land use is allowable as a conditional use.

(3) A city or county action concerning a land use compatibility statement under this section is not a land use decision for purposes of ORS chapter 195, 196, 197 or 215. [2015 c.614 §34(4)]

(Licensees in General)

475B.065 Lawful production, delivery and possession of marijuana items. Licensees and licensee representatives may produce, deliver and possess marijuana items subject to the provisions of ORS 475B.010 to 475B.395. The production, delivery and possession of marijuana items by a licensee or a licensee representative in compliance with ORS 475B.010 to 475B.395 does not constitute a criminal or civil offense under the laws of this state. [2015 c.1 §13; 2015 c.614 §43]

475B.068 Authority to hold more than one license. The same person may hold one or more production licenses, one or more processor licenses, one or more wholesale licenses and one or more retail licenses. [2015 c.1 §24; 2015 c.614 §47]

(License to Produce Marijuana)

475B.070 Production license; fees; rules. (1) The production of marijuana is subject to regulation by the Oregon Liquor Control Commission.

(2) A marijuana producer must have a production license issued by the commission for the premises at which the marijuana is produced. To hold a production license under this section, a marijuana producer:

(a) Must apply for a license in the manner described in ORS 475B.040;

(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under ORS 475B.040 has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older; and

(c) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.

(3) The commission shall adopt rules that:

(a) Require a marijuana producer to annually renew a license issued under this section;

(b) Establish application, licensure and renewal of licensure fees for marijuana producers;

(c) Require marijuana produced by marijuana producers to be tested in accordance with ORS 475B.555;

(d) Require marijuana producers to submit, at the time of applying for or renewing a license under ORS 475B.040, a report describing the applicant's or licensee's electrical or water usage; and

(e)(A) Require a marijuana producer to meet any public health and safety standards and industry best practices established by the commission by rule related to:

(i) The production of marijuana; or

(ii) The propagation of immature marijuana plants and the seeds of the plant Cannabis family Cannabaceae.

(B) For purposes of establishing rules under subparagraph (A)(ii) of this paragraph, the commission may not limit:

(i) The number of immature marijuana plants that may be possessed by a marijuana producer licensed under this section;

(ii) The size of the grow canopy a marijuana producer licensed under this section uses to grow immature marijuana plants; or

(iii) The weight or size of shipments of immature marijuana plants made by a marijuana producer licensed under this section.

(4) Fees adopted under subsection (3)(b) of this section:

(a) May not exceed the cost of administering ORS 475B.010 to 475B.395 with respect to marijuana producers;

(b) Shall be in the form of a schedule that imposes a greater fee for premises with more square footage or on which more mature marijuana plants are grown; and

(c) Shall be deposited in the Marijuana Control and Regulation Fund established under ORS 475B.240. [2015 c.1 §19; 2015 c.614 §12]

475B.075 Mature marijuana plant grow canopies; rules. (1) Subject to subsection (2) of this section, the Oregon Liquor Control Commission shall adopt rules restricting the size of mature marijuana plant grow canopies at premises for which a license has been issued under ORS 475B.070. In adopting rules under this subsection, the commission shall:

(a) Limit the size of mature marijuana plant grow canopies, for premises where marijuana is grown outdoors and for premises where marijuana is grown indoors, in a manner calculated to result in premises that produce the same amount of harvested marijuana leaves and harvested marijuana flowers regardless of whether the marijuana is grown outdoors or indoors.

(b) Adopt a tiered system under which the permitted size of a marijuana producer's mature marijuana plant grow canopy increases at the time of licensure renewal under ORS 475B.070, except that the permitted size of a marijuana producer's mature marijuana plant grow canopy may not increase following any year during which the commission disciplined the marijuana producer for violating a provision of ORS 475B.010 to 475B.395 or a rule adopted under a provision of ORS 475B.010 to 475B.395.

(c) Take into consideration the market demand for marijuana items in this state, the number of persons applying for a license under ORS 475B.070 and to whom a license has been issued under ORS 475B.070, and whether the availability of marijuana items in this state is commensurate with the market demand.

(2) This section does not apply to a premises for which a license has been issued under ORS 475B.070 if the premises is used only to propagate immature marijuana plants. [2015 c.614 §13]

475B.080 Issuing marijuana production licenses to marijuana grow sites registered under Oregon Medical Marijuana Act; rules. (1) A person responsible for a marijuana grow site under ORS 475B.420 may apply for a license under ORS 475B.070 to produce marijuana at the address of the marijuana grow site, provided that all individuals registered with the Oregon Health Authority to produce marijuana at the address are listed on the application submitted to the Oregon Liquor Control Commission under ORS 475B.040.

(2) Notwithstanding any other provision of ORS 475B.010 to 475B.395, the commission may issue a license under ORS 475B.070 to a person responsible for a marijuana grow site under ORS 475B.420 if the person responsible for the marijuana grow site:

(a) Meets any criminal background check requirements established by the commission by rule;

(b) Agrees to be subject to the provisions of ORS 475B.010 to 475B.395, including ORS 475B.063, 475B.340 and 475B.370, and rules adopted under ORS 475B.010 to 475B.395, that apply to marijuana producers; and

(c) Submits proof, in a form and manner prescribed by the commission, of having obtained the permission to apply for licensure under ORS 475B.070 of each individual who holds a registry identification card issued under ORS 475B.415 for whom the person produces marijuana at the address of the marijuana grow site.

(3) The commission by rule or order may waive the application of any rule adopted under ORS 475B.010 to 475B.395 to a person responsible for a marijuana grow site that holds a license under ORS 475B.070.

(4) A person responsible for a marijuana grow site that holds a license under ORS 475B.070:

(a) May not possess more than the amount or number of marijuana plants permitted pursuant to ORS 475B.400 to 475B.525;

(b) Must allow each marijuana plant to be tracked using the system developed and maintained under ORS 475B.150;

(c) May sell immature marijuana plants and usable marijuana in excess of amounts produced for individuals who hold a registry identification card issued under ORS 475B.415 to a person who holds a license under ORS 475B.090, 475B.100 or 475B.110, in accordance with rules adopted by the commission; and

(d) May transfer marijuana and usable marijuana to other registrants under ORS 475B.400 to 475B.525 in accordance with rules adopted by the authority.

(5) In a form and manner prescribed by the commission, a person responsible for a marijuana grow site that holds a license under ORS 475B.070 may surrender the person's license. If the person surrenders the person's license, the person is no longer subject to the provisions of this section.

(6) Notwithstanding ORS 475B.460, the authority may provide information to the commission as is necessary for the commission to determine whether a person responsible for a marijuana grow site that holds a license under ORS 475B.070 is in compliance with this section.

(7) This section does not prohibit or otherwise restrict the duties, functions and powers of a person responsible for a marijuana grow site as set forth in ORS 475B.400 to 475B.525, except that the person is not subject to any requirement related to the reporting or tracking of mature marijuana plants and usable marijuana. [2015 c.614 §116]

(License to Process Marijuana Items)

475B.090 Processor license; fees; rules. (1) The processing of marijuana items is subject to regulation by the Oregon Liquor Control Commission.

(2) A marijuana processor must have a processor license issued by the commission for the premises at which marijuana items are processed. To hold a processor license under this section, a marijuana processor:

(a) Must apply for a license in the manner described in ORS 475B.040;

(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under ORS 475B.040 has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;

(c) If the marijuana processor processes marijuana extracts, may not be located in an area zoned exclusively for residential use; and

(d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.

(3) The commission shall adopt rules that:

(a) Require a marijuana processor to annually renew a license issued under this section;

(b) Establish application, licensure and renewal of licensure fees for marijuana processors;

(c) Require marijuana processed by a marijuana processor to be tested in accordance with ORS 475B.555; and

(d) Require a marijuana processor to meet any public health and safety standards and industry best practices established by the commission by rule related to:

(A) Cannabinoid edibles;

(B) Cannabinoid concentrates;

(C) Cannabinoid extracts; and

(D) Any other type of cannabinoid product identified by the commission by rule.

(4) Fees adopted under subsection (3)(b) of this section:

(a) May not exceed the cost of administering ORS 475B.010 to 475B.395 with respect to marijuana processors; and

(b) Shall be deposited in the Marijuana Control and Regulation Fund established under ORS 475B.240.

[2015 c.1 §20; 2015 c.614 §14]

(License to Sell Marijuana Items at Wholesale)

475B.100 Wholesale license; fees; rules. (1) The wholesale sale of marijuana items is subject to regulation by the Oregon Liquor Control Commission.

(2) A marijuana wholesaler must have a wholesale license issued by the commission for the premises at which marijuana items are received, stored or delivered. To hold a wholesale license under this section, a marijuana wholesaler:

(a) Must apply for a license in the manner described in ORS 475B.040;

(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under ORS 475B.040 has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;

(c) May not be located in an area that is zoned exclusively for residential use; and

(d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.

(3) The commission shall adopt rules that:

(a) Require a marijuana wholesaler to annually renew a license issued under this section;

(b) Establish application, licensure and renewal of licensure fees for marijuana wholesalers;

(c) Require marijuana items received, stored or delivered by a marijuana wholesaler to be tested in accordance with ORS 475B.555; and

(d) Require a marijuana wholesaler to meet any public health and safety standards and industry best practices established by the commission by rule.

(4) Fees adopted under subsection (3)(b) of this section:

(a) May not exceed the cost of administering ORS 475B.010 to 475B.395 with respect to marijuana wholesalers; and

(b) Shall be deposited in the Marijuana Control and Regulation Fund established under ORS 475B.240.

[2015 c.1 §21; 2015 c.614 §15]

(License to Sell Marijuana Items at Retail)

475B.110 Retail license; fees; rules. (1) The retail sale of marijuana items is subject to regulation by the Oregon Liquor Control Commission.

(2) A marijuana retailer must have a retail license issued by the commission for the premises at which marijuana items are sold. To hold a retail license under this section, a marijuana retailer:

(a) Must apply for a license in the manner described in ORS 475B.040;

(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under ORS 475B.040 has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;

(c) May not be located in an area that is zoned exclusively for residential use;

(d) May not be located within 1,000 feet of:

(A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a); and

(e) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.

(3) The commission shall adopt rules that:

(a) Require a marijuana retailer to annually renew a license issued under this section;

(b) Establish application, licensure and renewal of licensure fees for marijuana retailers;

(c) Require marijuana items sold by a marijuana retailer to be tested in accordance with ORS 475B.555; and

(d) Require a marijuana retailer to meet any public health and safety standards and industry best practices established by the commission by rule.

(4) Fees adopted under subsection (3)(b) of this section:

(a) May not exceed the cost of administering ORS 475B.010 to 475B.395 with respect to marijuana retailers; and

(b) Shall be deposited in the Marijuana Control and Regulation Fund established under ORS 475B.240. [2015 c.1 §22; 2015 c.614 §16]

475B.115 Establishment of school after issuance of license. If a school described in ORS 475B.110 (2)(d) that has not previously been attended by children is established within 1,000 feet of a premises for which a license has been issued under ORS 475B.110, the marijuana retailer located at that premises may remain at that location unless the Oregon Liquor Control Commission revokes the license of the marijuana retailer under ORS 475B.210. [2015 c.614 §17]

475B.120 Requirement to maintain bond; bond payable upon failure to pay tax. (1) Except as provided in subsection (2) of this section, the Oregon Liquor Control Commission may require a person that holds a license under ORS 475B.110 to maintain on file with the commission a bond with a corporate surety authorized to transact business in this state. The bond shall be in a form acceptable to the commission and shall be in an amount that the commission determines is reasonably affordable and available. The bond is payable to the commission if the licensee fails to pay any tax imposed on the sale of marijuana items as required by state law.

(2) In lieu of maintaining the bond required by subsection (1) of this section, a person that holds a license under ORS 475B.110 may deposit in a bank or trust company for the benefit of the commission an equivalent amount in cash, letters of credit recognized by the State Treasurer or negotiable securities of a character approved by the State Treasurer. Interest earned on deposited funds or securities shall accrue to the person that made the deposit. [2015 c.614 §21; 2015 c.736 §119]

475B.125 Requirement to verify person's age; rules. The Oregon Liquor Control Commission may adopt rules establishing the circumstances under which the commission may require a marijuana retailer that holds a license issued under ORS 475B.110 to use an age verification scanner or any other equipment used to verify a person's age for the purpose of ensuring that the marijuana retailer does not sell marijuana items to a person under 21 years of age. The marijuana retailer may not retain any information obtained under this section after verifying a person's age. The marijuana retailer may not use any information obtained under this section for any purpose other than verifying a person's age. [2015 c.614 §26]

(Powers and Duties of Oregon Liquor Control Commission With Respect to Licensees)

475B.130 Authority to inspect books and premises; notice. (1) The Oregon Liquor Control Commission has the right after 72 hours' notice to the owner or the agent of the owner to make an examination of the books and may at any time make an examination of the premises of any person licensed under ORS 475B.010 to 475B.395 for the purpose of determining compliance with ORS 475B.010 to 475B.395 and the rules of the commission.

(2) The commission may not require the books of a licensee to be maintained on the premises of the licensee.

(3) This section does not authorize the commission to make an examination of the premises of a person registered under ORS 475B.400 to 475B.525. [2015 c.1 §23; 2015 c.614 §46]

475B.135 Authority to require segregation of premises. As is necessary to protect the public health and safety, the Oregon Liquor Control Commission may require a premises licensed under ORS 475B.070, 475B.090, 475B.100 or 475B.110 to be segregated into separate areas:

(1) For conducting the activities permitted under each license if the licensee holds more than one license issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110; or

(2) For conducting activities related to processing marijuana into different types of cannabinoid products, cannabinoid concentrates or cannabinoid extracts, if the licensee is a marijuana processor that processes marijuana into any combination of different types of products, concentrates and extracts. [2015 c.614 §18]

475B.140 Authority to require general liability insurance. As is necessary to protect the public health and safety, the Oregon Liquor Control Commission may require a person that holds a license under ORS 475B.070, 475B.090, 475B.100 or 475B.110 to maintain general liability insurance in an amount that the commission determines is reasonably affordable and available for the purpose of protecting the person against damages resulting from a cause of action related to activities undertaken pursuant to the license. [2015 c.614 §22]

475B.145 Authority to establish merit-based criteria for licensure or renewal of licensure. In adopting rules related to industry best practices under ORS 475B.070, 475B.090, 475B.100 and 475B.110, the Oregon Liquor Control Commission may establish merit-based criteria for licensure or renewal of licensure, including, but not limited to, possession of a developed business plan, access to sufficient capital, offering living wages and benefits to employees, provision of training and apprenticeship, provision of community benefits, implementation of best environmental practices and implementation of consumer safety practices. [2015 c.614 §20c]

475B.150 Duty to develop and maintain system for tracking transfer of marijuana items. (1) The Oregon Liquor Control Commission shall develop and maintain a system for tracking the transfer of marijuana items between licensed premises.

(2) The purposes of the system developed and maintained under this section include, but are not limited to:

(a) Preventing the diversion of marijuana items to criminal enterprises, gangs, cartels and other states;

(b) Preventing persons from substituting or tampering with marijuana items;

(c) Ensuring an accurate accounting of the production, processing and sale of marijuana items;

(d) Ensuring that taxes are collected for the purpose of being distributed as described in section 44, chapter 1, Oregon Laws 2015;

(e) Ensuring that laboratory testing results are accurately reported; and

(f) Ensuring compliance with the provisions of ORS 475B.010 to 475B.395, rules adopted under the provisions of ORS 475B.010 to 475B.395 and any other law of this state that charges the commission with a duty, function or power related to marijuana.

(3) The system developed and maintained under this section must be capable of tracking, at a minimum:

(a) The propagation of immature marijuana plants and the production of marijuana by a marijuana producer;

(b) The processing of marijuana by a marijuana processor;

(c) The receiving, storing and delivering of marijuana items by a marijuana wholesaler;

(d) The sale of marijuana items by a marijuana retailer to a consumer;

(e) The purchase and sale of marijuana items between licensees, as permitted by ORS 475B.010 to 475B.395;

(f) The transfer of marijuana items between licensed premises; and

(g) Any other information that the commission determines is reasonably necessary to accomplish the duties, functions and powers of the commission under ORS 475B.010 to 475B.395. [2015 c.614 §23; 2015 c.736 §120]

(Conduct of Licensees)

475B.160 Restrictions on deliveries. (1) A marijuana producer, marijuana processor or marijuana wholesaler may deliver marijuana items only to or on a licensed premises.

(2) A licensed premises may receive marijuana items only from a marijuana producer, marijuana processor or marijuana wholesaler for whom a premises has been licensed by the Oregon Liquor Control Commission.

(3) The sale of marijuana items by a marijuana retailer that holds a license issued under ORS 475B.110 must be restricted to the premises described in the license, but deliveries may be made by the marijuana retailer to consumers pursuant to a bona fide order received at the licensed premises prior to delivery. [2015 c.1 §27; 2015 c.614 §6]

475B.165 Prohibition against selling or delivering marijuana items to persons under 21 years of age. A licensee or licensee representative may not sell or deliver a marijuana item to a person under 21 years of age. [2015 c.1 §14; 2015 c.614 §44]

475B.170 Identification requirement; rules. (1) Subject to subsection (2) of this section, a licensee or licensee representative, before selling or providing a marijuana item to another person, must require the person to produce one of the following pieces of identification:

(a) The person's passport.

(b) The person's driver license, whether issued in this state or by any other state, as long as the license has a picture of the person.

(c) An identification card issued under ORS 807.400.

(d) A United States military identification card.

(e) Any other identification card issued by a state that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.

(2) The Oregon Liquor Control Commission may adopt rules exempting a licensee or licensee representative from this section. [2015 c.1 §16; 2015 c.614 §24]

475B.180 Prohibition against employing persons under 21 years of age. (1) A licensee may not employ any person under 21 years of age in any part of any licensed premises.

(2) During any inspection of a licensed premises, the Oregon Liquor Control Commission may require proof that a person performing work at the premises is 21 years of age or older. If the person does not provide the commission with acceptable proof of age upon request, the commission may require the person to immediately cease any activity and leave the premises until the commission receives acceptable proof of age. This subsection does not apply to a person temporarily at the premises to make a service, maintenance or repair call or for other purposes independent of the premises operations.

(3) If a person performing work has not provided proof of age requested by the commission under subsection (2) of this section, the commission may request that the licensee provide proof that the person is 21 years of age or older. Failure of the licensee to respond to a request made under this subsection by providing acceptable proof of age for a person is prima facie evidence that the licensee has allowed the person to perform work at the licensed premises in violation of the minimum age requirement. [2015 c.1 §52]

475B.185 Prohibition against importing or exporting marijuana items. (1) A licensee or licensee representative may not import marijuana items into this state or export marijuana items from this state.

(2) A violation of subsection (1) of this section is a:

(a) Class C felony, if the importation or exportation is for consideration; or

(b) Class A misdemeanor, if the importation or exportation is not for consideration. [2015 c.1 §45; 2015 c.614 §48]

475B.190 Prohibition against obfuscating mark or label or using mark or label to deceive. (1) A licensee may not use or allow the use of a mark or label on the container of a marijuana item that is kept for sale if the container does not precisely and clearly indicate the nature of the container's contents or in any way might deceive a customer as to the nature, composition, quantity, age or quality of the marijuana item.

(2) The Oregon Liquor Control Commission may prohibit a licensee from selling any brand of marijuana item that in the commission's judgment is deceptively labeled or branded as to content or contains injurious or adulterated ingredients. [2015 c.1 §51; 2015 c.614 §53]

475B.195 Requirement that marijuana items comply with minimum standards. (1) A marijuana item may not be sold or offered for sale within this state unless the marijuana item complies with the minimum standards prescribed by the statutory laws of this state.

(2) The Oregon Liquor Control Commission may prohibit the sale of a marijuana item by a marijuana retailer for a reasonable period of time for the purpose of determining whether the marijuana item complies with the minimum standards prescribed by the statutory laws of this state. [2015 c.1 §50; 2015 c.614 §52]

475B.200 Prohibition against holders of certain licenses possessing mature marijuana plants. (1) Except for a licensed marijuana producer and the producer's licensee representative, a licensee may not possess a mature marijuana plant.

(2) A licensee may not sell a mature marijuana plant. [2015 c.1 §53; 2015 c.614 §54]

475B.205 Other prohibitions. (1) A person may not make false representations or statements to the Oregon Liquor Control Commission in order to induce or prevent action by the commission.

(2) A licensee of the commission may not maintain a noisy, lewd, disorderly or insanitary establishment or supply impure or otherwise deleterious marijuana items.

(3) A licensee of the commission may not misrepresent to a customer or to the public any marijuana items. [2015 c.1 §48; 2015 c.614 §51]

(Disciplining Licensees)

475B.210 Grounds for revoking or suspending license. The Oregon Liquor Control Commission may revoke or suspend a license issued under ORS 475B.010 to 475B.395 if the commission finds or has reasonable ground to believe any of the following to be true:

(1) That the licensee:

(a) Has violated a provision of ORS 475B.010 to 475B.395 or a rule of the commission adopted under ORS 475B.010 to 475B.395.

(b) Has made any false representation or statement to the commission in order to induce or prevent action by the commission.

(c) Is insolvent or incompetent or physically unable to carry on the management of the establishment of the licensee.

(d) Is in the habit of using alcoholic liquor, habit-forming drugs, marijuana or controlled substances to excess.

(e) Has misrepresented to a customer or the public any marijuana items sold by the licensee.

(f) Since the granting of the license, has been convicted of a felony, of violating any of the marijuana laws of this state, general or local, or of any misdemeanor or violation of any municipal ordinance committed on the licensed premises.

(2) That there is any other reason that, in the opinion of the commission, based on public convenience or necessity, warrants canceling or suspending the license. [2015 c.1 §30; 2015 c.614 §9]

(Employees and Other Workers)

475B.215 Permit required to perform work for or on behalf of marijuana retailer. (1) An individual who performs work for or on behalf of a person who holds a license under ORS 475B.110 must have a valid permit issued by the Oregon Liquor Control Commission under ORS 475B.218 if the individual participates in:

(a) The possession, securing or selling of marijuana items at the premises for which the license has been issued;

(b) The recording of the possession, securing or selling of marijuana items at the premises for which the license has been issued; or

(c) The verification of any document described in ORS 475B.170.

(2) A person who holds a license under ORS 475B.110 must verify that an individual has a valid permit issued under ORS 475B.218 before allowing the individual to perform any work described in subsection (1) of this section at the premises for which the license has been issued. [2015 c.614 §19]

475B.218 Issuing and renewing permits; fees; rules. (1) The Oregon Liquor Control Commission shall issue permits to qualified applicants to perform work described in ORS 475B.215. The commission shall adopt rules establishing:

(a) The qualifications for performing work described in ORS 475B.215;

(b) The term of a permit issued under this section;

(c) Procedures for applying for and renewing a permit issued under this section; and

(d) Reasonable application, issuance and renewal fees for a permit issued under this section.

(2)(a) The commission may require an individual applying for a permit under this section to successfully complete a course, made available by or through the commission, through which the individual receives training on:

(A) Checking identification;

(B) Detecting intoxication;

(C) Handling marijuana items;

(D) The content of ORS 475B.010 to 475B.395 and rules adopted under ORS 475B.010 to 475B.395; and

(E) Any matter deemed necessary by the commission to protect the public health and safety.

(b) The commission or other provider of the course may charge a reasonable fee for the course.

(c) The commission may not require an individual to successfully complete the course more than once, except that:

(A) As part of a final order suspending a permit issued under this section, the commission may require a permit holder to successfully complete the course as a condition of lifting the suspension; and

(B) As part of a final order revoking a permit issued under this section, the commission shall require an individual to successfully complete the course prior to applying for a new permit.

(3) The commission shall conduct a criminal records check under ORS 181A.195 on an individual applying for a permit under this section.

(4) Subject to the applicable provisions of ORS chapter 183, the commission may suspend, revoke or refuse to issue or renew a permit if the individual who is applying for or who holds the permit:

(a) Is convicted of a felony, except that the commission may not consider a conviction for the manufacture or delivery of marijuana if the date of the conviction is two or more years before the date of the application or renewal;

(b) Violates any provision of ORS 475B.010 to 475B.395 or any rule adopted under ORS 475B.010 to 475B.395; or

(c) Makes a false statement to the commission.

(5) A permit issued under this section is a personal privilege and permits work described under ORS 475B.215 only for the individual who holds the permit. [2015 c.614 §20]

475B.230 Right of employees to organize. (1) An employee of a person licensed under ORS 475B.070, 475B.090, 475B.100 or 475B.110 has the right to form, join and participate in the activities of a labor organization of the employee's own choosing for the purpose of securing representation and collective bargaining for matters concerning employment relations with the person licensed under ORS 475B.070, 475B.090, 475B.100 or 475B.110.

(2) For purposes of this section, the provisions of ORS chapters 661 to 663 apply to relations between employees of persons licensed under ORS 475B.070, 475B.090, 475B.100 and 475B.110 and employers that are licensed under ORS 475B.070, 475B.090, 475B.100 or 475B.110 in the same manner that those provisions apply to other employment relations. [2015 c.614 §20a]

475B.233 Whistleblower protection for employees. (1) It is an unlawful employment practice for a person that holds a license under ORS 475B.070, 475B.090, 475B.100 or 475B.110 to discharge, demote, suspend or in any manner discriminate or retaliate against an employee of the person with regard to promotion, compensation or other terms, conditions or privileges of employment on the basis that the employee has in good faith reported information to the Oregon Liquor Control Commission that the employee believes is evidence of a violation of a provision of ORS 475B.010 to 475B.395 or a rule adopted under a provision of ORS 475B.010 to 475B.395.

(2) This section is subject to enforcement under ORS chapter 659A. [2015 c.614 §20b]

(Cannabis Research)

475B.235 Certifying public and private researchers of cannabis; rules. (1) The Oregon Liquor Control Commission, in consultation with the Oregon Health Authority and the State Department of Agriculture, shall

establish a program for the purpose of identifying and certifying private and public researchers of cannabis.

(2)(a) The authority shall assist the commission in identifying candidates for certification under this section with respect to potential medical research.

(b) The department shall assist the commission in identifying candidates for certification under this section with respect to potential agricultural research.

(3) Subject to subsection (4) of this section, the commission shall adopt by rule or order:

(a) Qualifications for certification under this section;

(b) The term of a certificate issued under this section;

(c) Processes for applying for, receiving and renewing a certificate under this section;

(d) Procedures for tracking marijuana, usable marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts received by and disposed or otherwise made use of by a person certified under this section; and

(e) Procedures for disposing or otherwise making use of marijuana, usable marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

(4) In establishing qualifications under subsection (3) of this section, the commission shall consider the following:

(a) A research applicant's access to funding and the overall cost of the proposed research;

(b) The overall benefit of an applicant's proposed research to this state's cannabis industry or to public health and safety; and

(c) Legal barriers to conducting the proposed research or legal risks associated with conducting the proposed research.

(5) A person certified under this section:

(a) May receive marijuana, usable marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts from a licensee or a registrant under ORS 475B.400 to 475B.525; and

(b) May not sell or otherwise transfer marijuana, usable marijuana, cannabinoid products, cannabinoid concentrates or cannabinoid extracts to any other person, except as provided in rules adopted by the commission under subsection (3)(e) of this section.

(6) Except as otherwise provided by the commission by rule, rules adopted by the commission for the purpose of administering and enforcing ORS 475B.010 to 475B.395 with respect to licensees and licensee representatives apply to persons certified under this section and persons employed by or who otherwise perform work for persons certified under this section.

(7) A person who is certified under this section, and an employee of or other person who performs work for a person certified under this section, is exempt from the criminal laws of this state for possession, delivery or manufacture of marijuana, aiding and abetting another in the possession, delivery and manufacture of marijuana, or any other criminal offense in which possession, delivery or manufacture of marijuana is an element, while performing activities related to conducting research as described in this section. [2015 c.614 §113]

(Marijuana Control and Regulation Fund)

475B.240 Marijuana Control and Regulation Fund. The Marijuana Control and Regulation Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Marijuana Control and Regulation Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Liquor Control Commission to administer and enforce ORS 475B.010 to 475B.395. [2015 c.614 §32]

(Homegrown Marijuana and Homemade Cannabinoid Products and Concentrates)

475B.245 Applicability of licensing provisions to homegrown marijuana and homemade cannabinoid products and concentrates. ORS 475B.025, 475B.033, 475B.035, 475B.040, 475B.045, 475B.055, 475B.060, 475B.065, 475B.068, 475B.070, 475B.090, 475B.100, 475B.110, 475B.130, 475B.160, 475B.165, 475B.170, 475B.210, 475B.265, 475B.325, 475B.330, 475B.335, 475B.350, 475B.353, 475B.355, 475B.358 and 475B.380 do not apply:

(1) To the production, processing or storage of homegrown marijuana at a household by one or more persons 21 years of age and older, if the total amount of homegrown marijuana at the household does not exceed four

marijuana plants and eight ounces of usable marijuana at any time.

(2) To the making, processing or storage of homemade cannabinoid products at a household by one or more persons 21 years of age and older, if the total amount of homemade cannabinoid products at the household does not exceed 16 ounces in solid form at any time.

(3) To the making, processing or storage of homemade cannabinoid products at a household by one or more persons 21 years of age and older, if the total amount of homemade cannabinoid products at the household does not exceed 72 ounces in liquid form at any time.

(4) To the making, processing or storage of homemade cannabinoid concentrates at a household by one or more persons 21 years of age or older, if the total amount of homemade cannabinoid concentrates at the household does not exceed 16 ounces at any time.

(5) To the delivery of not more than one ounce of homegrown marijuana at a time by a person 21 years of age or older to another person 21 years of age or older for noncommercial purposes.

(6) To the delivery of not more than 16 ounces of homemade cannabinoid products in solid form at a time by a person 21 years of age or older to another person 21 years of age or older for noncommercial purposes.

(7) To the delivery of not more than 72 ounces of homemade cannabinoid products in liquid form at a time by a person 21 years of age or older to another person 21 years of age or older for noncommercial purposes.

(8) To the delivery of not more than 16 ounces of cannabinoid concentrates at a time by a person 21 years of age or older to another person 21 years of age or older for noncommercial purposes. [2015 c.1 §6(1); 2015 c.614 §39(1)]

475B.250 Prohibition against producing, processing or storing homegrown marijuana or homemade cannabinoid products or concentrates in public view. (1) A person may not produce, process or store homegrown marijuana or homemade cannabinoid products or cannabinoid concentrates if the homegrown marijuana or homemade cannabinoid products or cannabinoid concentrates can be readily seen by normal unaided vision from a public place.

(2) A violation of subsection (1) of this section is a Class B violation. [2015 c.1 §56; 2015 c.614 §55]

475B.255 Prohibition against producing, processing or storing homemade cannabinoid extracts. A person may not produce, process or store homemade cannabinoid extracts. [2015 c.1 §57; 2015 c.614 §56]

(Prohibited Conduct)

475B.260 Prohibition against person under 21 years of age attempting to purchase, purchasing or acquiring marijuana item; penalty. (1)(a) A person under 21 years of age may not attempt to purchase, purchase or acquire a marijuana item.

(b) For purposes of this subsection, purchasing a marijuana item includes accepting a marijuana item, and acquiring a marijuana item includes consuming a marijuana item, provided that the consumption of the marijuana item occurred no more than 24 hours before the determination that the person consumed the marijuana item.

(2) Except as authorized by the Oregon Liquor Control Commission by rule, or as necessary in an emergency, a person under 21 years of age may not enter or attempt to enter any portion of a licensed premises that is posted or otherwise identified as being prohibited to the use of persons under 21 years of age.

(3) A person who violates subsection (1) or (2) of this section commits a Class B violation.

(4) In addition to and not in lieu of any other penalty established by law, a court may require a person under 21 years of age who violates subsection (1) of this section through misrepresentation of age to perform community service, and the court may order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order suspending driving privileges under this section, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(5) If a person cited under this section is at least 13 years of age but less than 21 years of age at the time the person is found in default under ORS 153.102 or 419C.472 for failure to appear, in addition to and not in lieu of

any other penalty, the court shall issue notice under ORS 809.220 to the department for the department to suspend the person's driving privileges under ORS 809.280 (4).

(6) In addition to and not in lieu of any penalty established by law, the court may order a person to undergo assessment and treatment if the person has previously been found to have violated this section.

(7) The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of the commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of marijuana items to persons who are under 21 years of age.

(8) The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of marijuana items to persons who are under 21 years of age.

(9)(a) A person under 21 years of age is not in violation of, and is immune from prosecution under, this section if:

(A) The person contacted emergency medical services or a law enforcement agency in order to obtain medical assistance for another person who was in need of medical assistance because that person consumed a marijuana item and the evidence of the violation of this section was obtained as a result of the person's having contacted emergency medical services or a law enforcement agency; or

(B) The person was in need of medical assistance because the person consumed a marijuana item and the evidence of the violation of this section was obtained as a result of the person's having sought or obtained the medical assistance.

(b) Paragraph (a) of this subsection does not exclude the use of evidence obtained as a result of a person's having sought medical assistance in proceedings for crimes or offenses other than a violation of this section. [2015 c.1 §49; 2015 c.614 §25]

475B.265 Prohibition against producing identification that falsely indicates age; protections for licensees and licensee representatives that rely on identification that falsely indicates age. (1) A person may not produce any piece of identification that would falsely indicate the person's age.

(2) If a piece of identification is offered as evidence in any administrative or criminal prosecution of a licensee or licensee representative for sale or service of a marijuana item to a person under 21 years of age, the licensee or licensee representative is not guilty of any offense prohibiting a person from selling or serving a marijuana item to a person under 21 years of age unless it is demonstrated that a reasonable person would have determined that the identification exhibited by the person under 21 years of age was altered or did not accurately describe the person under 21 years of age to whom the marijuana item was sold or served. [2015 c.1 §17; 2015 c.614 §45]

475B.270 Prohibition against selling, giving or making available marijuana item to person who is visibly intoxicated; prohibition against providing marijuana item to person under 21 years of age on private real property. (1) A person may not sell, give or otherwise make available any marijuana item to a person who is visibly intoxicated.

(2)(a) A person who exercises control over private real property may not knowingly allow a person under the age of 21 years to consume marijuana items on the property, or allow any other person under the age of 21 years to remain on the property if the person under the age of 21 years consumes marijuana items on the property.

(b) This subsection:

(A) Applies only to a person who is present and in control of the location at the time the consumption occurs; and

(B) Does not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual housing unit in which the owner or agent resides. [2015 c.1 §47; 2015 c.614 §50]

475B.275 Prohibition against giving marijuana item as prize. A marijuana item may not be given as a prize, premium or consideration for a lottery, contest, game of chance, game of skill or competition of any kind. [2015 c.1 §46; 2015 c.614 §49]

475B.280 Prohibition against using marijuana item in public place. (1) It is unlawful for any person to engage in the use of marijuana items in a public place.

(2) A violation of subsection (1) of this section is a Class B violation. [2015 c.1 §54]

(Civil Enforcement of ORS 475B.010 to 475B.395)

475B.285 Powers of regulatory specialists. (1) An Oregon Liquor Control Commission regulatory specialist has the authority as provided in ORS 133.005 to 133.400, 133.450, 133.525 to 133.703, 133.721 to 133.739, 161.235, 161.245 and 475B.010 to 475B.395, ORS chapter 153 and chapter 743, Oregon Laws 1971, to conduct inspections and investigations, make seizures, aid in prosecutions for offenses, issue citations for violations and otherwise enforce the provisions of ORS 475B.010 to 475B.395, any rule adopted under ORS 475B.010 to 475B.395 and any other law of this state that charges the commission with a duty, function or power related to marijuana, including enforcing any provision of a law or rule related to individuals who use false identification for purposes of purchasing or possessing a marijuana item or who engage in illegal activity on or near a licensed premises.

(2) A commission regulatory specialist may not:

(a) Be sworn in as a federal law enforcement official and act in that capacity while performing duties under this section.

(b) Carry a firearm.

(c) Conduct inspections and investigations of a primary residence or for purposes of ensuring compliance with ORS 475B.245 and 475B.375.

(d) Except as provided in ORS 475B.080, conduct inspections and investigations for purposes of ensuring compliance with ORS 475B.400 to 475B.525. [2015 c.614 §30]

475B.290 Authority to issue subpoenas. For purposes of ORS 475B.010 to 475B.395, the provisions of ORS 183.440 apply to subpoenas issued by the Oregon Liquor Control Commission and any authorized agent of the commission. [2015 c.614 §31]

475B.295 Civil penalty for violating ORS 475B.010 to 475B.395. In addition to any other liability or penalty provided by law, the Oregon Liquor Control Commission may impose for each violation of a provision of ORS 475B.010 to 475B.395 or a rule adopted under a provision of ORS 475B.010 to 475B.395 a civil penalty that does not exceed $5,000 for each violation. The commission shall impose civil penalties under this section in the manner provided by ORS 183.745. Moneys collected under this section shall be deposited in the Marijuana Control and Regulation Fund established under ORS 475B.240. [2015 c.614 §29]

475B.298 Forfeiture of building or premises for violating ORS 475B.010 to 475B.395. If it is proved that the owner of a building or premises knowingly has used the building or premises or allowed the building or premises to be occupied for the manufacture, sale or possession of marijuana items contrary to the provisions of ORS 475B.010 to 475B.395, the building or premises are subject to a lien for, and may be sold to pay all fines and costs assessed against their occupants for, any violation of ORS 475B.010 to 475B.395. The lien must be enforced immediately by civil action in any court that has jurisdiction, by the district attorney of the county in which the building or premises are located. [2015 c.1 §67; 2015 c.614 §64]

(Criminal Enforcement of ORS 475B.010 to 475B.395)

475B.300 Authority of law enforcement personnel to enforce provisions of ORS 475B.010 to 475B.395. The state police, sheriffs and police officers of this state may enforce ORS 475B.010 to 475B.395 and assist the Oregon Liquor Control Commission in detecting violations of ORS 475B.010 to 475B.395 and apprehending offenders. An enforcing officer who has notice, knowledge or reasonable ground of suspicion of a violation of ORS 475B.010 to 475B.395 shall immediately notify the district attorney and furnish the district attorney with names and addresses of any witnesses, or other information within the officer's knowledge, of the violation. [2015 c.1 §63; 2015 c.614 §60]

475B.305 Seizure of marijuana items by law enforcement personnel. (1) When an officer arrests a person for violation of ORS 475B.010 to 475B.395, the officer may take into possession all marijuana items and other property that the person so arrested has in possession, or that is on the premises, that is apparently being used in violation of ORS 475B.010 to 475B.395.

(2) If a person arrested as described in this section is convicted, and the court finds that the marijuana items and other property have been used in violation of the laws of this state:

(a) The marijuana items must be forfeited to an appropriate state or local law enforcement agency and must be delivered by the court or officer, at the direction of the court, to the law enforcement agency; and

(b) Subject to other applicable law, the other property must be forfeited to the Oregon Liquor Control Commission, and must be delivered by the court or officer to the commission.

(3) The commission is authorized to destroy or make such other disposition of any property it receives under subsection (2)(b) of this section as it considers to be in the public interest. In any such case, all such property, including furniture, furnishings, equipment and facilities for the storing, serving or using of marijuana items must be confiscated and forfeited to the state, and the clear proceeds must be deposited with the State Treasury in the Common School Fund. [2015 c.1 §64; 2015 c.614 §61]

475B.310 Duty to notify Oregon Liquor Control Commission of conviction of licensee. The county courts, district attorneys and municipal authorities, immediately upon the conviction of any licensee of the Oregon Liquor Control Commission of a violation of any provision of ORS 475B.010 to 475B.395 or the violation of any other law of this state or ordinance of any municipality in this state, in which violation marijuana had any part, shall notify the commission of the conviction. The county courts, district attorneys and municipal authorities shall notify the commission of any acts, practices or other conduct of a licensee convicted as described in this section that may be subversive of the general welfare or contrary to the spirit of ORS 475B.010 to 475B.395 and shall recommend such action on the part of the commission as will remove the evil. [2015 c.1 §65; 2015 c.614 §62]

475B.315 Criminal penalty for violating ORS 475B.010 to 475B.395. (1) Except where other punishment is specifically provided for in ORS 475B.010 to 475B.395, violation of any provision of ORS 475B.010 to 475B.395 is a Class A misdemeanor.

(2) Subject to ORS 153.022, violation of a rule adopted under ORS 475B.025 (2)(d) is a Class C violation. [2015 c.1 §69; 2015 c.614 §66; 2015 c.699 §25]

(Regulation of Cannabis for Recreational Use by Cities and Counties)

475B.320 Preemption of municipal charter amendments and local ordinances. The provisions of ORS 475B.010 to 475B.395 are designed to operate uniformly throughout the state and are paramount and superior to and fully replace and supersede any municipal charter amendment or local ordinance inconsistent with the provisions of ORS 475B.010 to 475B.395. Amendments and ordinances that are inconsistent with the provisions of ORS 475B.010 to 475B.395 are repealed. [2015 c.1 §58; 2015 c.614 §57]

475B.325 Prohibition against operation of licensed premises; petition; election. (1) The governing body of a city or a county, when a petition is filed as provided in this section, shall order an election on the question whether the operation of licensed premises should be prohibited in the city or county.

(2) Except as otherwise provided in this section, the requirements for preparing, circulating and filing a petition under this section:

(a) In the case of a city, must be as provided for an initiative petition under ORS 250.265 to 250.346.

(b) In the case of a county, must be as provided for an initiative petition under ORS 250.165 to 250.235.

(3) A petition under this section:

(a) Must be filed not less than 60 days before the day of the election; and

(b) Must be signed by not less than 10 percent of the electors registered in the city or county.

(4) If ORS 250.155 makes ORS 250.165 to 250.235 inapplicable to a county or if ORS 250.255 makes ORS 250.265 to 250.346 inapplicable to a city, the requirements for preparing, circulating and filing a petition under this section must be as provided for an initiative petition under the county or city charter or an ordinance adopted under the county or city charter.

(5) A signature is not valid unless signed within 180 days before the petition is filed.

(6) An election under this section must be held at the time of the next statewide general election.

(7) An election under this section must be conducted under ORS chapters 246 to 260. [2015 c.1 §60; 2015 c.614 §58]

475B.330 Effective date of prohibition against operation of licensed premises. In each county or city that returns a majority vote for or against prohibition, the law shall take effect on January 1 following the day of election. [2015 c.1 §62]

475B.335 Right to possess marijuana items for personal use. ORS 475B.325 does not prevent any person residing in the county or city from having, for personal use, a marijuana item purchased from a marijuana retailer licensed under ORS 475B.110. [2015 c.1 §61; 2015 c.614 §59]

475B.340 Local time, place and manner regulations. (1) For purposes of this section, "reasonable regulations" includes:

(a) Reasonable conditions on the manner in which a marijuana producer licensed under ORS 475B.070 may produce marijuana;

(b) Reasonable conditions on the manner in which a marijuana processor licensed under ORS 475B.090 may process marijuana;

(c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under ORS 475B.100 may sell marijuana at wholesale;

(d) Reasonable limitations on the hours during which a marijuana retailer licensed under ORS 475B.110 may operate;

(e) Reasonable conditions on the manner in which a marijuana retailer licensed under ORS 475B.110 may sell marijuana items;

(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110; and

(g) Reasonable limitations on where a premises for which a license may be issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110 may be located.

(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110 if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under ORS 475B.110 from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under ORS 475B.110.

(3) Regulations adopted under this section must be consistent with city and county comprehensive plans and zoning ordinances and applicable provisions of public health and safety laws. [2015 c.1 §59; 2015 c.614 §33]

475B.345 Local tax or fee; referral to electors for approval. (1)(a) Except as expressly authorized by this section, the 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.

(b) Except as expressly authorized by this section, a county, city or other municipal corporation or district may not adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items in this state.

(2) Subject to subsection (4) of this section, the governing body of a city or county may adopt an ordinance to be referred to the electors of the city or county as described in subsection (3) of this section that imposes a tax or a fee on the sale of marijuana items that are sold in the area subject to the jurisdiction of the city or the unincorporated area subject to the jurisdiction of a county by a person that holds a license under ORS 475B.110.

(3) If the governing body of a city or county adopts an ordinance under this section, the governing body shall refer the measure of the ordinance to the electors of the city or county for approval at the next statewide general election.

(4) An ordinance adopted under this section may not impose a tax or fee in excess of three percent. [2015 c.614 §34a]

(Powers and Duties of State Agencies and Officers and Governor)

475B.350 Duty of Oregon Health Authority to assist. The Oregon Health Authority shall assist and cooperate with the Oregon Liquor Control Commission and the State Department of Agriculture to the extent necessary for the commission and the department to carry out the duties of the commission and the department under ORS 475B.010 to 475B.395. [2015 c.1 §9]

475B.353 Duty of State Department of Agriculture to assist. The State Department of Agriculture shall assist and cooperate with the Oregon Liquor Control Commission and the Oregon Health Authority to the extent necessary for the commission and the authority to carry out the duties of the commission and the authority under ORS 475B.010 to 475B.395. [2015 c.1 §8]

475B.355 Prohibition against refusing to perform duties on basis that certain conduct is prohibited by federal law. (1) The Oregon Liquor Control Commission, the State Department of Agriculture and the Oregon Health Authority may not refuse to perform any duty under ORS 475B.010 to 475B.395 on the basis that manufacturing, distributing, dispensing, possessing or using marijuana is prohibited by federal law.

(2) The commission may not revoke or refuse to issue or renew a license under ORS 475B.010 to 475B.395 on the basis that manufacturing, distributing, dispensing, possessing or using marijuana is prohibited by federal law. [2015 c.1 §11; 2015 c.614 §41]

475B.358 Immunity for state agencies, officers and employees in performance of duties. A person may not sue the Oregon Liquor Control Commission or a member of the commission, the State Department of Agriculture or the Oregon Health Authority, or any employee of the commission, department or authority, for performing or omitting to perform any duty, function or power of the commission, department or authority set forth in ORS 475B.010 to 475B.395 or in any other law of this state requiring the commission, department or authority to perform a duty, function or power related to marijuana. [2015 c.1 §10; 2015 c.614 §40]

475B.360 Authority to purchase, possess, seize or dispose of marijuana items. Any state officer, board, commission, corporation, institution, department or other state body, and any local officer, board, commission, institution, department or other local government body, that is authorized by the statutory laws of this state to perform a duty, function or power with respect to a marijuana item, may purchase, possess, seize or dispose of the marijuana item as the state officer, board, commission, corporation, institution, department or other state body, or the local officer, board, commission, institution, department or other local government body, considers necessary to ensure compliance with and enforce the applicable statutory law or any rule adopted under the applicable statutory law. [2015 c.614 §4]

475B.365 Authority of Governor to suspend licenses without notice. In case of invasion, disaster, insurrection or riot, or imminent danger of invasion, disaster, insurrection or riot, the Governor may, for the duration of the invasion, disaster, insurrection or riot, or imminent danger, immediately suspend without notice any license in the area involved granted under ORS 475B.010 to 475B.395. [2015 c.1 §68; 2015 c.614 §65]

(Other Provisions)

475B.370 Marijuana as crop; exceptions to permitted uses. (1) Notwithstanding any other provision of law, marijuana is:

(a) A crop for the purposes of "farm use" as defined in ORS 215.203;

(b) A crop for purposes of a "farm" and "farming practice," both as defined in ORS 30.930;

(c) A product of farm use as described in ORS 308A.062; and

(d) The product of an agricultural activity for purposes of ORS 568.909.

(2) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses on land designated for exclusive farm use:

(a) A new dwelling used in conjunction with a marijuana crop;

(b) A farm stand, as described in ORS 215.213 (1)(r) or 215.283 (1)(o), used in conjunction with a marijuana crop; and

(c) A commercial activity, as described in ORS 215.213 (2)(c) or 215.283 (2)(a), carried on in conjunction with a marijuana crop.

(3) A county may allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones under this section and ORS 215.213, 215.283 and 475B.063. [2015 c.614 §34(1) to (3)]

475B.373 Regulation of marijuana items as food or other commodity subject to regulation by State Department of Agriculture. (1) Notwithstanding the authority granted to the State Department of Agriculture under ORS chapters 571, 618 and 633 and ORS 632.206 to 632.260, 632.275 to 632.290, 632.450 to 632.490, 632.516 to 632.625, 632.705 to 632.815, 632.835 to 632.850 and 632.900 to 632.985, the department may not exercise authority over marijuana items or a licensee, except that ORS 618.121 to 618.161, 618.991, 618.995, 633.311 to 633.479, 633.992 and 633.994 apply to marijuana items or to a licensee.

(2) In exercising its authority under ORS chapter 616, the department may not:

(a) Establish standards for marijuana as a food additive, as defined in ORS 616.205;

(b) Consider marijuana to be an adulterant, unless the concentration of a cannabinoid in a cannabinoid product, cannabinoid concentrate or cannabinoid extract exceeds acceptable levels established by the Oregon Health Authority by rule; or

(c) Apply ORS 616.256, 616.265, 616.270 or 616.275 to cannabinoid edibles or enforce ORS 616.256, 616.265, 616.270 or 616.275 with respect to cannabinoid edibles. [2015 c.614 §114]

475B.375 Applicability of ORS 475B.010 to 475B.395 to Oregon Medical Marijuana Act. ORS 475B.025, 475B.033, 475B.035, 475B.040, 475B.045, 475B.055, 475B.060, 475B.065, 475B.068, 475B.070, 475B.090, 475B.100, 475B.110, 475B.130, 475B.160, 475B.165, 475B.170, 475B.180, 475B.185, 475B.190, 475B.195, 475B.200, 475B.205, 475B.210, 475B.250, 475B.255, 475B.260, 475B.265, 475B.270, 475B.275, 475B.280, 475B.298, 475B.300, 475B.305, 475B.310, 475B.315, 475B.320, 475B.325, 475B.330, 475B.335, 475B.340, 475B.350, 475B.353, 475B.355, 475B.358, 475B.365, 475B.378, 475B.380 and 475B.395:

(1) Do not apply to the extent a person acts within the scope of and in compliance with the Oregon Medical Marijuana Act; and

(2) Do not amend or affect duties, functions and powers of the Oregon Health Authority under the Oregon Medical Marijuana Act. [2015 c.1 §6(2); 2015 c.614 §39(2)]

475B.378 Violation of laws of this state as nuisance. Any room, house, building, boat, structure or place of any kind where marijuana items are sold, manufactured, bartered or given away in violation of the laws of this state, or where persons are permitted to resort for the purpose of using marijuana items in violation of the laws of this state, or any place where marijuana items are kept for sale, barter or gift in violation of the laws of this state, and all marijuana items or property subject to confiscation under ORS 475B.305 kept and used in such a place, are a common nuisance. A person who maintains or assists in maintaining the common nuisance or knowingly suffers or permits the nuisance to exist in any place of which the person is the owner, manager or lessor, is guilty of a violation of ORS 475B.010 to 475B.395. [2015 c.1 §66; 2015 c.614 §63]

475B.380 Enforceability of contracts. A contract is not unenforceable on the basis that manufacturing, distributing, dispensing, possessing or using marijuana is prohibited by federal law. [2015 c.1 §12; 2015 c.614 §42]

(Severability)

475B.395 Severability of ORS 475B.010 to 475B.395. If any section, subsection, paragraph, phrase or word of ORS 475B.010 to 475B.395 is held to be unconstitutional, void or illegal, either on its face or as applied, that holding does not affect the applicability, constitutionality or legality of any other section, subsection, paragraph, phrase or word of ORS 475B.010 to 475B.395. To that end, the sections, subsections, paragraphs, phrases and words of ORS 475B.010 to 475B.395 are intended to be severable. It is hereby declared to be the intent of the people of this state in adopting ORS 475B.010 to 475B.395 that ORS 475B.010 to 475B.395 would have been

adopted had such unconstitutional, void or illegal sections, subsections, paragraphs, phrases or words, if any, not been included in ORS 475B.010 to 475B.395. [2015 c.1 §70; 2015 c.614 §67]

(Biennial Report on Supply and Demand)

475B.399 Duty to report to Legislative Assembly. (1) As used in this section, "marijuana" and "marijuana item" have the meanings given those terms in ORS 475B.015.

(2) On or before February 1 of each odd-numbered year, the Oregon Liquor Control Commission shall report to the Legislative Assembly in the manner required by ORS 192.245, the approximate amount of marijuana produced by persons who hold a license under ORS 475B.070 and the approximate amount of marijuana items sold by persons who hold a license under ORS 475B.110, and whether the supply of marijuana in this state is commensurate with the demand for marijuana items in this state. [2015 c.614 §170]

Note: Section 172, chapter 614, Oregon Laws 2015, provides:

Sec. 172. On or before January 1, 2017, the Oregon Liquor Control Commission:

(1) Shall examine available research, and may conduct or commission new research, to investigate the influence of marijuana on the ability of a person to drive a vehicle and on the concentration of delta-9-tetrahydrocannabinol in a person's blood, in each case taking into account all relevant factors; and

(2) In the manner provided by ORS 192.245, shall present the results of the research, including any recommendations for legislation, to the interim committees of the Legislative Assembly related to judiciary. [2015 c.614 §172]

(Use of Moneys in Oregon Liquor Control Commission Account)

Note: Section 3, chapter 20, Oregon Laws 2015, provides:

Sec. 3. Use of moneys in Oregon Liquor Control Commission Account. (1) Notwithstanding ORS 221.770, 471.805 and 471.810, for the biennium beginning July 1, 2013, and the biennium beginning July 1, 2015, the Oregon Liquor Control Commission may expend moneys in the Oregon Liquor Control Commission Account to pay any expenses incurred by the commission in implementing and carrying out sections 3 to 70, chapter 1, Oregon Laws 2015 [475B.010 to 475B.395]. Any expenditure made under this subsection is considered a loan and must be repaid from the Oregon Marijuana Account established by section 44, chapter 1, Oregon Laws 2015. Expenditures made under this subsection shall be made from moneys in the Oregon Liquor Control Commission Account before the distributions required by ORS 471.810 are made.

(2) Notwithstanding section 44, chapter 1, Oregon Laws 2015, not later than June 30, 2017, the Department of Revenue shall transfer from the Oregon Marijuana Account to the commission for deposit in the Oregon Liquor Control Commission Account an amount equal to the total amount expended by the commission under subsection (1) of this section plus two percent of the total amount expended. The department shall make the transfer required by this subsection before making any other withholding, distribution or expenditure from the Oregon Marijuana Account for purposes described in section 44, chapter 1, Oregon Laws 2015. [2015 c.20 §3; 2015 c.840 §10]

MEDICAL USE OF CANNABIS

Note: Amendments and additions to 475.300 to 475.346 (renumbered 475B.400 to 475B.525) become operative March 1, 2016. See sections 177 (2) and 179, chapter 614, Oregon Laws 2015. Refer to the 2013 Edition of Oregon Revised Statutes for the text of 475.300 to 475.346 that is operative until March 1, 2016.

Note: For the text of 475.309 (renumbered 475B.415) that is operative until March 1, 2016, see section 103, chapter 736, Oregon Laws 2015.

Note: For the text of 475.314 (renumbered 475B.450) that is operative until March 1, 2016, see section 5, chapter 79, Oregon Laws 2014.

(Generally)

475B.400 Findings. The people of the State of Oregon find that:

(1) Patients and doctors have found marijuana to be an effective treatment for suffering caused by debilitating medical conditions and, therefore, marijuana must be treated like other medicines;

(2) Oregonians suffering from debilitating medical conditions should be allowed to use marijuana without fear of civil or criminal penalties when a doctor advises that using marijuana may provide a medical benefit and when other reasonable restrictions are met regarding that use;

(3) ORS 475B.400 to 475B.525 are intended to allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to be able to freely discuss with doctors the possible risks and benefits associated with the medical use of marijuana and to have the benefit of professional medical advice; and

(4) ORS 475B.400 to 475B.525 are intended to protect patients and doctors from criminal and civil penalties and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes. [Formerly 475.300]

475B.405 Short title. ORS 475B.400 to 475B.525 shall be known as the Oregon Medical Marijuana Act. [Formerly 475.346]

475B.410 Definitions for ORS 475B.400 to 475B.525. As used in ORS 475B.400 to 475B.525:

(1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(2) "Cannabinoid" means any of the chemical compounds that are the active constituents of marijuana.

(3) "Cannabinoid concentrate" means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process;

(b) A chemical extraction process using a nonhydrocarbon-based solvent, such as vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol;

(c) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or

(d) Any other process identified by the Oregon Health Authority, in consultation with the Oregon Liquor Control Commission, by rule.

(4) "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried leaves or flowers of marijuana have been incorporated.

(5) "Cannabinoid extract" means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane;

(b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses high heat or pressure; or

(c) Any other process identified by the Oregon Health Authority, in consultation with the Oregon Liquor Control Commission, by rule.

(6) "Debilitating medical condition" means:

(a) Cancer, glaucoma, a degenerative or pervasive neurological condition, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of those medical conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including seizures caused by epilepsy; or

(E) Persistent muscle spasms, including spasms caused by multiple sclerosis;

(c) Post-traumatic stress disorder; or

(d) Any other medical condition or side effect related to the treatment of a medical condition adopted by the Oregon Health Authority by rule or approved by the authority pursuant to a petition filed under ORS 475B.517.

(7)(a) "Delivery" has the meaning given that term in ORS 475.005.

(b) "Delivery" does not include transfer of marijuana by a registry identification cardholder to another registry identification cardholder if no consideration is paid for the transfer.

(8)(a) "Designated primary caregiver" means an individual:

(A) Who is 18 years of age or older;

(B) Who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition; and

(C) Who is designated as the person responsible for managing the well-being of a person who has been diagnosed with a debilitating medical condition on that person's application for a registry identification card or in other written notification submitted to the authority.

(b) "Designated primary caregiver" does not include a person's attending physician.

(9) "High heat" means a temperature exceeding 180 degrees.

(10) "Immature marijuana plant" means a marijuana plant that is not flowering.

(11)(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

(12) "Marijuana grow site" means a location registered under ORS 475B.420 where marijuana is produced for use by a registry identification cardholder.

(13) "Marijuana processing site" means a marijuana processing site registered under ORS 475B.435 or a site for which an applicant has submitted an application for registration under ORS 475B.435.

(14) "Mature marijuana plant" means a marijuana plant that is not an immature marijuana plant.

(15)(a) "Medical cannabinoid product" means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to a person's skin or hair, that contains cannabinoids or dried leaves or flowers of marijuana.

(b) "Medical cannabinoid product" does not include:

(A) Usable marijuana by itself;

(B) A cannabinoid concentrate by itself;

(C) A cannabinoid extract by itself; or

(D) Industrial hemp, as defined in ORS 571.300.

(16) "Medical marijuana dispensary" means a medical marijuana dispensary registered under ORS 475B.450 or a site for which an applicant has submitted an application for registration under ORS 475B.450.

(17) "Medical use of marijuana" means the production, processing, possession, delivery or administration of marijuana, or use of paraphernalia used to administer marijuana, to mitigate the symptoms or effects of a debilitating medical condition.

(18) "Person designated to produce marijuana by a registry identification cardholder" means a person designated to produce marijuana by a registry identification cardholder under ORS 475B.420 who produces marijuana for a registry identification cardholder at an address other than the address where the registry identification cardholder resides or at an address where more than 12 mature marijuana plants are produced.

(19) "Process" means the compounding or conversion of marijuana into medical cannabinoid products, cannabinoid concentrates or cannabinoid extracts.

(20) "Production" means:

(a) Planting, cultivating, growing, trimming or harvesting marijuana; or

(b) Drying marijuana leaves or flowers.

(21) "Registry identification card" means a document issued by the Oregon Health Authority under ORS 475B.415 that identifies a person authorized to engage in the medical use of marijuana and, if the person has a designated primary caregiver under ORS 475B.418, the person's designated primary caregiver.

(22) "Registry identification cardholder" means a person to whom a registry identification card has been issued under ORS 475B.415.

(23)(a) "Usable marijuana" means the dried leaves and flowers of marijuana.

(b) "Usable marijuana" does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing marijuana.

(24) "Written documentation" means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records. [Formerly 475.302]

475B.413 Construction of ORS 475B.400 to 475B.525. Nothing in ORS 475B.400 to 475B.525 requires:

(1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(2) An employer to accommodate the medical use of marijuana in the workplace. [Formerly 475.340]

(Registry Identification Cardholders and Designated Primary Caregivers)

475B.415 Registry identification cardholders; eligibility; fees; rules. (1) The Oregon Health Authority shall establish a program for the issuance of registry identification cards to applicants who meet the requirements of this section.

(2) The authority shall issue a registry identification card to an applicant who is 18 years of age or older if the applicant pays a fee in an amount established by the authority by rule and submits to the authority an application containing the following information:

(a) Written documentation from the applicant's attending physician stating that the attending physician has diagnosed the applicant as having a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the applicant's debilitating medical condition;

(b) The name, address and date of birth of the applicant;

(c) The name, address and telephone number of the applicant's attending physician;

(d) Proof of residency, as required by the authority by rule;

(e) The name and address of the applicant's designated primary caregiver, if the applicant is designating a primary caregiver under ORS 475B.418; and

(f) The information described in ORS 475B.420 (2), if the applicant is applying to produce marijuana or designate another person under ORS 475B.420 to produce marijuana.

(3)(a) The authority shall issue a registry identification card to an applicant who is under 18 years of age if:

(A) The applicant pays the fee and submits the application described in subsection (2) of this section; and

(B) The custodial parent or legal guardian who is responsible for the health care decisions of the applicant signs and submits to the authority a written statement that:

(i) The applicant's attending physician has explained to the applicant and to the custodial parent or legal guardian the possible risks and benefits of the medical use of marijuana;

(ii) The custodial parent or legal guardian consents to the medical use of marijuana by the applicant;

(iii) The custodial parent or legal guardian agrees to serve as the applicant's designated primary caregiver; and

(iv) The custodial parent or legal guardian agrees to control the acquisition, dosage and frequency of the medical use of marijuana by the applicant.

(b) An applicant who is under 18 years of age may not apply to produce marijuana under subsection (2)(f) of this section.

(4) The authority shall approve or deny an application within 30 days after receiving the application.

(5)(a) If the authority approves an application, the authority shall issue a serially numbered registry identification card to the applicant within five days after approving the application. The registry identification card must include the following information:

(A) The registry identification cardholder's name, address and date of birth;

(B) The issuance date and expiration date of the registry identification card;

(C) If the registry identification cardholder designated a primary caregiver under ORS 475B.418, the name and address of the registry identification cardholder's designated primary caregiver; and

(D) Any other information required by the authority by rule.

(b) If the registry identification cardholder designated a primary caregiver under ORS 475B.418, the authority shall issue an identification card to the designated primary caregiver. The identification card must contain the information required by paragraph (a) of this subsection.

(6) A registry identification cardholder shall:

(a) In a form and manner prescribed by the authority, notify the authority of any change concerning the registry identification cardholder's:

(A) Name, address or attending physician;

(B) Designated primary caregiver, including the designation of a primary caregiver made at a time other than at the time of applying for or renewing a registry identification card; or

(C) Person responsible for a marijuana grow site, including the designation of a person responsible for a marijuana grow site made at a time other than at the time of applying for or renewing a registry identification card.

(b) Annually renew the registry identification card by paying a fee in an amount established by the authority by rule and submitting to the authority an application that contains the following information:

(A) Updated written documentation from the registry identification cardholder's attending physician stating that the registry identification cardholder still has a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the registry identification cardholder's debilitating medical condition;

(B) The information described in subsection (2)(b) to (f) of this section; and

(C) If the registry identification cardholder is under 18 years of age, a statement signed by the custodial parent or legal guardian of the registry identification cardholder that meets the requirements of subsection (3) of this section.

(7)(a) If the registry identification cardholder's attending physician determines that the registry identification cardholder no longer has a debilitating medical condition or determines that the medical use of marijuana is contraindicated for the registry identification cardholder's debilitating medical condition, the registry identification cardholder shall return the registry identification card to the authority within 30 calendar days after receiving notice of the determination.

(b) If, because of circumstances beyond the control of the registry identification cardholder, a registry identification cardholder is unable to obtain a second medical opinion about the registry identification cardholder's continuing eligibility for the medical use of marijuana before having to return the registry identification card to the authority, the authority may grant the registry identification cardholder additional time to obtain a second medical opinion.

(8)(a) The authority may deny an application for a registry identification card or an application to renew a registry identification card, or may suspend or revoke a registry identification card, if:

(A) The applicant or registry identification cardholder does not provide the information required by this section;

(B) The authority determines that the applicant or registry identification cardholder provided false information; or

(C) The authority determines that the applicant or registry identification cardholder violated a provision of ORS 475B.400 to 475B.525 or a rule adopted under ORS 475B.400 to 475B.525.

(b) If a registry identification card is revoked, any associated identification card issued under subsection (5)(b) of this section, or marijuana grow site registration card issued under ORS 475B.420 (6), shall also be revoked.

(c) A person whose application is denied, or whose registry identification card is revoked, under this subsection may not reapply for a registry identification card for six months from the date of the denial or revocation unless otherwise authorized by the authority.

(9)(a) The authority may deny a designation of a primary caregiver made under ORS 475B.418, or suspend or revoke an associated identification card issued under subsection (5)(b) of this section, if the authority determines that the designee or the registry identification cardholder violated a provision of ORS 475B.400 to 475B.525 or a rule adopted under ORS 475B.400 to 475B.525.

(b) A person whose designation has been denied, or whose identification card has been revoked, under this subsection may not be designated as a primary caregiver under ORS 475B.418 for six months from the date of the denial or revocation unless otherwise authorized by the authority.

(10) Notwithstanding subsection (2) or (6)(b) of this section, if an applicant for a registry identification card, or a registry identification cardholder applying for renewal of a registry identification card, submits to the authority proof of having served in the Armed Forces of the United States and of having been diagnosed with post-traumatic stress disorder, the authority may not impose a fee that is greater than $20 for the issuance or renewal of the registry identification card. [Formerly 475.309]

475B.418 Designated primary caregivers. (1) If a person who is applying for a registry identification card under ORS 475B.415, or who is a registry identification cardholder, chooses to designate, or to change the designation of, a primary caregiver, the person must include the primary caregiver's name and address:

(a) On the person's application for a registry identification card;

(b) On the person's application to renew a registry identification card; or

(c) In a form and manner prescribed by the authority, in a signed statement notifying the Oregon Health Authority of the designation.

(2) A registry identification cardholder may have only one designated primary caregiver at any given time.

(3) If a registry identification cardholder who previously designated a primary caregiver chooses to designate a different primary caregiver, the authority shall notify the previous designee of the new designation and issue an identification card to the newly designated primary caregiver. [Formerly 475.312]

475B.419 Authority to designate certain organizations as primary caregivers. (1) Notwithstanding ORS 475B.418, an organization that provides hospice, palliative or home health care services, or a residential facility as defined in ORS 443.400, that has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition may be designated, in addition to an individual designated pursuant to ORS 475B.418, as an additional caregiver for a registry identification cardholder in the same manner that an individual is designated as the primary caregiver for a registry identification cardholder under ORS 475B.418.

(2) An organization or residential facility that is designated under this section has all the duties, functions and powers of a designated primary caregiver as prescribed by ORS 475B.400 to 475B.525 or a rule adopted under ORS 475B.400 to 475B.525. [2015 c.844 §6]

(Marijuana Grow Sites)

475B.420 Marijuana grow site registration system; fees; rules. (1)(a) The Oregon Health Authority shall establish by rule a marijuana grow site registration system to track and regulate the production of marijuana by a registry identification cardholder or a person designated by the registry identification cardholder to produce marijuana for the registry identification cardholder.

(b) Except as provided in paragraph (c) of this subsection, a person may not produce marijuana unless the person is registered under this section.

(c) Paragraph (b) of this subsection does not apply to the production of marijuana as provided in ORS 475B.010 to 475B.395 or as otherwise provided for by the statutory laws of this state.

(2) Rules adopted under this section must require an applicant for a registry identification card, or a registry identification cardholder who produces marijuana or who designates another person to produce marijuana, to submit an application to the authority containing the following information at the time of making an application under ORS 475B.415 (2), renewing a registry identification card under ORS 475B.415 (6)(b), or notifying the authority of a change under ORS 475B.415 (6)(a):

(a) The name of the person responsible for the marijuana grow site;

(b) Proof, until January 1, 2020, that the person responsible for the marijuana grow site has been a resident of this state for two or more years, and proof that the person is 21 years of age or older;

(c) The address of the marijuana grow site; and

(d) Any other information that the authority considers necessary to track the production of marijuana under ORS 475B.400 to 475B.525.

(3)(a) The authority shall conduct a criminal records check under ORS 181A.195 of any person whose name is submitted under this section as the person responsible for a marijuana grow site.

(b) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not act as or be designated a person responsible for a marijuana grow site for two years from the date of conviction.

(c) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not act as or be designated a person responsible for a marijuana grow site.

(4) Subject to subsection (11) of this section, the authority shall issue a marijuana grow site registration card if the requirements of subsections (2) and (3) of this section are met.

(5) A person who holds a marijuana grow site registration card under this section must display the card at the marijuana grow site at all times.

(6) A marijuana grow site registration card must be obtained and posted for each registry identification cardholder for whom marijuana is being produced at a marijuana grow site.

(7)(a) All seeds, immature marijuana plants, mature marijuana plants and usable marijuana associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site are the property of the registry identification cardholder.

(b) All seeds, immature marijuana plants, mature marijuana plants and usable marijuana associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site must be transferred to the registry identification cardholder upon the request of the registry identification cardholder.

(c) All usable marijuana associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site must be transferred to a marijuana processing site upon the request of the registry identification cardholder. For purposes of this paragraph, a request to transfer usable marijuana constitutes an assignment of the right to possess the usable marijuana.

(d) All seeds, immature marijuana plants and usable marijuana associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site must be transferred to a medical marijuana dispensary upon request of the registry identification cardholder. For purposes of this paragraph, a request to transfer seeds, immature marijuana plants or usable marijuana constitutes an assignment of the right to possess the seeds, immature marijuana plants or usable marijuana.

(e) Information related to transfers made under this subsection must be submitted to the authority in the manner required by ORS 475B.423.

(8) A registry identification cardholder, or the designated caregiver of a registry identification cardholder, may reimburse a person responsible for a marijuana grow site for all costs associated with the production of marijuana for the registry identification cardholder.

(9) The authority may inspect:

(a) The marijuana grow site of a person designated to produce marijuana by a registry identification cardholder to ensure compliance with this section and ORS 475B.423 and 475B.428 and any rule adopted under this section and ORS 475B.423 and 475B.428; and

(b) The records of the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder to ensure compliance with this section and ORS 475B.423 and any rule adopted under this section and ORS 475B.423.

(10) The authority may refuse to register a registry identification cardholder or a designee under this section or may suspend or revoke the registration of a person responsible for a marijuana grow site if the authority determines that the applicant or the person responsible for a marijuana grow site violated a provision of ORS 475B.400 to 475B.525, a rule adopted under ORS 475B.400 to 475B.525 or an ordinance adopted pursuant to ORS 475B.500.

(11) The authority may require a person responsible for a marijuana grow site, prior to issuing a marijuana grow site registration card under subsection (4) of this section, to pay a fee reasonably calculated to pay costs incurred under this section and ORS 475B.423 and 475B.458. [Formerly 475.304]

Note: Sections 173 and 175b, chapter 614, Oregon Laws 2015, provide:

Sec. 173. (1) The Oregon Health Authority, in addition to the information required under ORS 475.304 [renumbered 475B.420] for registering as a marijuana grow site or renewing a marijuana grow site registration, and in addition to information required under ORS 475.314 [renumbered 475B.450] for registering as a medical marijuana dispensary or renewing a medical marijuana dispensary registration, shall require all applications for registering or renewing registration under ORS 475.304 and 475.314 to contain proof that any person whose name is included in the application has been a resident of this state for:

(a) Except as provided in paragraph (b) of this subsection, two or more years; or

(b) Subject to subsection (2) of this section, and notwithstanding any residency requirements under ORS 475.304 or 475.314, if the person first registered with the authority on or before January 1, 2015, one year.

(2) For purposes of subsection (1)(b) of this section, the authority may not require proof of residency for any person whose name is included in the application for renewing a marijuana grow site registration or renewing a medical marijuana dispensary registration until January 1, 2016. [2015 c.614 §173]

Sec. 175b. Section 173 of this 2015 Act is repealed on January 1, 2019. [2015 c.614 §175b]

475B.423 Duty to submit production data to Oregon Health Authority. (1) A person designated to produce marijuana by a registry identification cardholder must submit to the Oregon Health Authority, in a form and manner established by the authority by rule, the following information related to the production of marijuana:

(a) The number of mature marijuana plants and immature marijuana plants, the amount of marijuana leaves and flowers being dried, and the amount of usable marijuana, in the person's possession;

(b) The number of mature marijuana plants and immature marijuana plants, and the amount of usable marijuana, that the person transfers to each registry identification cardholder for whom the person produces marijuana;

(c) The amount of usable marijuana that the person transfers to each marijuana processing site; and

(d) The number of immature marijuana plants, and the amount of usable marijuana, that the person transfers to each medical marijuana dispensary.

(2) The authority shall by rule require a person designated to produce marijuana by a registry identification cardholder to submit the information described in subsection (1) of this section once each month. The authority may not employ any method other than that described in this section to obtain information related to the production of marijuana from a person designated to produce marijuana by a registry identification cardholder.

(3) In addition to submitting the information as required by subsection (1) of this section, a person designated to produce marijuana by a registry identification cardholder must keep a record of the information described in subsection (1) of this section for two years after the date on which the person submits the information to the authority. [2015 c.614 §81a]

475B.425 Personal agreements. Notwithstanding ORS 475B.420 (7), a person responsible for a marijuana grow site may enter into an agreement with a registry identification cardholder under which the registry identification cardholder assigns, to the person responsible for the marijuana grow site, a portion of the right to possess the seeds, immature marijuana plants and usable marijuana that are the property of the registry identification cardholder. [2015 c.614 §83]

(Possession Limits for Registry Identification Cardholders, Designated Primary Caregivers and Marijuana Grow Sites)

475B.428 Possession limits for mature marijuana plants. (1) Subject to subsection (2) of this section, a registry identification cardholder and the designated primary caregiver of the registry identification cardholder may jointly possess six or fewer mature marijuana plants.

(2)(a) A person may be designated to produce marijuana under ORS 475B.420 by no more than four registry identification cardholders.

(b) A person who is designated to produce marijuana by a registry identification cardholder may produce no more than six mature marijuana plants per registry identification cardholder.

(3) If the address of a person responsible for a marijuana grow site under ORS 475B.420 is located within city limits in an area zoned for residential use:

(a) Except as provided in paragraph (b) of this subsection, no more than 12 mature marijuana plants may be produced at the address; or

(b) Subject to subsection (5) of this section, if each person responsible for a marijuana grow site located at the address first registered with the Oregon Health Authority under ORS 475B.420 before January 1, 2015, no more than the amount of mature marijuana plants located at that address on December 31, 2014, in excess of 12 mature marijuana plants, not to exceed 24 mature marijuana plants, may be produced at the address.

(4) If the address of a person responsible for a marijuana grow site under ORS 475B.420 is located in an area other than an area described in subsection (3) of this section:

(a) Except as provided in paragraph (b) of this subsection, no more than 48 mature marijuana plants may be produced at the address; or

(b) Subject to subsections (5) and (6) of this section, if each person responsible for a marijuana grow site located at the address first registered with the authority under ORS 475B.420 before January 1, 2015, no more than the amount of mature marijuana plants located at that address on December 31, 2014, in excess of 48 mature marijuana plants, not to exceed 96 mature marijuana plants, may be produced at the address.

(5) If the authority suspends or revokes the registration of a person responsible for a marijuana grow site that is located at an address described in subsection (3)(b) or (4)(b) of this section:

(a) No more than 12 mature marijuana plants may be subsequently produced at any address described in subsection (3) of this section at which the person responsible for that marijuana grow site produces marijuana.

(b) No more than 48 mature marijuana plants may be subsequently produced at any address described in subsection (4) of this section at which the person responsible for that marijuana grow site produces marijuana.

(6) If a registry identification cardholder who designated a person to produce marijuana for the registry identification cardholder pursuant to ORS 475B.420 terminates the designation, the person responsible for the marijuana grow site whose designation has been terminated may not be designated to produce marijuana by another registry identification cardholder, except that the person may be designated by another registry identification cardholder if no more than 48 mature marijuana plants are produced at the address for the marijuana grow site at which the person produces marijuana.

(7) If a law enforcement officer determines that a registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site under ORS 475B.420 who grows marijuana for a registry identification cardholder, possesses a number of mature marijuana plants in excess of the quantities specified in this section, the law enforcement officer may confiscate only the excess number of mature marijuana plants. [Formerly 475.320]

475B.430 Possession limits for usable marijuana. (1) Except as provided in subsection (2) of this section, a registry identification cardholder and the designated primary caregiver of the registry identification cardholder may jointly possess no more than 24 ounces of usable marijuana.

(2) Subject to subsection (3) of this section, a person designated to produce marijuana by a registry identification cardholder may possess the amount of usable marijuana that the person harvests from the person's mature marijuana plants, provided that the person may not possess usable marijuana in excess of the amount of usable marijuana in the person's possession as reported to the Oregon Health Authority under ORS 475B.423.

(3) A person designated to produce marijuana by a registry identification cardholder may not possess usable marijuana in excess of:

(a) For a marijuana growsite located outdoors, 12 pounds of usable marijuana per mature marijuana plant; or

(b) For a marijuana growsite located indoors, six pounds of usable marijuana per mature marijuana plant. [2015 c.614 §82a]

475B.433 Duty to carry card when at location other than address on file with Oregon Health Authority. A person to whom a registry identification card has been issued under ORS 475B.415 (5)(a), an identification card has been issued under ORS 475B.415 (5)(b), or a marijuana grow site registration card has been issued under ORS 475B.420, may not possess marijuana, usable marijuana, medical cannabinoid products, cannabinoid concentrates or cannabinoid extracts in a location other than the address on file with the Oregon Health Authority unless the person is carrying the card. [Formerly 475.306]

(Marijuana Processing Sites)

475B.435 Marijuana processing site registration system; fees; rules. (1)(a) The Oregon Health Authority shall establish by rule a marijuana processing site registration system to track and regulate the processing of marijuana by a person responsible for a marijuana processing site.

(b) Except as provided in paragraph (c) of this subsection, a person may not process marijuana unless the person is registered under this section.

(c) Paragraph (b) of this subsection does not apply to the processing of marijuana as provided in ORS 475B.010 to 475B.395 or as otherwise provided for by the statutory laws of this state.

(2) The registration system established under subsection (1) of this section must require an applicant for a marijuana processing site to submit an application to the authority that includes:

(a) The name of the individual who owns the marijuana processing site or, if a business entity owns the marijuana processing site, the name of each individual who has a financial interest in the marijuana processing site;

(b) The name of the individual or individuals responsible for the marijuana processing site, if different from the name of the individual who owns the marijuana processing site;

(c) The address of the marijuana processing site;

(d) Proof, until January 1, 2020, that each individual responsible for the marijuana processing site has been a resident of this state for two or more years, and proof that each individual responsible for the marijuana processing site is 21 years of age or older;

(e) Documentation, as required by the authority by rule, that demonstrates the marijuana processing site meets the requirements of subsection (3) of this section; and

(f) Any other information that the authority considers necessary.

(3) To qualify for registration under this section, a marijuana processing site:

(a) May not be located in an area that is zoned for residential use if the marijuana processing site processes cannabinoid extracts;

(b) Must be registered as a business, or have filed an application to register as a business, with the office of the Secretary of State; and

(c) Must meet the requirements of any rule adopted by the authority under subsection (10) of this section.

(4)(a) The authority shall conduct a criminal records check under ORS 181A.195 for each individual named in an application under subsection (2) of this section.

(b) An individual convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not own or be responsible for a marijuana processing site for two years from the date the individual is convicted.

(c) An individual convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not own or be responsible for a marijuana processing site.

(5) If a person submits the application required under subsection (2) of this section, if the marijuana processing site identified in the application meets the requirements of this section and any rules adopted under this section and if each individual named in the application passes the criminal records check required under subsection (4) of this section, the authority shall register the marijuana processing site and issue proof of registration. Proof of registration must be displayed on the premises of the marijuana processing site at all times.

(6) A marijuana processing site that is registered under this section is not required to register with the State Board of Pharmacy under ORS 475.125.

(7) The individual or individuals responsible for a marijuana processing site shall maintain documentation of each transfer of usable marijuana, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

(8) The authority may inspect:

(a) The premises of a proposed marijuana processing site or a registered marijuana processing site to ensure compliance with this section and ORS 475B.438 and 475B.440 and any rules adopted under this section and ORS 475B.438 and 475B.440; and

(b) The records of a registered marijuana processing site to ensure compliance with subsection (7) of this section.

(9) Subject to the provisions of ORS chapter 183, the authority may refuse to register an applicant under this section or may suspend or revoke the registration of a marijuana processing site if the authority determines that the applicant, the owner of the marijuana processing site, a person responsible for the marijuana processing site, or an employee of the marijuana processing site, violated a provision of ORS 475B.400 to 475B.525, a rule adopted under ORS 475B.400 to 475B.525 or an ordinance adopted pursuant to ORS 475B.500.

(10) The authority shall adopt rules to implement this section, including rules that:

(a) Require a registered marijuana processing site to annually renew the registration for that site;

(b) Establish fees for registering, and renewing the registration of, a marijuana processing site;

(c) Require that medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts transferred by a marijuana processing site be tested to ensure the public health and safety; and

(d) Impose any other standard on the operation of a marijuana processing site to ensure the public health and safety. [2015 c.614 §85]

475B.438 Duty to submit processing data to Oregon Health Authority; rules. (1) The Oregon Health Authority shall require by rule a marijuana processing site to submit to the authority for inclusion in the database developed and maintained pursuant to ORS 475B.458 the following information:

(a) The amount of usable marijuana transferred to the marijuana processing site;

(b) The amount and type of medical cannabinoid products transferred by the marijuana processing site;

(c) The amount and type of cannabinoid concentrates transferred by the marijuana processing site; and

(d) The amount and type of cannabinoid extracts transferred by the marijuana processing site.

(2) The authority by rule may require a marijuana processing site to submit to the authority for inclusion in the database developed and maintained pursuant to ORS 475B.458 information that is in addition to the

information described in subsection (1) of this section as the authority considers necessary to fulfill the authority's duties under ORS 475B.435 (1). The authority may not employ any method other than that described in this section to obtain information from a marijuana processing site. [2015 c.614 §85b]

475B.440 Public health and safety standards for medical cannabinoid products, concentrates and extracts; rules. (1) A marijuana processing site must meet any public health and safety standards established by the Oregon Health Authority by rule related to:

(a) Cannabinoid edibles, if the marijuana processing site processes marijuana into cannabinoid edibles;

(b) Cannabinoid concentrates, if the marijuana processing site processes marijuana into cannabinoid concentrates;

(c) Cannabinoid extracts, if the marijuana processing site processes marijuana into cannabinoid extracts; or

(d) Any other type of medical cannabinoid product identified by the authority by rule, if the marijuana processing site processes marijuana into that type of medical cannabinoid product.

(2) The authority shall adopt rules to implement this section. [2015 c.614 §85a]

475B.443 Prohibition against transferring medical cannabinoid products, concentrates and extracts to certain persons. (1) A marijuana processing site may not transfer medical cannabinoid products, cannabinoid concentrates or cannabinoid extracts to a person other than a registry identification cardholder, a designated primary caregiver or a medical marijuana dispensary.

(2) A person other than a marijuana processing site may not transfer medical cannabinoid products, cannabinoid concentrates or cannabinoid extracts to a medical marijuana dispensary. [2015 c.614 §85c]

475B.445 Exception to registration requirement. ORS 475B.435 does not apply to a registry identification cardholder or a person who has been designated as a primary caregiver under ORS 475B.418 who processes a medical cannabinoid product or a cannabinoid concentrate for a registry identification cardholder. [2015 c.614 §85d]

(Medical Marijuana Dispensaries)

475B.450 Medical marijuana dispensary registration system; fees; rules. (1)(a) The Oregon Health Authority shall establish by rule a medical marijuana dispensary registration system for the purpose of tracking and regulating the transfer of:

(A) Usable marijuana, immature marijuana plants and seeds from registry identification cardholders, designated primary caregivers and persons responsible for marijuana grow sites to medical marijuana dispensaries;

(B) Medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts from persons responsible for marijuana processing sites to medical marijuana dispensaries; and

(C) Usable marijuana, immature marijuana plants, seeds, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts from medical marijuana dispensaries to registry identification cardholders and designated primary caregivers.

(b) A person may not operate an establishment for the purpose of providing the services described in paragraph (a) of this subsection unless the person is registered under this section.

(2) The registration system established under subsection (1) of this section must require an applicant for a medical marijuana dispensary to submit an application to the authority that includes:

(a) The name of the individual who owns the medical marijuana dispensary or, if a business entity owns the medical marijuana dispensary, the name of each individual who has a financial interest in the medical marijuana dispensary;

(b) The name of the individual or individuals responsible for the medical marijuana dispensary, if different from the name of the individual who owns the medical marijuana dispensary;

(c) The address of the medical marijuana dispensary;

(d) Proof, until January 1, 2020, that each individual responsible for the medical marijuana dispensary has been a resident of this state for two or more years, and proof that each individual responsible for the medical marijuana dispensary is 21 years of age or older;

(e) Documentation, as required by the authority by rule, that demonstrates the medical marijuana dispensary meets the requirements of subsection (3) of this section; and

(f) Any other information that the authority considers necessary.

(3) To qualify for registration under this section, a medical marijuana dispensary:

(a) May not be located in an area that is zoned for residential use;

(b) May not be located at the same address as a marijuana grow site;

(c) Must be registered as a business, or have filed an application to register as a business, with the office of the Secretary of State;

(d) May not be located within 1,000 feet of:

(A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a);

(e) Must not be located within 1,000 feet of another medical marijuana dispensary; and

(f) Must meet the requirements of any rule adopted by the authority under subsection (10) of this section.

(4)(a) The authority shall conduct a criminal records check under ORS 181A.195 for each individual named in an application submitted under subsection (2) of this section.

(b) An individual convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not own or be responsible for a medical marijuana dispensary for two years from the date the individual is convicted.

(c) An individual convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not own or be responsible for a medical marijuana dispensary.

(5) If a person submits the application required under subsection (2) of this section, if the medical marijuana dispensary identified in the application meets the requirements of this section and any rules adopted under this section and if each individual named in the application passes the criminal records check required under subsection (4) of this section, the authority shall register the medical marijuana dispensary and issue proof of registration. Proof of registration must be displayed on the premises of the medical marijuana dispensary at all times.

(6) A medical marijuana dispensary that is registered under this section is not required to register with the State Board of Pharmacy under ORS 475.125.

(7) The individual or individuals responsible for a medical marijuana dispensary shall maintain documentation of each transfer of usable marijuana, medical cannabinoid products, cannabinoid concentrates, cannabinoid extracts, immature marijuana plants and seeds.

(8) The authority may inspect:

(a) The premises of a proposed medical marijuana dispensary or a registered medical marijuana dispensary to ensure compliance with this section and ORS 475B.453 and any rules adopted under this section or ORS 475B.453; and

(b) The records of a registered medical marijuana dispensary to ensure compliance with subsection (7) of this section.

(9) Subject to the provisions of ORS chapter 183, the authority may refuse to register an applicant under this section or may suspend or revoke the registration of a medical marijuana dispensary if the authority determines that the applicant, the owner of the medical marijuana dispensary, a person responsible for the medical marijuana dispensary, or an employee of the medical marijuana dispensary, violated a provision of ORS 475B.400 to 475B.525, a rule adopted under ORS 475B.400 to 475B.525 or an ordinance adopted pursuant to ORS 475B.500.

(10) The authority shall adopt rules to implement this section, including rules that:

(a) Require a registered medical marijuana dispensary to annually renew the registration for that dispensary;

(b) Establish fees for registering, and renewing the registration of, a medical marijuana dispensary;

(c) Require that each medical marijuana dispensary install and maintain a minimum security system that includes video surveillance, an alarm system and a safe;

(d) Require that usable marijuana, medical cannabinoid products, cannabinoid concentrates, cannabinoid extracts and immature marijuana plants transferred by a medical marijuana dispensary be tested to ensure the public health and safety; and

(e) Impose any other standard on the operation of a medical marijuana dispensary to ensure the public health and safety. [Formerly 475.314]

Note: Sections 2 and 3, chapter 784, Oregon Laws 2015, provide:

Sec. 2. (1) As used in this section:

(a) "Limited marijuana retail product" means:

(A) The seeds of marijuana;

(B) The dried leaves and flowers of marijuana; and

(C) A marijuana plant that is not flowering.

(b) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(c) "Medical marijuana dispensary" means an entity registered with the Oregon Health Authority under ORS 475.314 [renumbered 475B.450].

(2) Notwithstanding any other provision of law, on and after October 1, 2015, a medical marijuana dispensary may sell limited marijuana retail product to a person who is 21 years of age or older if:

(a) The person presents proof of age to the medical marijuana dispensary before entering into the medical marijuana dispensary;

(b) The medical marijuana dispensary verifies that the person is 21 years of age or older at the time of the sale;

(c) The medical marijuana dispensary sells no more than one-quarter ounce of limited marijuana retail product to the person per day if the person is purchasing the dried leaves and flowers of marijuana; and

(d) The medical marijuana dispensary sells no more than four units of limited marijuana retail product to the person if the person is purchasing a marijuana plant that is not flowering.

(3) A city or county may adopt ordinances prohibiting the sale of limited marijuana retail product as described in this section in the area subject to the jurisdiction of the city or the unincorporated area subject to the jurisdiction of the county.

(4) The authority shall adopt rules to implement this section, including rules that:

(a) Are necessary to ensure the public health and safety; and

(b) Ensure that a medical marijuana dispensary complies with this section.

(5) The authority may prohibit a medical marijuana dispensary from selling limited marijuana retail product as described in this section if the medical marijuana dispensary violates this section. [2015 c.784 §2]

Sec. 3. Section 2 of this 2015 Act is repealed on December 31, 2016. [2015 c.784 §3]

Note: Sections 21a and 24 (2), chapter 699, Oregon Laws 2015, provide: **Sec. 21a.** (1) For purposes of this section:

(a) "Limited marijuana retail product" has the meaning given that term in section 2, chapter 784, Oregon Laws 2015.

(b) "Medical marijuana dispensary" means an entity registered with the Oregon Health Authority under ORS 475.314 [renumbered 475B.450].

(2) On and after January 4, 2016, if a medical marijuana dispensary elects to make sales as described in section 2, chapter 784, Oregon Laws 2015, the medical marijuana dispensary must collect the tax imposed under section 2 of this 2015 Act [475B.705] in the same manner that a marijuana retailer that holds a license under section 22, chapter 1, Oregon Laws 2015 [475B.110], collects the tax imposed under section 2 of this 2015 Act, except that the tax imposed under this section shall be imposed at the rate of 25 percent of the retail sales price of the limited marijuana retail product.

(3) A medical marijuana dispensary that collects taxes as required by this section is subject to the provisions of sections 1 to 13 of this 2015 Act [475B.700 to 475B.760], except that the tax imposed under this section shall be imposed at the rate described in subsection (2) of this section. [2015 c.699 §21a]

Sec. 24. (2) If Senate Bill 460 [chapter 784, Oregon Laws 2015] becomes law, section 21a of this 2015 Act is repealed on December 31, 2016. [2015 c.699 §24(2)]

Note: See note under 475B.420.

475B.453 Duty to submit dispensing data to Oregon Health Authority; rules. (1) The Oregon Health Authority shall require by rule a medical marijuana dispensary to submit to the authority for inclusion in the database developed and maintained pursuant to ORS 475B.458 the following information:

(a) The amount of usable marijuana transferred to and by the medical marijuana dispensary;

(b) The amount and type of medical cannabinoid products transferred to and by the medical marijuana dispensary;

(c) The amount and type of cannabinoid concentrates transferred to and by the medical marijuana dispensary;

(d) The amount and type of cannabinoid extracts transferred to and by the medical marijuana dispensary; and

(e) The quantity of immature marijuana plants transferred to and by the medical marijuana dispensary.

(2) The authority by rule may require a medical marijuana dispensary to submit to the authority for inclusion in the database developed and maintained pursuant to ORS 475B.458 information that is in addition to the information described in subsection (1) of this section as the authority considers necessary to fulfill the authority's duties under ORS 475B.450 (1). The authority may not employ any method other than that described in this section to obtain information from a medical marijuana dispensary. [2015 c.614 §86b]

475B.455 Establishment of school after registration. If a school described in ORS 475B.450 (3)(d) that has not previously been attended by children is established within 1,000 feet of a medical marijuana dispensary, the medical marijuana dispensary may remain at its current location unless the Oregon Health Authority revokes the registration of the medical marijuana dispensary. [2015 c.614 §86a]

Note: Section 174, chapter 614, Oregon Laws 2015, provides:

Sec. 174. If the Oregon Health Authority refuses to reregister a medical marijuana dispensary before the effective date of this 2015 Act [June 30, 2015] on the basis that the medical marijuana dispensary is located within 1,000 feet of a school as described in ORS 475.314 (3)(d) [renumbered 475B.450 (3)(d)], the authority shall reregister the medical marijuana dispensary on or after the effective date of this 2015 Act upon receiving a request, in a form and manner prescribed by the authority, to reregister the medical marijuana dispensary from the person who was previously registered as the person responsible for the medical marijuana dispensary. [2015 c.614 §174]

(Databases and Confidentiality of Information)

475B.458 Database of information related to production, processing and dispensing. (1) The Oregon Health Authority shall develop and maintain a database of information related to the production of marijuana by persons designated to produce marijuana by a registry identification cardholder, the processing of marijuana by a marijuana processing site under ORS 475B.435 and the transfer of usable marijuana, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts by medical marijuana dispensaries under ORS 475B.450. At a minimum, the database must include the information submitted to the authority under ORS 475B.423, 475B.438 and 475B.453.

(2)(a) Subject to paragraph (c) of this subsection, the authority may provide information that is stored in the database developed and maintained under this section to a law enforcement agency.

(b) Subject to paragraph (c) of this subsection, the authority may provide information that is stored in the database developed and maintaining under this section to the regulatory agencies of a city or county.

(c) The authority may not disclose:

(A) Any personally identifiable information related to a registry identification cardholder or a designated primary caregiver that is stored in the database developed and maintained under this section.

(B) Any information related to the amount and type of usable marijuana, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts transferred to or by persons designated to produce marijuana by a registry identification cardholder, marijuana processing sites or medical marijuana dispensaries.

(3) Nothing in this section prevents a law enforcement agency from lawfully obtaining information that is stored in the database developed and maintained under this section by subpoena. [2015 c.614 §85e]

475B.460 Database of information related to cardholders. (1)(a) The Oregon Health Authority shall establish and maintain a list of:

(A) The names of persons to whom a registry identification card has been issued under ORS 475B.415;

(B) The names of persons designated as primary caregivers under ORS 475B.418; and

(C) The addresses of marijuana grow sites registered under ORS 475B.420.

(b) Except as provided in subsection (2) of this section, the list is confidential and not subject to public disclosure under ORS 192.410 to 192.505.

(c) The authority shall develop a system by which authorized employees of state and local law enforcement agencies may verify that:

(A) A person lawfully possesses a registry identification card;

(B) A person is the designated primary caregiver of a lawful possessor of a registry identification card; or

(C) A location is a registered marijuana grow site.

(2) Names, addresses and other identifying information from the list established and maintained pursuant to subsection (1) of this section may be released to:

(a) Authorized employees of the authority as necessary to perform official duties of the authority.

(b) Authorized employees of state or local law enforcement agencies who provide to the authority adequate identification, but only as necessary to verify that:

(A) A person lawfully possesses a registry identification card;

(B) A person is the designated primary caregiver of a lawful possessor of a registry identification card; or

(C) A location is a registered marijuana grow site.

(3) Authorized employees of state or local law enforcement agencies who obtain identifying information as authorized by this section may not release or use the information for any purpose other than to verify that:

(a) A person lawfully possesses a registry identification card;

(b) A person is the designated primary caregiver of a lawful possessor of a registry identification card; or

(c) A location is a registered marijuana grow site.

(4) In addition to releasing information to authorized employees of state or local law enforcement agencies for purposes of verifying information under subsection (2)(b) of this section, the authority may release to authorized employees of state or local law enforcement agencies the minimum amount of information necessary to enable an employee to determine whether an individual or location is in compliance with a provision of ORS 475B.400 to 475B.525 or a rule adopted under ORS 475B.400 to 475B.525.

(5) If the authority determines, after conducting an investigation or receiving a complaint of an alleged violation of a provision of ORS 475B.400 to 475B.525 or a rule adopted under ORS 475B.400 to 475B.525, that a violation of a provision of ORS 475B.400 to 475B.525 or a rule adopted under ORS 475B.400 to 475B.525 has occurred, the authority may provide information obtained by the authority, except for information related to a registry identification cardholder's debilitating condition, to authorized employees of state or local law enforcement agencies, or to another state or local government agency with jurisdiction over the matter. [Formerly 475.331]

475B.462 Confidentiality of personally identifiable information. (1) Any personally identifiable information, as defined in ORS 432.005, other than a name of an individual or an address submitted with an application under ORS 475B.435 or 475B.450, that the Oregon Health Authority collects and maintains for purposes of registering a marijuana grow site under ORS 475B.420, a marijuana processing site under ORS 475B.435, or a medical marijuana dispensary under ORS 475B.450, is confidential and not subject to public disclosure under ORS 192.410 to 192.505, except that the authority may provide personally identifiable information to a person registered under ORS 475B.400 to 475B.525 if the registrant requests the information and the information is related to a designation made under ORS 475B.400 to 475B.525.

(2) Any personally identifiable information, as defined in ORS 432.005, submitted to the authority under ORS 475B.423, 475B.438 or 475B.453 or pursuant to ORS 475B.458 is confidential and not subject to public disclosure under ORS 192.410 to 192.505.

(3) Any record that the authority keeps or maintains for purposes related to the installation or maintenance of a security system by a medical marijuana dispensary pursuant to rules adopted under ORS 475B.450 (10) is confidential and not subject to public disclosure under ORS 192.410 to 192.505. [2015 c.614 §88d]

475B.464 Disclosure of personally identifiable information upon revocation or suspension of registration. Notwithstanding ORS 475B.462, if the Oregon Health Authority suspends or revokes the registration of the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary, or otherwise takes disciplinary action against the marijuana grow site of a person designated to produce marijuana by a registry identification

cardholder, a marijuana processing site or a medical marijuana dispensary, the authority shall provide that information to a law enforcement agency. [2015 c.614 §88e]

(Designation, Assignment, Foreclosure)

475B.468 Authority to designate responsibility for site or dispensary to another person. (1) A person responsible for a marijuana processing site, or a person responsible for a medical marijuana dispensary, may designate that responsibility to another person.

(2) If a designation is made under this section, the designee must submit to the Oregon Health Authority proof that the designee meets the requirements and restrictions set forth in:

(a) For marijuana processing sites, ORS 475B.435 (2)(d) and (4); or

(b) For medical marijuana dispensaries, ORS 475B.450 (2)(d) and (4).

(3) The authority may prescribe the form and manner of submitting proof under subsection (2) of this section. [2015 c.614 §86c]

475B.469 Authority to assign responsibility for site or dispensary to another person. (1) A person responsible for a marijuana processing site, or a person responsible for a medical marijuana dispensary, may assign that responsibility to another person.

(2) If an assignment is made under this section, the assignee must submit to the Oregon Health Authority proof that the assignee meets the requirements and restrictions set forth in:

(a) For marijuana processing sites, ORS 475B.435 (2)(d) and (4); or

(b) For medical marijuana dispensaries, ORS 475B.450 (2)(d) and (4).

(3) The authority may prescribe the form and manner of submitting proof under subsection (2) of this section. [2015 c.614 §86d]

475B.470 Rights of secured parties. (1) In the event that a marijuana processing site or a medical marijuana dispensary is foreclosed or otherwise ceases operations as described in ORS chapter 79, a secured party, as defined in ORS 79.0102, may continue operations at the marijuana processing site or medical marijuana dispensary upon submitting to the Oregon Health Authority proof that the secured party or, if the secured party is a business entity, any individual who has a financial interest in the secured party, meets the requirements and restrictions set forth in:

(a) For marijuana processing sites, ORS 475B.435 (2)(d) and (4); or

(b) For medical marijuana dispensaries, ORS 475B.450 (2)(d) and (4).

(2) The authority may prescribe the form and manner of submitting proof under subsection (1) of this section. [2015 c.614 §86e]

(Protections from Civil and Criminal Liability)

475B.475 Exemptions from criminal liability. Except as provided in ORS 475B.478, a person engaged in or assisting in the medical use of marijuana is exempt from the criminal laws of this state for possession, delivery or manufacture of marijuana, aiding and abetting another in the possession, delivery or manufacture of marijuana, or any other criminal offense in which possession, delivery or manufacture of marijuana is an element if:

(1) The person holds a registry identification card.

(2) The person has applied for a registry identification card under ORS 475B.415 and the person has proof of written documentation described in ORS 475B.415 (2)(a) and proof of the date on which the person submitted the application to the Oregon Health Authority. An exemption under this subsection applies only until the authority approves or denies the application.

(3) The person is designated as a primary caregiver under ORS 475B.418.

(4) The person is responsible for or is employed by a marijuana grow site registered under ORS 475B.420.

(5) The person owns, is responsible for, or is employed by, a marijuana processing site.

(6) The person owns, is responsible for, or is employed by, a medical marijuana dispensary. [2015 c.614 §87]

475B.478 Exceptions to exemption from criminal liability. A person is not exempt from the criminal laws of this state for possession, delivery or manufacture of marijuana, aiding and abetting another in the possession, delivery or manufacture of marijuana, or any other criminal offense in which possession, delivery or manufacture of marijuana is an element, and the person may not assert the affirmative defense established in ORS 475B.480, if the person, in connection with conduct constituting an element of the offense:

(1) Drives under the influence of marijuana as provided in ORS 813.010;

(2) Engages in the medical use of marijuana in a public place, as defined in ORS 161.015, in public view or in a correctional facility, as defined in ORS 162.135 (2), or a youth correction facility, as defined in ORS 162.135 (6); or

(3) Delivers marijuana to any individual who the person knows is not in possession of a registry identification card or to any individual or entity that the person knows has not been designated to receive marijuana or assigned a possessory interest in marijuana by an individual in possession of a registry identification card. [Formerly 475.316]

475B.480 Affirmative defense. (1) Except as provided in ORS 475B.478, a person has an affirmative defense to a criminal charge of possession, delivery or manufacture of marijuana, or any other criminal offense in which possession, delivery or manufacture of marijuana is an element, if the person charged with the offense:

(a) Was diagnosed with a debilitating medical condition within 12 months of the date on which the person was arrested and was advised by the person's attending physician that the medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condition;

(b) Is engaged in the medical use of marijuana; and

(c) Possesses, delivers or manufactures marijuana only in quantities permitted under ORS 475B.428.

(2) A person does not need to lawfully possess a registry identification card to assert the affirmative defense established in this section.

(3) A person engaged in the medical use of marijuana who claims that marijuana provides medically necessary benefits and who is charged with a crime pertaining to the use of marijuana is not precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition, provided that:

(a) The person possesses, delivers or manufactures marijuana only as permitted under ORS 475B.428 (1); and

(b) The person has taken a substantial step toward complying with the provisions of ORS 475B.400 to 475B.525.

(4) A defendant proposing to use the affirmative defense established in this section in a criminal action shall, not less than five days before the trial of the cause, file and serve upon the district attorney a written notice of the intention to assert the affirmative defense. The notice must specifically state the reasons why the defendant is entitled to assert the affirmative defense and the factual basis for the affirmative defense. If the defendant fails to file and serve the notice, the defendant is not permitted to assert the affirmative defense at the trial of the cause unless the court orders, for good cause, otherwise. [Formerly 475.319]

475B.483 Prohibition against taking disciplinary action against attending physician. The Oregon Medical Board may not impose a civil penalty or take other disciplinary action against an attending physician for:

(1) Advising a person diagnosed as having a debilitating medical condition by the attending physician or another physician licensed under ORS chapter 677 about the risks and benefits associated with the medical use of marijuana or that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, provided that the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition; or

(2) Providing the written documentation necessary for issuance or renewal of a registry identification card under ORS 475B.415, provided that the written documentation is based on the attending physician's personal assessment of the person's medical history and current medical condition and the attending physician has discussed with the person the potential risks and benefits associated with the medical use of marijuana. [Formerly 475.326]

475B.485 Prohibition against taking disciplinary action against professional licensee; right to administer marijuana for medical purposes. (1) A professional licensing board may not impose a civil penalty or take other disciplinary action against a licensee based on the licensee's medical use of marijuana under the provisions of ORS 475B.400 to 475B.525 or actions taken by the licensee pursuant to the licensee's designation as a primary caregiver under ORS 475B.418.

(2)(a) A licensed health care professional may administer medical marijuana to a person who possesses a registry identification card and resides in a licensed health care facility if the administration of pharmaceuticals is within the scope of practice of the licensed health care professional. Administration of medical marijuana under this subsection may not take place in a public place as defined in ORS 161.015 or in the presence of a person under 18 years of age. If the medical marijuana administered under this subsection is smoked, adequate ventilation must be provided.

(b) Nothing in this subsection requires:

(A) A licensed health care professional to administer medical marijuana; or

(B) A licensed health care facility to make accommodations for the administration of medical marijuana. [Formerly 475.328]

(Civil Enforcement of ORS 475B.400 to 475B.525)

475B.490 Authority to investigate; rights related to seized property. (1) Registration under ORS 475B.400 to 475B.525 or possession of proof of registration under ORS 475B.400 to 475B.525 does not constitute probable cause to search the person or property of the registrant or otherwise subject the person or property of the registrant to inspection by a government agency. However, the Oregon Health Authority may inspect a marijuana grow site registered under ORS 475B.420, a marijuana processing site registered under ORS 475B.435, or a medical marijuana dispensary registered under ORS 475B.450, at any reasonable time to determine whether the person responsible for the marijuana grow site, the person responsible for the marijuana processing site, or the person responsible for the medical marijuana dispensary, is in compliance with ORS 475B.400 to 475B.525 and rules adopted under ORS 475B.400 to 475B.525.

(2) Any property interest possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana that has been seized by state or local law enforcement officers may not be harmed, neglected, injured or destroyed while in the possession of a law enforcement agency, except that a law enforcement agency has no responsibility to maintain live marijuana plants lawfully seized. Such property interest may not be forfeited under any provision of law providing for the forfeiture of property, except pursuant to a sentence imposed after conviction of a criminal offense. Marijuana and equipment or paraphernalia used to produce, process or administer marijuana that was seized by a law enforcement officer shall be returned immediately if the district attorney in whose county the property was seized, or the district attorney's designee, determines that the person from whom the marijuana, equipment or paraphernalia was seized is entitled to the protections provided by ORS 475B.400 to 475B.525. The determination may be evidenced by a decision not to prosecute, the dismissal of charges or acquittal. [Formerly 475.323]

475B.495 Civil penalty for violating ORS 475B.400 to 475B.525. (1) In addition to any other liability or penalty provided by law, the Oregon Health Authority may impose for each violation of a provision of ORS 475B.400 to 475B.525, or for each violation of a rule adopted under a provision of ORS 475B.400 to 475B.525, a civil penalty that does not exceed $500 for each day that the violation occurs.

(2) The authority shall impose civil penalties under this section in the manner provided by ORS 183.745.

(3) All moneys collected pursuant to this section shall be deposited in the Oregon Health Authority Fund established under ORS 413.101 and are continuously appropriated to the authority for the purpose of carrying out the duties, functions and powers of the authority under ORS 475B.400 to 475B.525. [2015 c.614 §88]

(Regulation of Cannabis for Medical Use by Cities and Counties)

475B.500 Local time, place and manner regulations. (1) For purposes of this section, "reasonable regulations" includes:

(a) Reasonable limitations on the hours during which the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana

dispensary may operate;

(b) Reasonable conditions on the manner in which a marijuana processing site or medical marijuana dispensary may transfer usable marijuana, medical cannabinoid products, cannabinoid concentrates, cannabinoid extracts, immature marijuana plants and seeds;

(c) Reasonable requirements related to the public's access to the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary; and

(d) Reasonable limitations on where the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary may be located.

(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of marijuana grow sites of persons designated to produce marijuana by registry identification cardholders, marijuana processing sites and medical marijuana dispensaries that are located in the area subject to the jurisdiction of the city or county. [2014 c.79 §2; 2015 c.614 §89]

Note: The amendments to 475B.500 by section 89, chapter 614, Oregon Laws 2015, become operative March 1, 2016. See section 179, chapter 614, Oregon Laws 2015. The text that is operative until March 1, 2016, is set forth for the user's convenience.

475B.500. Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, "reasonable regulations" includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

Note: Refer to section 5, chapter 79, Oregon Laws 2014, for the text of 475.314 that is referenced in 475B.500 as operative until March 1, 2016.

(Other Provisions)

475B.505 Duty of State Department of Agriculture and Oregon Liquor Control Commission to assist. Upon request the State Department of Agriculture and the Oregon Liquor Control Commission, pursuant to an agreement or otherwise, shall assist the Oregon Health Authority in implementing and enforcing the provisions of ORS 475B.400 to 475B.525 and rules adopted under the provisions of ORS 475B.400 to 475B.525. [2015 c.614 §88a]

475B.507 Immunity for state agencies, officers, employees and agents in performance of duties. The Oregon Health Authority, the State Department of Agriculture and the Oregon Liquor Control Commission, and the officers, employees and agents of the authority, department and commission, are immune from any cause of action for the performance of, or the failure to perform, duties required by ORS 475B.400 to 475B.525. [2015 c.614 §88c]

475B.510 Authority to possess, seize or dispose of marijuana and marijuana-derived products. The Oregon Health Authority, the State Department of Agriculture and the Oregon Liquor Control Commission may possess, seize or dispose of marijuana, usable marijuana, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts as is necessary for the authority to ensure compliance with and enforce the provisions of ORS 475B.400 to 475B.525 and any rule adopted under ORS 475B.400 to 475B.525. [2015 c.614 §88b]

475B.513 Cannabis seeds as propagant of nursery stock. (1) For purposes of ORS 475B.400 to 475B.525, seeds of the plant Cannabis family Cannabaceae are a propagant of nursery stock as defined in ORS 571.005.

(2) Notwithstanding subsection (1) of this section, the production and processing of seeds under ORS 475B.400 to 475B.525 is not subject to the labeling or other requirements of ORS 576.715 to 576.744 or

633.511 to 633.750. [2015 c.614 §88f]

475B.515 Applicability of ORS 475B.400 to 475B.525 to criminal causes of action. The provisions of ORS 475B.400 to 475B.525 do not protect a person from a criminal cause of action based on possession, delivery or manufacture of marijuana that is not described in ORS 475B.400 to 475B.525. [Formerly 475.342]

475B.517 Petitioning for disease or condition to be included as debilitating medical condition; rules. Any person may petition the Oregon Health Authority to request that a disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions under ORS 475B.400 to 475B.525. The authority shall adopt rules establishing the procedure for filing a petition under this section and the manner by which the authority evaluates a request made under this section. Rules adopted under this section must require the authority to approve or deny a petition within 180 days of receiving the petition. Denial of a petition is a final agency action subject to judicial review. [Formerly 475.334]

475B.520 Advisory Committee on Medical Marijuana. (1) There is established within the Oregon Health Authority the Advisory Committee on Medical Marijuana, consisting of 11 members appointed by the Director of the Oregon Health Authority.

(2) The director shall appoint members of the committee from persons who are knowledgeable about marijuana or who are registered with the authority under ORS 475B.400 to 475B.525 and who are advocates for the medical use of marijuana, provided that a majority of the members of the committee are registered with the authority under ORS 475B.400 to 475B.525 and are advocates for the medical use of marijuana.

(3) The committee shall advise the director on the administrative aspects of ORS 475B.400 to 475B.525, including rules and fees adopted, and proposed for adoption, under ORS 475B.400 to 475B.525.

(4) The committee shall meet at least four times per year, at times and places specified by the director.

(5) The authority shall provide staff support to the committee.

(6) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice that the members of the committee consider necessary to perform their duties. [Formerly 475.303]

(Rulemaking)

475B.525 Authority to adopt rules for ORS 475B.400 to 475B.525. (1) The Oregon Health Authority shall adopt rules necessary for the implementation, administration and enforcement of ORS 475B.400 to 475B.525.

(2) The authority may adopt rules as the authority considers necessary to protect the public health and safety. [Formerly 475.338]

TESTING OF CANNABIS AND CANNABIS PRODUCTS

475B.550 Definitions for ORS 475B.550 to 475B.590. As used in ORS 475B.550 to 475B.590:

(1) “Cannabinoid” means any of the chemical compounds that are the active constituents of marijuana.

(2) “Cannabinoid concentrate or extract” means a substance obtained by separating cannabinoids from marijuana by a mechanical, chemical or other process.

(3) “Cannabinoid edible” means food or potable liquid into which a cannabinoid concentrate or extract or the dried leaves or flowers of marijuana have been incorporated.

(4)(a) “Cannabinoid product” means a cannabinoid edible or any other product intended for human consumption or use, including a product intended to be applied to a person’s skin or hair, that contains cannabinoids or the dried leaves or flowers of marijuana.

(b) “Cannabinoid product” does not include:

(A) Usable marijuana by itself;

(B) A cannabinoid concentrate or extract by itself; or

(C) Industrial hemp, as defined in ORS 571.300.

(5)(a) “Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) “Marijuana” does not include industrial hemp, as defined in ORS 571.300.

(6) "Marijuana item" means marijuana, usable marijuana, a cannabinoid product or a cannabinoid concentrate or extract.

(7) "Processing" means the compounding or conversion of marijuana into cannabinoid products or cannabinoid concentrates or extracts.

(8) "Producing" means:

(a) Planting, cultivating, growing, trimming or harvesting marijuana; or

(b) Drying marijuana leaves and flowers.

(9)(a) "Usable marijuana" means the dried leaves and flowers of marijuana.

(b) "Usable marijuana" does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana. [2015 c.614 §91]

475B.555 Testing standards and processes; rules. (1) As is necessary to protect the public health and safety, and in consultation with the Oregon Liquor Control Commission and the State Department of Agriculture, the Oregon Health Authority shall adopt rules:

(a) Establishing standards for testing marijuana items.

(b) Identifying appropriate tests for marijuana items, depending on the type of marijuana item and the manner in which the marijuana item was produced or processed, that are necessary to protect the public health and safety, including, but not limited to, tests for:

(A) Microbiological contaminants;

(B) Pesticides;

(C) Other contaminants;

(D) Solvents or residual solvents; and

(E) Tetrahydrocannabinol and cannabidiol concentration.

(c) Establishing procedures for determining batch sizes and for sampling usable marijuana, cannabinoid products and cannabinoid concentrates or extracts.

(d) Establishing different minimum standards for different varieties of usable marijuana and different types of cannabinoid products and cannabinoid concentrates and extracts.

(2) In addition to the testing requirements established under subsection (1) of this section, the authority or the commission may require cannabinoid edibles to be tested in accordance with any applicable law of this state, or any applicable rule adopted under a law of this state, related to the production and processing of food products or commodities.

(3) In adopting rules under ORS 475B.400 to 475B.525, the authority may require:

(a) A person responsible for a marijuana grow site under ORS 475B.420 to test usable marijuana before transferring the usable marijuana to a registrant other than an individual who holds a registry identification card under ORS 475B.415; and

(b) A person processing marijuana to test cannabinoid products or cannabinoid concentrates or extracts before transferring the cannabinoid products or cannabinoid concentrates or extracts to a registrant other than an individual who holds a registry identification card under ORS 475B.415.

(4) In adopting rules under ORS 475B.010 to 475B.395, the commission may require:

(a) A marijuana producer that holds a license under ORS 475B.070 or a marijuana wholesaler that holds a license under ORS 475B.100 to test usable marijuana before selling or transferring the usable marijuana; and

(b) A marijuana processor that holds a license under ORS 475B.090 or a marijuana wholesaler that holds a license under ORS 475B.100 to test cannabinoid products or cannabinoid concentrates or extracts before selling or transferring the cannabinoid products or cannabinoid concentrates or extracts.

(5) The authority and the commission may conduct random testing of marijuana items for the purpose of determining whether a person subject to testing under subsection (3) of this section or a licensee subject to testing under subsection (4) of this section is in compliance with this section.

(6) In adopting rules to implement this section, the authority and commission may not require a marijuana item to undergo the same test more than once unless the marijuana item is processed into a different type of marijuana item or the condition of the marijuana item has fundamentally changed.

(7) The testing of marijuana items as required by this section must be conducted by a laboratory licensed by the commission under ORS 475B.560 and accredited by the authority under ORS 475B.565.

(8) In adopting rules under subsection (1) of this section, the authority:

(a) Shall consider the cost of a potential testing procedure and how that cost will affect the cost to the ultimate consumer of the marijuana item; and

(b) May not adopt rules that are more restrictive than is reasonably necessary to protect the public health and safety. [2015 c.614 §92]

475B.560 Laboratory licensure; qualifications; fees; rules. (1) A laboratory that conducts testing of marijuana items as required by ORS 475B.555 must have a license to operate at the premises at which the marijuana items are tested.

(2) For purposes of this section, the Oregon Liquor Control Commission shall adopt rules establishing:

(a) Qualifications to be licensed under this section, including that an applicant for licensure under this section must be accredited by the authority as described in ORS 475B.565;

(b) Processes for applying for and renewing a license under this section;

(c) Fees for applying for, receiving and renewing a license under this section; and

(d) Procedures for:

(A) Tracking usable marijuana, cannabinoid products and cannabinoid concentrates or extracts to be tested;

(B) Documenting and reporting test results; and

(C) Disposing of samples of usable marijuana, cannabinoid products and cannabinoid concentrates or extracts that have been tested.

(3) A license issued under this section must be renewed annually.

(4) The commission may inspect premises licensed under this section to ensure compliance with ORS 475B.550 to 475B.590 and rules adopted under ORS 475B.550 to 475B.590.

(5) Subject to the applicable provisions of ORS chapter 183, the commission may refuse to issue or renew, or may suspend or revoke, a license issued under this section for violation of:

(a) A provision of ORS 475B.550 to 475B.590 or a rule adopted under a provision of ORS 475B.550 to 475B.590; or

(b) A provision of ORS 475B.010 to 475B.395 or a rule adopted under a provision of ORS 475B.010 to 475B.395.

(6) Fees adopted under subsection (2)(c) of this section must be reasonably calculated to pay the expenses incurred by the commission under ORS 475B.550 to 475B.590.

(7) Fee moneys collected under this section shall be deposited in the Marijuana Control and Regulation Fund established under ORS 475B.240 and are continuously appropriated to the commission for the purpose of carrying out the duties, functions and powers of the commission under ORS 475B.550 to 475B.590. [2015 c.614 §93]

475B.565 Laboratory accreditation; qualifications; fees; rules. (1) A laboratory that conducts testing of marijuana items as required by ORS 475B.555 must be accredited under ORS 438.605 to 438.620 and meet other qualifications as established by the Oregon Health Authority under this section.

(2) In addition to other qualifications required pursuant to ORS 438.605 to 438.620, the authority shall require an applicant for accreditation under ORS 438.605 to 438.620 for purposes related to the testing of marijuana items to:

(a) Complete an application;

(b) Undergo an onsite inspection; and

(c) Meet other applicable requirements, specifications and guidelines for testing marijuana items, as determined to be appropriate by the authority by rule.

(3) The authority may inspect premises licensed under ORS 475B.560 to ensure compliance with ORS 475B.550 to 475B.590 and rules adopted under ORS 475B.550 to 475B.590.

(4) Subject to the applicable provisions of ORS chapter 183, the authority may refuse to issue or renew, or may suspend or revoke, a laboratory's accreditation granted under this section and ORS 438.605 to 438.620 for violation of:

(a) A provision of ORS 475B.550 to 475B.590 or a rule adopted under a provision of ORS 475B.550 to 475B.590; or

(b) A provision of ORS 475B.010 to 475B.395 or a rule adopted under a provision of ORS 475B.010 to 475B.395.

(5) In establishing fees under ORS 438.620 for laboratories that test marijuana items, the authority shall establish fees that are reasonably calculated to pay the expenses incurred by the authority under this section and ORS 438.605 to 439.620 in accrediting laboratories that test marijuana items. [2015 c.614 §94]

475B.570 Applicability of ORS 475B.550 to 475B.590. ORS 475B.550 to 475B.590 do not apply to:

(1) A person responsible for a marijuana grow site under ORS 475B.420 if the person is transferring usable marijuana or an immature marijuana plant, as defined in ORS 475B.015, to:

(a) A person who holds a registry identification card under ORS 475B.415 and who designated the person responsible for the marijuana grow site to grow marijuana for the person who holds a registry identification card; or

(b) A person who has been designated as the primary caregiver under ORS 475B.418 of a person who holds a registry identification card under ORS 475B.415 and who designated the person responsible for the marijuana grow site to grow marijuana for the person who holds a registry identification card; or

(2) A person who has been designated as the primary caregiver under ORS 475B.418 of a person who holds a registry identification card under ORS 475B.415 if the person is transferring a marijuana item to the person who holds a registry identification card. [2015 c.614 §95]

475B.575 Authority of Oregon Liquor Control Commission to discipline licensees of commission. Subject to the applicable provisions of ORS chapter 183, if an applicant or licensee violates a provision of ORS 475B.550 to 475B.590 or a rule adopted under a provision of ORS 475B.550 to 475B.590, the Oregon Liquor Control Commission may refuse to issue or renew, or may suspend or revoke, a license issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110. [2015 c.614 §96]

475B.580 Authority of Oregon Health Authority to discipline registrants of authority. Subject to the applicable provisions of ORS chapter 183, if a person violates a provision of ORS 475B.550 to 475B.590 or a rule adopted under a provision of ORS 475B.550 to 475B.590, the Oregon Health Authority may:

(1) Refuse to register the person under ORS 475B.400 to 475B.525;

(2) Suspend activities conducted by a registrant pursuant to ORS 475B.400 to 475B.525; or

(3) Remove a registrant from a registry kept pursuant to ORS 475B.400 to 475B.525. [2015 c.614 §97]

475B.585 Civil penalty for violating ORS 475B.550 to 475B.590. (1) In addition to any other liability or penalty provided by law, the Oregon Health Authority may impose for each violation of a provision of ORS 475B.550 to 475B.590, or a rule adopted under a provision of ORS 475B.550 to 475B.590, a civil penalty that does not exceed $500 for each day that the violation occurs.

(2) The authority shall impose civil penalties under this section in the manner provided by ORS 183.745.

(3) Moneys collected under this section shall be deposited in the Oregon Health Authority Fund established under ORS 413.101 and are continuously appropriated to the authority for the purpose of carrying out the duties, functions and powers of the authority under ORS 475B.550 to 475B.590. [2015 c.614 §98]

475B.590 Exemption from criminal liability. A person who holds a license under ORS 475B.560, and an employee of or other person who performs work for a person who holds a license under ORS 475B.560, are exempt from the criminal laws of this state for possession, delivery or manufacture of marijuana, aiding and abetting another in the possession, delivery or manufacture of marijuana, or any other criminal offense in which possession, delivery or manufacture of marijuana is an element, while performing activities related to testing as described in ORS 475B.550 to 475B.590. [2015 c.614 §99]

PACKAGING, LABELING AND DOSAGE OF CANNABIS AND CANNABIS PRODUCTS

475B.600 Definitions for ORS 475B.600 to 475B.655. As used in ORS 475B.600 to 475B.655:

(1) “Cannabinoid” means any of the chemical compounds that are the active constituents of marijuana.

(2) “Cannabinoid concentrate or extract” means a substance obtained by separating cannabinoids from marijuana by a mechanical, chemical or other process.

(3) “Cannabinoid edible” means food or potable liquid into which a cannabinoid concentrate or extract or the dried leaves or flowers of marijuana have been incorporated.

(4)(a) "Cannabinoid product" means a cannabinoid edible or any other product intended for human consumption or use, including a product intended to be applied to a person's skin or hair, that contains cannabinoids or the dried leaves or flowers of marijuana.

(b) "Cannabinoid product" does not include:

(A) Usable marijuana by itself;

(B) A cannabinoid concentrate or extract by itself; or

(C) Industrial hemp, as defined in ORS 571.300.

(5)(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

(6) "Marijuana item" means marijuana, usable marijuana, a cannabinoid product or a cannabinoid concentrate or extract.

(7) "Processing" means the compounding or conversion of marijuana into cannabinoid products or cannabinoid concentrates or extracts.

(8) "Producing" means:

(a) Planting, cultivating, growing, trimming or harvesting marijuana; or

(b) Drying marijuana leaves and flowers.

(9)(a) "Usable marijuana" means the dried leaves and flowers of marijuana.

(b) "Usable marijuana" does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana. [2015 c.614 §100]

475B.605 Labeling requirements; rules. (1) As is necessary to protect the public health and safety, and in consultation with the Oregon Liquor Control Commission and the State Department of Agriculture, the Oregon Health Authority shall adopt rules establishing standards for the labeling of marijuana items, including but not limited to:

(a) Ensuring that usable marijuana, cannabinoid concentrates and extracts, cannabinoid edibles and other cannabinoid products have labeling that communicates:

(A) Health and safety warnings;

(B) Activation time;

(C) Results of tests conducted pursuant to ORS 475B.550 to 475B.590;

(D) Potency;

(E) For cannabinoid products and cannabinoid concentrates and extracts, serving size and the number of servings included in a cannabinoid product or cannabinoid concentrate or extract package; and

(F) Content of the marijuana item; and

(b) Labeling that is in accordance with applicable state food labeling requirements for the same type of food product or potable liquid when the food product or potable liquid does not contain marijuana or cannabinoids.

(2) In adopting rules under ORS 475B.400 to 475B.525, the authority shall require all usable marijuana, cannabinoid products and cannabinoid concentrates and extracts transferred by a medical marijuana dispensary registered under ORS 475B.450 to be labeled in accordance with subsection (1) of this section and rules adopted under subsection (1) of this section.

(3) In adopting rules under ORS 475B.010 to 475B.395, the commission shall require all usable marijuana, cannabinoid products and cannabinoid concentrates and extracts sold or transferred by a marijuana retailer that holds a license under ORS 475B.110 to be labeled in accordance with subsection (1) of this section and rules adopted under subsection (1) of this section.

(4) In adopting rules under subsection (1) of this section, the authority:

(a) May establish different labeling standards for different varieties of usable marijuana and for different types of cannabinoid products and cannabinoid concentrates and extracts;

(b) May establish different minimum labeling standards for persons registered under ORS 475B.400 to 475B.525 and persons licensed under ORS 475B.010 to 475B.395;

(c) Shall consider the cost of a potential requirement and how that cost will affect the cost to the ultimate consumer of the marijuana item; and

(d) May not adopt rules that are more restrictive than is reasonably necessary to protect the public health and safety. [2015 c.614 §101]

475B.610 Authority to require preapproval of labels. (1) As used in this section:

(a) "Licensee" has the meaning given that term in ORS 475B.015.

(b) "Registrant" means a person registered under ORS 475B.400 to 475B.525.

(2) The Oregon Liquor Control Commission may by rule require a licensee, and the Oregon Health Authority may by rule require a registrant, to submit a label intended for use on a marijuana item for preapproval by the commission before the licensee or registrant may sell or transfer a marijuana item bearing the label. The commission shall determine whether a label submitted under this section complies with ORS 475B.605 and any rule adopted under ORS 475B.605.

(3) The commission may impose a fee for submitting a label for preapproval under this section that is reasonably calculated to not exceed the cost of administering this section. [2015 c.614 §102]

475B.615 Packaging requirements; rules. (1) As is necessary to protect the public health and safety, and in consultation with the Oregon Health Authority and the State Department of Agriculture, the Oregon Liquor Control Commission shall adopt rules establishing standards for the packaging of marijuana items, including but not limited to:

(a) Ensuring that usable marijuana, cannabinoid concentrates and extracts, cannabinoid edibles and other cannabinoid products are:

(A) Packaged in child-resistant safety packaging; and

(B) Not marketed in a manner that:

(i) Is untruthful or misleading;

(ii) Is attractive to minors; or

(iii) Otherwise creates a significant risk of harm to public health and safety; and

(b) Ensuring that cannabinoid edibles and other cannabinoid products are not packaged in a manner that is attractive to minors.

(2) In adopting rules under ORS 475B.400 to 475B.525, the authority shall require all usable marijuana, cannabinoid products and cannabinoid concentrates and extracts transferred by a medical marijuana dispensary registered under ORS 475B.450 to be packaged in accordance with subsection (1) of this section and rules adopted under subsection (1) of this section.

(3) In adopting rules under ORS 475B.010 to 475B.395, the commission shall require all usable marijuana, cannabinoid products and cannabinoid concentrates and extracts sold or transferred by a marijuana retailer that holds a license under ORS 475B.110 to be packaged in accordance with subsection (1) of this section and rules adopted under subsection (1) of this section.

(4) In adopting rules under subsection (1) of this section the commission:

(a) May establish different packaging standards for different varieties of usable marijuana and for different types of cannabinoid products and cannabinoid concentrates and extracts;

(b) May establish different minimum packaging standards for persons registered under ORS 475B.400 to 475B.525 and persons licensed under ORS 475B.010 to 475B.395;

(c) May consider the effect on the environment of requiring certain packaging;

(d) Shall consider the cost of a potential requirement and how that cost will affect the cost to the ultimate consumer of the marijuana item; and

(e) May not adopt rules that are more restrictive than is reasonably necessary to protect the public health and safety. [2015 c.614 §103]

475B.620 Authority to require preapproval of packaging. (1) As used in this section:

(a) "Licensee" has the meaning given that term in ORS 475B.015.

(b) "Registrant" means a person registered under ORS 475B.400 to 475B.525.

(2) The Oregon Liquor Control Commission may by rule require a licensee, and the Oregon Health Authority may by rule require a registrant, to submit packaging intended for a marijuana item for preapproval by the commission before the licensee or registrant may sell or transfer a marijuana item packaged in the packaging. The commission shall determine whether packaging submitted under this section complies with ORS 475B.615 and any rule adopted under ORS 475B.615.

(3) The commission may impose a fee for submitting packaging for preapproval under this section that is reasonably calculated to not exceed the cost of administering this section. [2015 c.614 §104]

475B.625 Dosage requirements; rules. (1) The Oregon Health Authority shall adopt rules establishing:

(a) The maximum concentration of tetrahydrocannabinol that is permitted in a single serving of a cannabinoid product or cannabinoid concentrate or extract; and

(b) The number of servings that are permitted in a cannabinoid product or cannabinoid concentrate or extract package.

(2) In adopting rules under ORS 475B.400 to 475B.525, the authority shall require all usable marijuana, cannabinoid products and cannabinoid concentrates and extracts transferred by a medical marijuana dispensary registered under ORS 475B.450 to meet the concentration standards adopted by rule pursuant to subsection (1) of this section.

(3) In adopting rules under ORS 475B.010 to 475B.395, the Oregon Liquor Control Commission shall require all usable marijuana, cannabinoid products and cannabinoid concentrates and extracts sold or transferred by a marijuana retailer that holds a license under ORS 475B.110 to meet the concentration standards adopted by rule pursuant to subsection (1) of this section. [2015 c.614 §105]

475B.630 Applicability of ORS 475B.600 to 475B.655. ORS 475B.600 to 475B.655 do not apply to:

(1) A person responsible for a marijuana grow site under ORS 475B.420 if the person is transferring usable marijuana or an immature marijuana plant, as defined in ORS 475B.015, to:

(a) A person who holds a registry identification card under ORS 475B.415 and who designated the person responsible for the marijuana grow site to grow marijuana for the person who holds a registry identification card; or

(b) A person who has been designated as the primary caregiver under ORS 475B.418 of a person who holds a registry identification card under ORS 475B.415, and who designated the person responsible for the marijuana grow site to grow marijuana for the person who holds a registry identification card; or

(2) A person who has been designated as the primary caregiver under ORS 475B.418 of a person who holds a registry identification card under ORS 475B.415 if the person is transferring a marijuana item to the person who holds a registry identification card. [2015 c.614 §106]

475B.635 Authority of Oregon Liquor Control Commission to inspect. To ensure compliance with ORS 475B.600 to 475B.655 and any rule adopted under ORS 475B.600 to 475B.655, the Oregon Liquor Control Commission may inspect the premises of a person that holds a license under ORS 475B.070, 475B.090, 475B.100 or 475B.110. [2015 c.614 §108]

475B.640 Authority of Oregon Health Authority to inspect. To ensure compliance with ORS 475B.600 to 475B.655 and any rule adopted under ORS 475B.600 to 475B.655, the Oregon Health Authority may inspect the premises of:

(1) A medical marijuana dispensary registered under ORS 475B.450; and

(2) A person that processes marijuana to test cannabinoid products or cannabinoid concentrates or extracts for the purpose of transferring the cannabinoid products or cannabinoid concentrates or extracts to a medical marijuana dispensary registered under ORS 475B.450. [2015 c.614 §107]

475B.645 Authority of Oregon Liquor Control Commission to discipline licensees of commission. Subject to the applicable provisions of ORS chapter 183, if the applicant or licensee violates a provision of ORS 475B.600 to 475B.655 or a rule adopted under a provision of ORS 475B.600 to 475B.655, the Oregon Liquor Control Commission may refuse to issue or renew, or may suspend or revoke, a license issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110. [2015 c.614 §110]

475B.650 Authority of Oregon Health Authority to discipline registrants of authority. Subject to the applicable provisions of ORS chapter 183, if a person violates a provision of ORS 475B.600 to 475B.655 or a rule adopted under a provision of ORS 475B.600 to 475B.655, the Oregon Health Authority may:

(1) Refuse to register a person under ORS 475B.400 to 475B.525;

(2) Suspend activities conducted by a registrant pursuant to ORS 475B.400 to 475B.525; or

(3) Remove a registrant from a registry kept pursuant to ORS 475B.400 to 475B.525. [2015 c.614 §109]

475B.655 Civil penalty for violating ORS 475B.600 to 475B.655. (1) In addition to any other liability or penalty provided by law, the Oregon Health Authority may impose for each violation of a provision of ORS 475B.600 to 475B.655, or a rule adopted under a provision of ORS 475B.600 to 475B.655, a civil penalty that does not exceed $500 for each day that the violation occurs.

(2) The authority shall impose civil penalties under this section in the manner provided by ORS 183.745.

(3) Moneys collected under this section shall be deposited in the Oregon Health Authority Fund established under ORS 413.101 and are continuously appropriated to the authority for the purpose of carrying out the duties, functions and powers of the authority under ORS 475B.600 to 475B.655. [2015 c.614 §111]

TAXATION OF CANNABIS AND CANNABIS PRODUCTS

475B.700 Definitions for ORS 475B.700 to 475B.760. As used in ORS 475B.700 to 475B.760:

(1) "Cannabinoid concentrate," "cannabinoid edible," "cannabinoid extract," "cannabinoid product," "consumer," "immature marijuana plant," "marijuana flowers," "marijuana items," "marijuana leaves" and "marijuana retailer" have the meanings given those terms in ORS 475B.015.

(2) "Retail sale" means any transfer, exchange, gift or barter of a marijuana item by any person to a consumer.

(3) "Retail sales price" means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item. [2015 c.699 §1]

475B.705 Imposition of tax on retail sale of marijuana items. (1) A tax is hereby imposed upon the retail sale of marijuana items in this state. The tax imposed by this section is a direct tax on the consumer, for which payment upon retail sale is required to achieve convenience and facility in the collection and administration of the tax. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs.

(2) The tax imposed under this section shall be imposed at the rate of:

(a) 17 percent of the retail sales price of marijuana leaves;

(b) 17 percent of the retail sales price of marijuana flowers;

(c) 17 percent of the retail sales price of immature marijuana plants;

(d) 17 percent of the retail sales price of a cannabinoid edible;

(e) 17 percent of the retail sales price of a cannabinoid concentrate;

(f) 17 percent of the retail sales price of a cannabinoid extract;

(g) 17 percent of the retail sales price of a cannabinoid product that is intended to be used by applying the cannabinoid product to the skin or hair; and

(h) 17 percent of the retail sales price of cannabinoid products other than those described in paragraph (g) of this subsection.

(3) If the tax imposed under this section does not equal an amount calculable to a whole cent, the tax shall be equal to the next higher whole cent.

(4) The amount of the tax shall be separately stated on an invoice, receipt or other similar document that the marijuana retailer provides to the consumer, or shall be otherwise disclosed to the consumer.

(5) A person may not knowingly sell, purchase, install, transfer or possess software programs or other electronic devices intended to hide or to remove records of retail sales of marijuana items or to falsify records of retail sales of marijuana items. [2015 c.699 §2]

475B.710 Collection of tax; refund; credit. (1) Except as otherwise provided in ORS 475B.700 to 475B.760, the tax imposed upon the consumer under ORS 475B.705 shall be collected at the point of sale and remitted by each marijuana retailer that engages in the retail sale of marijuana items. The tax is considered a tax upon the marijuana retailer that is required to collect the tax, and the marijuana retailer is considered a taxpayer.

(2) The marijuana retailer shall submit a return to the Department of Revenue on or before the last day of January, April, July and October of each year for the previous calendar quarter.

(3) The marijuana retailer shall pay the tax to the department in the form and manner prescribed by the department, but not later than with each quarterly return, without regard to extensions under subsection (5) of this section.

(4) Marijuana retailers shall file the returns required under this section regardless of whether any tax is owed.

(5) The department for good cause may extend the time for making any return under this section. The extension may be granted at any time if a written request is filed with the department during or prior to the period for which the extension may be granted. The department may not grant an extension of more than 30 days.

(6) Interest shall be added at the rate established under ORS 305.220 for each month, or fraction of a month, from the time the return was originally required to be filed to the time of payment.

(7) Except as provided in subsections (8) and (9) of this section, the period prescribed for the department to allow or make a refund of any overpayment of tax paid under ORS 475B.700 to 475B.760 shall be as provided in ORS 314.415.

(8)(a) The department shall first apply any overpayment of tax to any marijuana tax that is then owed.

(b) If after any offset against any delinquent amount the overpayment of tax remains greater than $1,000, the entire refund shall be applied as a credit against the next subsequent calendar quarter as an estimated payment.

(9) The department may not make a refund of, or credit, any overpayment of tax under ORS 475B.700 to 475B.760 that was credited to the account of a marijuana retailer under subsection (8)(b) of this section if the return for that tax period is not filed within three years after the due date of that return. [2015 c.699 §3]

475B.715 Enforcement; liability; notice of liability; notices of determination and assessment. (1) Every person who collects any amount under ORS 475B.710 shall hold the same in trust for the State of Oregon and for the payment thereof to the Department of Revenue in the manner and at the time provided in ORS 475B.710.

(2) At any time a marijuana retailer fails to remit any amount collected, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. The warrant shall be issued, recorded and proceeded upon in the same manner and shall have the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes.

(3)(a) In the case of a marijuana retailer that is assessed pursuant to the provisions of ORS 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer, employee or member of the marijuana retailer within three years from the time of assessment. Within 30 days from the date the notice of liability is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the liability and, if desired, request a conference. A conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days from the date the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided for an appeal from a notice of assessment.

(c) If the department does not receive payment or written objection to the notice of liability within 30 days after the notice of liability was mailed, the notice of liability becomes final. In that event, the officer, employee or member may appeal the notice of liability to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.

(4)(a) In the case of a failure to file a return on the due date, governed by the provisions of ORS 305.265 (10) and 314.400, the department, in addition to any action described in the provisions of ORS 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, employee or member any time within three years after the assessment. The time of assessment against the officer, employee or member is 30 days after the date the notice of determination and assessment is mailed. Within 30 days from the date the notice of determination and assessment is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the assessment and, if desired, request a conference. A conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days from the date the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal in the manner provided for an appeal from a notice of assessment.

(c) If the department does not receive payment or written objection to the notice of determination and assessment within 30 days after the notice of determination and assessment was mailed, the notice of determination and assessment becomes final. In that event, the officer, employee or member may appeal the notice of determination and assessment to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.

(5)(a) More than one officer or employee of a corporation may be held jointly and severally liable for payment of taxes.

(b) Notwithstanding the confidentiality provisions of ORS 475B.755, if more than one officer or employee of a corporation may be held jointly and severally liable for payment of taxes, the department may require any or all of the officers, members or employees who may be held liable to appear before the department for a joint determination of liability. The department shall notify each officer, member or employee of the time and place set for the determination of liability.

(c) Each person notified of a joint determination under this subsection shall appear and present such information as is necessary to establish that person's liability or nonliability for payment of taxes to the department. If a person who was notified fails to appear, the department shall make its determination on the basis of all the information and evidence presented. The department's determination is binding on all persons notified and required to appear under this subsection.

(d)(A) If an appeal is taken to the Oregon Tax Court pursuant to ORS 475B.755 by any person determined to be liable for unpaid taxes under this subsection, each person required to appear before the department under this subsection shall be impleaded by the plaintiff. The department may implead any officer, employee or member who may be held jointly and severally liable for the payment of taxes. Each person impleaded under this paragraph shall be made a party to the action before the tax court and shall make available to the tax court the information that was presented before the department, as well as other information that may be presented to the court.

(B) The court may determine that one or more persons impleaded under this paragraph are liable for unpaid taxes without regard to any earlier determination by the department that an impleaded person was not liable for unpaid taxes.

(C) If a person required to appear before the court under this subsection fails or refuses to appear or bring such information in part or in whole, or is outside the jurisdiction of the tax court, the court shall make its determination on the basis of all the evidence introduced. Notwithstanding ORS 475B.755, the evidence constitutes a public record and shall be available to the parties and the court. The determination of the tax court is binding on all persons made parties to the action under this subsection.

(e) This section may not be construed to preclude a determination by the department or the Oregon Tax Court that more than one officer, employee or member are jointly and severally liable for unpaid taxes. [2015 c.699 §4]

475B.720 Duty to keep receipts, invoices and other records. (1) A marijuana retailer shall keep receipts, invoices and other pertinent records related to retail sales of marijuana items in the form required by the Department of Revenue. Each record shall be preserved for five years from the time to which the record relates, or for as long as the marijuana retailer retains the marijuana items to which the record relates, whichever is later. During the retention period and at any time prior to the destruction of records, the department may give written notice to the marijuana retailer not to destroy records described in the notice without written permission of the department. Notwithstanding any other provision of law, the department shall preserve reports and returns filed with the department for at least five years.

(2) The department or its authorized representative, upon oral or written demand, may make examinations of the books, papers, records and equipment of persons making retail sales of marijuana items and any other investigations as the department deems necessary to carry out the provisions of ORS 475B.700 to 475B.760. [2015 c.699 §5]

475B.725 Authority to require production of books, papers, accounts and other information. (1) The Department of Revenue has authority, by order or subpoena to be served with the same force and effect and in the same manner as a subpoena is served in a civil action in the circuit court, or the Oregon Tax Court, to require the production at any time and place the department designates of any books, papers, accounts or other information necessary to carry out ORS 475B.700 to 475B.760. The department may require the attendance of

any person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to the person.

(2) If a person fails to comply with a subpoena or order of the department or to produce or permit the examination or inspection of any books, papers, records and equipment pertinent to an investigation or inquiry under ORS 475B.700 to 475B.760, or to testify to any matter regarding which the person is lawfully interrogated, the department may apply to the Oregon Tax Court or to the circuit court of the county in which the person resides or where the person is for an order to the person to attend and testify, or otherwise to comply with the demand or request of the department. The department shall apply to the court by ex parte motion, upon which the court shall make an order requiring the person against whom the motion is directed to comply with the request or demand of the department within 10 days after the service of the order, or within the additional time granted by the court, or to justify the failure within that time. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service is required to confer jurisdiction upon the court. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section is in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state. [2015 c.699 §6]

475B.730 Disclosure of information. (1) Notwithstanding the confidentiality provisions of ORS 475B.755, the Department of Revenue may disclose information received under ORS 317.363 and 475B.700 to 475B.760 to the Oregon Liquor Control Commission to carry out the provisions of ORS 475B.010 to 475B.395 and 475B.700 to 475B.760.

(2) The commission may disclose information obtained pursuant to ORS 475B.010 to 475B.395 and 475B.700 to 475B.760 to the department for the purpose of carrying out the provisions of ORS 475B.010 to 475B.395 and 475B.700 to 475B.760. [2015 c.699 §7(1),(2)]

475B.735 Right to appeal determination of tax liability. Except as otherwise provided in ORS 475B.010 to 475B.395 and 475B.700 to 475B.760, a person aggrieved by an act or determination of the Department of Revenue or its authorized agent under ORS 317.363 and 475B.700 to 475B.760 may appeal, within 90 days after the act or determination, to the Oregon Tax Court in the manner provided in ORS 305.404 to 305.560. These appeal rights are the exclusive remedy available to determine the person's liability for the tax imposed under ORS 475B.700 to 475B.760. [2015 c.699 §7(3)]

475B.740 Duty to return excess tax collected. (1)(a) When an amount represented by a marijuana retailer at retail to a consumer as constituting the tax imposed under ORS 475B.700 to 475B.760 is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the consumer to the marijuana retailer, the excess tax paid shall be returned by the marijuana retailer to the consumer upon written notification by the Department of Revenue or the consumer.

(b) The written notification must contain information necessary to determine the validity of the consumer's claim.

(2) If the marijuana retailer does not return the excess tax within 60 days after mailing of the written notification required under subsection (1) of this section, the consumer may appeal to the department for a refund of the amount of the excess tax, in the manner and within the time allowed under rules adopted by the department.

(3) If excess tax is returned to the consumer by the department, the department may issue a notice of deficiency for the excess tax to the marijuana retailer in the manner provided under ORS 305.265. [2015 c.699 §9]

475B.745 Authority to retain portion of tax to pay expenses incurred. For the purpose of compensating marijuana retailers for expenses incurred in collecting the tax imposed under ORS 475B.705, each marijuana retailer is permitted to deduct and retain two percent of the amount of taxes that are collected by the marijuana retailer from all retail sales of marijuana items conducted by the marijuana retailer. [2015 c.699 §13]

475B.750 Duties and powers of Department of Revenue; rules; interagency cooperation. (1) The Department of Revenue shall administer and enforce ORS 475B.700 to 475B.760. The department is authorized to establish rules and procedures for the implementation and enforcement of ORS 475B.700 to 475B.760 that

are consistent with ORS 475B.700 to 475B.760 and that the department considers necessary and appropriate to administer and enforce ORS 475B.700 to 475B.760.

(2) The Oregon Liquor Control Commission shall enter into an agreement with the department for the purpose of administering and enforcing those provisions of ORS 475B.700 to 475B.760, and rules or procedures established for the purpose of implementing and enforcing ORS 475B.700 to 475B.760, that the commission and the department determine are necessary for the effective and efficient administration, implementation and enforcement of ORS 475B.700 to 475B.760. [2015 c.699 §8]

475B.755 Applicability of tax laws to ORS 475B.700 to 475B.760. Except as otherwise provided in ORS 475B.700 to 475B.760 or where the context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit and examination of returns, periods of limitation, determination of and notices of deficiencies, assessments, collections, liens, delinquencies, claims for refund and refunds, conferences, appeals to the Oregon Tax Court, stays of collection pending appeal, confidentiality of returns and the penalties relative thereto, and the procedures relating thereto, apply to the determinations of taxes, penalties and interest under ORS 475B.700 to 475B.760. [2015 c.699 §10]

475B.760 Suspense account; payment of expenses; crediting balance to Oregon Marijuana Account. (1) All moneys received by the Department of Revenue under ORS 475B.700 to 475B.760 and section 21a, chapter 699, Oregon Laws 2015, shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. The department may pay expenses for the administration and enforcement of ORS 475B.700 to 475B.760 and section 21a, chapter 699, Oregon Laws 2015, out of moneys received from the tax imposed under ORS 475B.705. Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account.

(2) After the payment of administrative and enforcement expenses and refunds or credits arising from erroneous overpayments, the department shall credit the balance of the moneys received by the department under this section to the Oregon Marijuana Account established under section 44, chapter 1, Oregon Laws 2015. [2015 c.699 §11]

Note: Section 44, chapter 1, Oregon Laws 2015, provides:

Sec. 44. (1) There is established the Oregon Marijuana Account, separate and distinct from the General Fund.

(2) The account shall consist of moneys transferred to the account under section 11 of this 2015 Act [475B.760].

(3) Subject to subsection (4) of this section, the Department of Revenue shall certify the amount of moneys available for distribution in the Oregon Marijuana Account and distribute the moneys as follows:

(a) Forty percent must be transferred to the Common School Fund;

(b) Twenty percent must be transferred to the Mental Health Alcoholism and Drug Services Account established under ORS 430.380;

(c) Fifteen percent must be transferred to the State Police Account established under ORS 181.175 [renumbered 181A.020];

(d) To assist local law enforcement in performing its duties under sections 3 to 70, chapter 1, Oregon Laws 2015 [475B.010 to 475B.395], 10 percent must be transferred to the cities of this state in the following shares:

(A) For all distributions made from the Oregon Marijuana Account before July 1, 2017, in such shares as the population of each city bears to the population of the cities of this state, as determined by Portland State University last preceding such apportionment, under ORS 190.510 to 190.610; and

(B) For all distributions made from the Oregon Marijuana Account on or after July 1, 2017:

(i) Fifty percent of the 10 percent must be transferred in such shares as the number of licenses issued by the commission under sections 19 to 21, chapter 1, Oregon Laws 2015 [475B.070, 475B.090 and 475B.100], during the calendar year preceding the date of the distribution for premises located in each city bears to the number of such licenses issued by the commission during such calendar year for all premises in this state; and

(ii) Fifty percent of the 10 percent must be transferred in such shares as the number of licenses issued by the commission under section 22, chapter 1, Oregon Laws 2015 [475B.110], during the calendar year preceding the date of the distribution for premises located in each city bears to the number of such licenses issued by the commission during such calendar year for all premises in this state;

(e) To assist local law enforcement in performing its duties under sections 3 to 70, chapter 1, Oregon Laws 2015, 10 percent must be transferred to counties in the following shares:

(A) For all distributions made from the Oregon Marijuana Account before July 1, 2017, in such shares as their respective populations bear to the total population of this state, as estimated from time to time by Portland State University; and

(B) For all distributions made from the Oregon Marijuana Account on or after July 1, 2017:

(i) Fifty percent of the 10 percent must be transferred in such shares as the number of licenses issued by the commission under sections 19 to 21, chapter 1, Oregon Laws 2015, during the calendar year preceding the date of the distribution for premises located in each county bears to the number of such licenses issued by the commission during such calendar year for all premises in this state; and

(ii) Fifty percent of the 10 percent must be transferred in such shares as the number of licenses issued by the commission under section 22, chapter 1, Oregon Laws 2015, during the calendar year preceding the date of the distribution for premises located in each county bears to the number of such licenses issued by the commission during such calendar year for all premises in this state; and

(f) Five percent must be transferred to the Oregon Health Authority to be used for the establishment, operation and maintenance of alcohol and drug abuse prevention, early intervention and treatment services.

(4) A city or county that adopts ordinances prohibiting the establishment of a premises for which a license is issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, or prohibiting the establishment of an entity for which registration is required under ORS 475.300 to 475.346 [renumbered 475B.400 to 475B.525], is not eligible to receive distributions under this section.

(5) It is the intent of the Legislative Assembly that the moneys distributed from the Oregon Marijuana Account to the persons listed in subsection (3) of this section are in addition to, and not in lieu of, any other moneys available to such persons. [2015 c.1 §44; 2015 c.699 §14; 2015 c.767 §219]

AUTHORITY OF CITIES AND COUNTIES TO PROHIBIT ESTABLISHMENT OF CANNABIS-RELATED BUSINESSES

475B.800 Adoption of ordinances; referral to electors for approval. (1) The governing body of a city or county may adopt ordinances to be referred to the electors of the city or county as described in subsection (2) of this section that prohibit or allow the establishment of any one or more of the following in the area subject to the jurisdiction of the city or the unincorporated area subject to the jurisdiction of the county:

(a) Marijuana processing sites registered under ORS 475B.435;

(b) Medical marijuana dispensaries registered under ORS 475B.450;

(c) Marijuana producers licensed under ORS 475B.070;

(d) Marijuana processors licensed under ORS 475B.090;

(e) Marijuana wholesalers licensed under ORS 475B.100;

(f) Marijuana retailers licensed under ORS 475B.110; or

(g) Any combination of the entities described in this subsection.

(2) If the governing body of a city or county adopts an ordinance under this section, the governing body shall submit the measure of the ordinance to the electors of the city or county for approval at the next statewide general election.

(3) If the governing body of a city or county adopts an ordinance under this section, the governing body must provide the text of the ordinance:

(a) To the Oregon Health Authority, in a form and manner prescribed by the authority, if the ordinance concerns a medical marijuana dispensary registered under ORS 475B.450 or a marijuana processing site registered under ORS 475B.435; or

(b) To the Oregon Liquor Control Commission, if the ordinance concerns a premises for which a license has been issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110.

(4)(a) Upon receiving notice of a prohibition under subsection (3) of this section, the authority shall discontinue registering those entities to which the prohibition applies until the date of the next statewide general election.

(b) Upon receiving notice of a prohibition under subsection (3) of this section, the commission shall discontinue licensing those premises to which the prohibition applies until the date of the next statewide general election.

(5) Notwithstanding any other provisions of law, a city or county that adopts an ordinance under this section that prohibits the establishment of an entity described in subsection (1) of this section may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated.

(6) Notwithstanding subsection (1) of this section, a medical marijuana dispensary is not subject to an ordinance adopted under this section if the medical marijuana dispensary:

(a) Is registered under ORS 475B.450 on or before the date on which the governing body adopts the ordinance; and

(b) Has successfully completed a city or county land use application process.

(7) Notwithstanding subsection (1) of this section, a marijuana processing site is not subject to an ordinance adopted under this section if the marijuana processing site:

(a) Is registered under ORS 475B.435 on or before the date on which the governing body adopts the ordinance; and

(b) Has successfully completed a city or county land use application process. [2015 c.614 §134]

Note: Sections 133, 135 and 136, chapter 614, Oregon Laws 2015, provide:

Sec. 133. (1) As used in this section, "qualifying city or county" means a county, or a city located in a county, in which not less than 55 percent of votes cast in the county during the statewide general election held on November 4, 2014, on Ballot Measure 91 (chapter 1, Oregon Laws 2015) were in opposition to the ballot measure.

(2)(a) The governing body of a qualifying city or county may adopt ordinances that prohibit the establishment of any one or more of the following in the area subject to the jurisdiction of the city or the unincorporated area subject to the jurisdiction of the county:

(A) Marijuana processing sites registered under section 85 of this 2015 Act [475B.435];

(B) Medical marijuana dispensaries registered under ORS 475.314 [renumbered 475B.450];

(C) Marijuana producers licensed under section 19, chapter 1, Oregon Laws 2015 [475B.070];

(D) Marijuana processors licensed under section 20, chapter 1, Oregon Laws 2015 [475B.090];

(E) Marijuana wholesalers licensed under section 21, chapter 1, Oregon Laws 2015 [475B.100];

(F) Marijuana retailers licensed under section 22, chapter 1, Oregon Laws 2015 [475B.110]; or

(G) Any combination of the entities described in this subsection.

(b) The governing body of a qualifying city or county may not adopt an ordinance under this section later than 180 days after the effective date of this 2015 Act [June 30, 2015].

(3) If the governing body of a qualifying city or county adopts an ordinance under this section, the governing body must provide the text of the ordinance:

(a) To the Oregon Health Authority, in a form and manner prescribed by the authority, if the ordinance concerns a medical marijuana dispensary registered under ORS 475.314 or a marijuana processing site registered under section 85 of this 2015 Act; or

(b) To the Oregon Liquor Control Commission, if the ordinance concerns a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015.

(4)(a) Upon receiving notice of a prohibition under subsection (3) of this section, the authority shall discontinue registering those entities to which the prohibition applies.

(b) Upon receiving notice of a prohibition under subsection (3) of this section, the commission shall discontinue licensing those premises to which the prohibition applies.

(5) Notwithstanding any other provisions of law, a qualifying city or county that adopts an ordinance under this section may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated.

(6) Notwithstanding subsection (2) of this section, a medical marijuana dispensary is not subject to an ordinance adopted under this section if the medical marijuana dispensary:

(a) Is registered under ORS 475.314 on or before the date on which the governing body adopts the ordinance; and

(b) Has successfully completed a city or county land use application process.

(7) Notwithstanding subsection (2) of this section, a marijuana processing site is not subject to an ordinance adopted under this section if the marijuana processing site:

(a) Is registered under section 85 of this 2015 Act on or before the date on which the governing body adopts the ordinance; and

(b) Has successfully completed a city or county land use application process. [2015 c.614 §133]

Sec. 135. (1) Notwithstanding sections 133 and 134 [475B.800] of this 2015 Act, a medical marijuana dispensary is not subject to an ordinance adopted pursuant to section 133 or 134 of this 2015 Act if the medical marijuana dispensary:

(a) Was registered under ORS 475.314 [renumbered 475B.450], or has applied to be registered under ORS 475.314, on or before July 1, 2015; and

(b) Has successfully completed a city or county land use application process.

(2) This section does not apply to a medical marijuana dispensary if the Oregon Health Authority revokes the registration of the medical marijuana dispensary. [2015 c.614 §135]

Sec. 136. (1) Notwithstanding sections 133 and 134 [475B.800] of this 2015 Act, a marijuana processing site is not subject to an ordinance adopted pursuant to section 133 or 134 of this 2015 Act if the person responsible for the marijuana processing site or applying to be the person responsible for the marijuana processing site:

(a) Was registered under ORS 475.300 to 475.346 [renumbered 475B.400 to 475B.525] on or before July 1, 2015;

(b) Was processing usable marijuana as described in section 85 (1) of this 2015 Act [475B.435 (1)] on or before July 1, 2015; and

(c) Has successfully completed a city or county land use application process.

(2) This section does not apply to a marijuana processing site if the Oregon Health Authority revokes the registration of the marijuana processing site. [2015 c.614 §136]

TASK FORCES

Note: Sections 132 and 175 (2), chapter 614, Oregon Laws 2015, provide:

Sec. 132. (1)(a) The Task Force on Cannabis Environmental Best Practices is established, consisting of 13 members appointed as follows:

(A) The President of the Senate shall appoint one member from among members of the Senate;

(B) The Senate Minority Leader shall appoint one member from among members of the Senate;

(C) The Speaker of the House shall appoint one member from among members of the House of Representatives;

(D) The House Minority Leader shall appoint one member from among members of the House of Representatives; and

(E) The Governor shall appoint nine representatives from among the following:

(i) One individual who represents utilities;

(ii) One individual who represents electricians;

(iii) Two individuals who represent the cannabis industry;

(iv) One individual who represents the State Department of Agriculture;

(v) One individual who represents the Water Resources Department;

(vi) One individual who represents the Public Utility Commission;

(vii) One individual who represents the State Department of Energy; and

(viii) One individual who represents the Energy Trust of Oregon.

(b) In making appointments under paragraph (a) of this subsection, the President of the Senate, the Senate Minority Leader, the Speaker of the House and the House Minority Leader shall appoint, if available, members of the Senate and members of the House of Representatives who served on the Joint Committee on Implementing Measure 91 during the 2015 regular session of the Legislative Assembly.

(2) The task force shall study the use of electricity and water by, and the agricultural practices associated with, the growing of cannabis by persons who hold a license under section 19, chapter 1, Oregon Laws 2015 [475B.070], and by persons who are responsible for a marijuana grow site under ORS 475.304 [renumbered 475B.420]. As part of the report submitted under subsection (9) of this section, the task force shall include suggestions related to environmental best practices for the propagating, producing and harvesting of cannabis.

(3) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(4) Official action by the task force requires the approval of a majority of the voting members of the task force.

(5) The task force shall elect one of its members to serve as chairperson.

(6) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(7) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the task force.

(8) The task force may adopt rules necessary for the operation of the task force.

(9) The task force shall submit a report in the manner provided by ORS 192.245, and may include recommendations for legislation, to an interim committee of the Legislative Assembly related to the regulation of cannabis as appropriate no later than September 15, 2016.

(10) The Oregon Liquor Control Commission shall provide staff support to the task force.

(11) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the task force shall be paid out of funds appropriated to Oregon Liquor Control Commission for purposes of the task force.

(12) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties. [2015 c.614 §132]

Sec. 175. (2) Section 132 of this 2015 Act is repealed on December 31, 2016. [2015 c.614 §175(2)]

Note: Sections 1 and 9, chapter 844, Oregon Laws 2015, provide:

Sec. 1. (1) The Task Force on Researching the Medical and Public Health Properties of Cannabis is established, consisting of 15 members appointed as follows:

(a) The President of the Senate shall appoint one member from among members of the Senate.

(b) The Speaker of the House of Representatives shall appoint one member from among members of the House of Representatives.

(c) The Governor shall appoint the following members:

(A) One member who represents the Oregon Liquor Control Commission and is knowledgeable about sections 3 to 70, chapter 1, Oregon Laws 2015 [475B.010 to 475B.395];

(B) One member who represents the Oregon Health Authority and is knowledgeable about ORS 475.300 to 475.346 [renumbered 475B.400 to 475B.525];

(C) One member who represents the Department of Justice;

(D) One member who represents Oregon Health and Science University and is knowledgeable about at least one debilitating medical condition, as defined in ORS 475.302 [renumbered 475B.410];

(E) One member who represents the Oregon University System and is knowledgeable about the availability of federal grants for researching cannabis;

(F) One member with expertise in agricultural research;

(G) One member with expertise in microbiology;

(H) One member with expertise in substance abuse treatment;

(I) One member with expertise in neurology;

(J) One member with expertise in oncology;

(K) One member with expertise in palliative care;

(L) One member who has been designated as a person responsible for a marijuana grow site under ORS 475.304 [renumbered 475B.420]; and

(M) One member with expertise in measuring tetrahydrocannabinol and cannabidiol levels and in identifying other cannabinoid compounds that have a potential effect on specific medical conditions.

(2) The task force shall study and make a report on the development of a medical cannabis industry that provides patients with medical products that meet individual patient needs. The report must:

(a) Identify and assess the validity of research related to the medical properties of cannabis that have been conducted in other countries and in other states and territories of the United States;

(b) Assess the potential for this state to collaborate with other states that have legalized the medical or recreational use of cannabis for purposes related to researching the medical properties of cannabis;

(c) Identify key research areas related to the medical properties of cannabis;

(d) Identify legal barriers to the establishment of laboratories that research the medical properties of cannabis, including barriers related to the possession, delivery and manufacture of marijuana;

(e) Identify legal barriers to the use of institutional review boards in approving, monitoring and reviewing research involving the medical properties of cannabis;

(f) Propose solutions to structuring and funding research that involves the medical properties of cannabis, including solutions that involve state programs and moneys and solutions that involve investment by private businesses and business sectors; and

(g) Assess the potential of locating a cannabis grow site for research purposes in this state and, if appropriate, setting forth a plan for the establishment of a cannabis grow site for research purposes in this state.

(3) A majority of the members of the task force constitutes a quorum for the transaction of business.

(4) Official action by the task force requires the approval of a majority of the members of the task force.

(5) The task force shall elect one of its members to serve as chairperson.

(6) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(7) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the members of the task force.

(8) The task force may adopt rules necessary for the operation of the task force.

(9) The task force shall:

(a) Submit a report updating the task force's progress in carrying out the duties of the task force pursuant to subsection (2) of this section, including any recommendations for legislation, in the manner provided by ORS 192.245 to the interim committees of the Legislative Assembly related to health, and any interim committee of the Legislative Assembly related to marijuana, no later than December 15, 2015; and

(b) Submit the report described in subsection (2) of this section, including any recommendations for legislation, in the manner provided by ORS 192.245 to the interim committees of the Legislative Assembly related to health, and any interim committee of the Legislative Assembly related to marijuana, no later than February 1, 2016.

(10) The Oregon Health Authority shall provide staff support to the task force.

(11) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the task force shall be paid out of funds appropriated to the Oregon Health Authority for purposes of the task force.

(12) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties. [2015 c.844 §1]

Sec. 9. Section 1 of this 2015 Act is repealed on December 31, 2017. [2015 c.844 §9]

City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Minutes - Final

City Commission

Dan Holladay, Mayor
Rocky Smith, Jr., Commission President
Brian Shaw and Renate Mengelberg

Tuesday, August 9, 2016 | **5:30 PM** | **Commission Chambers**

Work Session - REVISED

1. Convene Work Session and Roll Call

Mayor Holladay called the meeting to order at 5:40 PM.

Present: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

Staffers: 9 - Tony Konkol, Public Works Director John Lewis, Community Development Director Laura Terway, Human Resources Director Jim Loeffler, Economic Development Manager Eric Underwood, Police Chief and Public Safety Director James Band, City Recorder Kattie Riggs, Assistant City Attorney Carrie Richter and Pete Walter

2. Future Agenda Items

Mayor Holladay wanted to revisit the issue of the Commission's participation in the Regional Wastewater Treatment Capacity Advisory Committee.

3. Discussion Items:

3a. History of Regulating Membrane (Fabric and Metal) Residential Accessory Structures

Laura Terway, Community Development Director, said several Code Enforcement complaints had been received regarding membrane structures. Membrane structures were accessory buildings used for storage and she explained per Municipal Code that the structures were not allowed if they were visible in the right-of-way. This standard was adopted in 2011 and it was retroactive, did not allow for grandfathering, and these structures had to be removed in six months. She gave a history of how the Code had been changed and the adoption process for the changes that occurred in 2011. She then explained the reasons for the regulation and public outreach that was done. Some of the concerns from the public were these structures had permits, there were a variety of structure types, the cost, lack of proactive enforcement, and there were no complaints from nearby properties. She gave a history of Code Enforcement actions and how there had not been a lot of violations in the past, but several came forward in June as one person complained about 35 structures. The standards could not be ignored as they were in the City's Code, however the Code could be changed through a legislative application. The reason the Code was retroactive was these structures were temporary in nature and it was difficult to distinguish what was in good repair and what was in poor repair.

Mayor Holladay thought it was unfair to put something like this in place and not

grandfather those who already had the structures at least until property ownership changed.

Frank O'Donnell, resident of Oregon City, read his prepared testimony. He thought this was a well-intentioned piece of legislation, but had some unintended consequences. Mr. O'Donnell thought these were not temporary structures. He did not think this should be retroactive as it disregarded previously made land owning decisions and choosing building sites. The Code did not focus on the root cause of the problem, which was nuisances created by solid waste and junk. It identified the structure as the thing to be controlled. The focus of the Code was cosmetic in nature and not health and safety. These structures could withstand weather and the elements and many were properly anchored. The life expectancy was 30-50 years. Similar structures existed in the Oregon City maintenance yard, parks, schools, gas stations, storage sheds, and the End of the Oregon Trail. The Code did not differentiate between a properly installed anchored structure located behind fences and front property lines and unanchored insufficiently restrained structures in front of residences that might go tumbling down in the wind. Many of these structures were multi-use and membrane construction was recognized and widely used. He suggested grandfathering in existing structures, possibly opening up a free registration period for owners of existing structures to record their structures, and refining the existing Code with a focus on public health, safety, and welfare which was the proper role of government.

Mike Crawford, resident of Oregon City, passed around some pictures of his structure. In 1988 he put in a carport and the structure was still up and was on the back of his property. There were ordinances against a fence height that would block it. He would like to see these types of structures grandfathered.

Teresa Hayworth, resident of Oregon City, thought the intent of the Code was not safety related, but more associated with aesthetics. There were many structures that were visible in her block and she did not usually notice them. They were anchored down and in good condition and a lot were made from aluminum which lasted a long time. She thought they were more permanent structures, were expensive, and were well maintained. The structures had become part of their properties and she would like to have the freedom to keep hers.

Brian Gibson, resident of Oregon City, said his structure was used to cover an investment. It was put up prior to the Code change and it would create a hardship to take it down. He would like it to be grandfathered in or come up with a compromise.

Jeanette Kmetic, resident of Oregon City, bought her house in 2003 and she had a metal structure that was barely visible from the street. It was pre-existing to the Code change and she hoped it could be grandfathered as she did not want to have to take it down.

Mayor Holladay thought grandfathering was a valid concern. He suggested holding in abeyance any further Code Enforcement action until staff came back with a recommendation to the Commission.

Carrie Richter, City Attorney, said staff needed to look at where the Code Enforcement actions were in the process. The Commission could also start the process for amending the Code.

Jim Band, Police Chief, stated for these types of issues, the City worked with everyone and gave them time to comply. He did not think abeyance was necessary and the Commission could change the policy as they desired.

Mayor Holladay asked staff to bring back a recommendation to the City Commission for possible options in September. Mr. Konkol said if the Commission wanted to look at this Code, staff would take that into consideration as far as Code Enforcement was concerned.

3b. Time, Place and Manner Regulations for Marijuana Businesses and Personal Cultivation

Pete Walter, Planner, said the Planning Commission held a public hearing on marijuana business regulations and they forwarded the regulations to the City Commission with some amendments. He discussed the State laws and bills that had been passed regarding marijuana, current City policy which was a temporary ban until the November vote, public outreach, web based survey results, zoning, school, transit, city parks, and childcare buffers, where retail/dispensaries were permitted and how they were prohibited in residential zones, producer permitted areas, wholesaler permitted areas, and proposed standards of operation.

Mayor Holladay wanted to make sure they were fair in regard to where these uses were prohibited and the buffers required. He thought there needed to be more clarity on outdoor storage and the ability to load and unload product.

Mr. Walter said the Planning Commission held two public hearings on this issue. Some of the concerns were outdoor vs. indoor personal cultivation, odor nuisance, Land Use Compatibility Statement process, business license process, 1,000 foot buffer around Clackamas Community College, increased school buffer to 1,500 feet, requiring 1,000 foot separation between individual retail uses, and prohibiting retail use in the Canemah National Register District. The amendments recommended by the Planning Commission were: outdoor cultivation for personal grows would align with State law, there should be a minimum of 1,000 square feet between retail uses, and retailers would not be allowed in the Canemah District due to compatibility. He then discussed what other cities were doing in regard to marijuana regulations and discussed the tax revenue that would be dispersed by the State. A City Commission public hearing was scheduled for August 17, 2016.

There was discussion regarding the buffers and possibly limiting the number of retailers allowed in the City. There was further discussion regarding the Planning Commission's concerns.

Commissioner Mengelberg recommended using the boundary of the College as the buffer.

Tom Geil, resident of Oregon City, explained the Planning Commission's deliberations on this issue. It took a lot of compromise and he thought they had come up with the best solutions. Going with what the State said for personal grows was a compromise. The Clackamas Community College buffer was due to minors being on the campus and there needed to be more protections. The reason there was only one liquor store in the City was because it was based on population.

Mayor Holladay had an issue with adding a 250 foot buffer around parks. He did not see the marijuana facilities as different from a convenience store except that they could only do business in cash. He did not think a buffer would prevent kids from seeing the stores. The 1,000 foot buffer from schools was enough. He hesitated to single out the Canemah District for excluding marijuana businesses.

Commissioner Smith thought there should be a park buffer. He thought the buffer around the college should match the buffer around the high school. He was unsure

about the Canemah District issue.

There was discussion regarding what other cities did regarding park buffers.

Commissioner Mengelberg thought if the Canemah District felt strongly about not wanting it in their area, she would respect that. It seemed like a good place for it from a business standpoint.

Mr. Konkol had a concern regarding the security of the outdoor personal grows as well as impacts to neighbors.

There was discussion regarding crime surrounding marijuana, livability, and keeping it away from children.

Mr. Walter said the odor issue would be handled by Code Enforcement. The outstanding issues were the 1,000 foot buffer around the college, prohibiting retail use in the Canemah District, requiring a 1,000 foot separation between retail uses, and staff would come back with a map indicating removal of the 250 foot buffer for parks, day care facilities, and transit centers to show what it meant for retail sites. Staff would also work on the regulation for maneuvering and transporting the product without violating the outdoor storage regulations.

4. City Manager's Report

Mr. Konkol would be on vacation August 18-23, 2016.

Mr. Lewis said the paving on Molalla Avenue and Singer Hill had been put off due to the weather, but was going to start tomorrow, August 10, 2016.

5. Adjournment

Mayor Holladay adjourned the meeting at 7:54 PM.

Respectfully submitted,

_____

Kattie Riggs, City Recorder

City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Minutes - Final

City Commission

Dan Holladay, Mayor
Rocky Smith, Jr., Commission President
Brian Shaw and Renate Mengelberg

Wednesday, August 17, 2016 | **7:00 PM** | **Commission Chambers**

1. Convene Regular Meeting and Roll Call

Mayor Holladay called the meeting to order at 7:00 PM.

Present: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

Staffers: 9 - Tony Konkol, Assistant City Attorney Carrie Richter, City Recorder Kattie Riggs, Police Chief and Public Safety Director James Band, Public Works Director John Lewis, Economic Development Manager Eric Underwood, Pete Walter, Community Development Director Laura Terway and Library Director Maureen Cole

2. Flag Salute

3. Ceremonies, Proclamations, and Presentations

3a. Proclamation for the 96th Oregon City / West Linn Rivalry Day

Mayor Holladay read the proclamation declaring September 2, 2016, as the 96th Oregon City / West Linn Rivalry Day.

Commissioner Shaw announced the Optimist Club Breakfast on August 30, 2016.

3b. Transportation Advisory Committee Annual Report for 2015

Bob La Salle, Chair of the Transportation Advisory Committee, presented the Transportation Advisory Committee Annual Report for 2015. He discussed the accomplishments of the Committee including the Carnegie Library project and new traffic patterns during construction, Linn Avenue/Leland Road/Meyers Road roundabout, Pavement Maintenance Utility Fee Five Year Plan, tracking system for the condition of City signs, Drive Safe Oregon City Campaign, South End Road and Hazel Grove Drive crosswalk, improved communications with City departments and other organizations, presentations on the Parks Master Plan and parks projects, Hospital Master Plan, and speedbump, crosswalk, and stop sign requests.

3c. Public Works Stormwater and Grading Design Standards Update

John Lewis, Public Works Director, said the City had updated the stormwater and grading design standards last year and staff was continuing to monitor the implementation of the standards. As land developed more impervious areas were created and how the City managed stormwater was through low impact development such as rain gardens and rain barrels which encouraged on site storage. The

standards helped in the implementation and maintenance of these systems. Most of the current new development had already been approved through the land use process before adoption of the standards. However all new applications would be using them. He did not think it would impact the development community.

4. Citizen Comments

Bob Mahoney, resident of Oregon City, discussed the whitewater park and how it had not gone to the Planning Commission as a land use application. These types of proposals needed to follow the process especially if public funds were going to be used. Anyone who appeared before the City Commission with an intent to get an endorsement without public participation and a record being established was not going through the correct process. This was a complicated project and they had to protect the public process.

5. Adoption of the Agenda

The agenda was adopted as presented.

6. Public Hearings

6a. Request to Continue: Annexation Request of Approximately 0.46 Acres of Property Located at 19358 S. Columbine Court into the City (Annexation File AN-16-0001)

Laura Terway, Community Development Director, said staff was requesting a continuation of this annexation hearing to September 7, 2016.

There was no public testimony.

A motion was made by Commissioner Smith, seconded by Commissioner Mengelberg, to continue the annexation request of approximately 0.46 acres of property located at 19358 S. Columbine Court into the City (Annexation File AN-16-0001) to September 7, 2016. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

6b. Time, Place and Manner Regulations for Marijuana Businesses and Personal Cultivation (Planning File LE-16-0001)

Ms. Terway said there was a measure on the November ballot asking if voters wanted marijuana associated businesses in the City as currently they were not allowed. Staff was proposing time, place, and manner regulations should the measure pass.

Pete Walter, Planner, said this application would amend the existing zoning code to allow these businesses. All of the previous items had been entered into the record except the survey results which he then entered into the record. He explained the public process that was done and discussed zoning that showed where the marijuana businesses could be located. No marijuana businesses were allowed in residential, retail businesses would be allowed in mixed use and commercial, and most uses were allowed in industrial and employment. Grow sites had to be indoors. This did not apply to personal cultivation, where people could grow up to four plants for personal use. The Planning Commission recommended approval of the application with a few questions for the City Commission to decide. The first was should there be a 1,000

foot separation from Clackamas Community College for marijuana retailers? This would have a large effect on where retailers could be located in the City and Mr. Walter showed maps of the different buffer scenarios and possible locations for retailers. The next question was should the City require a 250 foot separation from public parks, licensed childcare and daycare facilities, and public transit centers for marijuana retailers? Mr. Walter gave examples of the effect on the amount of retail that would be allowed in those scenarios. The next question was should there be a 1,000 foot separation between marijuana retailers? This was not a requirement for any other type of retail use and with this separation there would be 25 possible retail sites available in the City. Another question was should marijuana retailers be prohibited in the Canemah Historic District? Since it was a mixed use zone, staff recommended that retailers be allowed. Regarding outdoor business use, it was not allowed except for temporary ingress and egress of vehicles, persons, and materials associated with the permitted use. The last question was should personal outdoor cultivation be permitted? There were concerns about theft and trespassing and smell and odor complaints. He was asking for Commission guidance on these items. The president of Clackamas Community College submitted a letter in favor of the 1,000 foot buffer around the college.

Mayor Holladay opened the public hearing.

Mike Albin, resident of Oregon City, urged the City Commission to follow the Planning Commission's recommendations regarding the buffers around Clackamas Community College and daycare centers. The churches were not on the maps, and he thought having a buffer around churches would be a good idea.

Doug Neeley, resident of Oregon City, was representing Oregon City Together who educated youth about substance abuse. He thought if there was a buffer from schools there should be a buffer from parks. The reasons for the 1,000 foot buffer around Clackamas Community College were there were a lot of people under 21 who were attending the college, high school students were attending classes at the college, and the more marijuana businesses that were in the City the more it was likely that marijuana would be sold to youth. He had a child who became a heroin addict and had started using it in high school and her gateway drug was marijuana. He also had a grandson who became a heroin addict and his gateway drug was also marijuana. They were no longer addicts but their experiences as addicts would be with them for the rest of their lives.

Paige Hirt, program director for Oregon City Together, said she was a parent with a recent graduate of Oregon City High School and had two younger boys. She was concerned about marijuana use increasing as the perception of harm was decreasing. The perception of harm would begin to change when it was normalized in the community and culture. Youth needed to understand use of these substances were not good for developing brains and seeing signage and advertisements for marijuana or availability of marijuana where kids frequent normalized it and reduced the perception of harm. She was in favor of the buffers recommended by the Planning Commission as they put youth and the health of the community first.

Christopher Lane, resident of Milwaukie, was attending Gardiner Middle School. He thought there should be bigger buffer zones around daycares, schools, parks, and between dispensaries. The more dispensaries there were, more youth would use marijuana as they would think it was normal and they could become addicts or suffer brain damage. They needed to worry less about profit and more about the City. Kids needed to be exposed less to marijuana.

Mayor Holladay closed the public hearing.

Mayor Holladay said there was a vote coming up in November regarding marijuana retail sales being allowed in the City. If the citizens said they wanted marijuana retailers, they had to view this fairly as other businesses. Marijuana already had a lot more regulations than other retail businesses and the Code discussion had to be separate from whether or not marijuana should be allowed. He wanted the fairest application of the Code to the business community as a whole.

There was discussion regarding the 1,000 foot buffer around Clackamas Community College.

Commissioner Mengelberg had originally questioned whether the buffer was too much and based on the letter from the college and public testimony received, she was now convinced that a 1,000 foot buffer around the college was the right decision.

Commissioner Shaw agreed that the recommendation should be upheld as there would only be more youth attending classes at the college. Marijuana was still illegal federally and different from other businesses. He thought the east buffer should end at Beavercreek Road and not cross over the road.

Commissioner Smith did not think there could be an exception for Beavercreek Road. He thought the buffer should remain at 1,000 feet as all other schools. There were many students that went back and forth between the high school and college campuses and it made sense that all the schools were consistent.

Mayor Holladay thought a lot was being read into a storefront sign. He had visited marijuana retail stores to see how they operated and he thought several security measures were in place. He did not see a reason to go beyond what was required by the State legislature.

Commissioner Mengelberg thought it was easier to be restrictive first and loosen some of the requirements as needed.

A motion was made by Commissioner Smith, seconded by Commissioner Shaw, to support a 1,000 foot buffer around Clackamas Community College. The motion carried by the following vote:

Aye: 3 - Commissioner Brian Shaw, Commissioner Rocky Smith and Commissioner Renate Mengelberg

Nay: 1 - Mayor Dan Holladay

There was discussion regarding 250 foot separation from public parks, licensed childcare and daycare facilities, and public transit centers for marijuana retailers.

Commissioner Shaw, Smith, and Mengelberg agreed with the Planning Commission's recommendation for these buffers.

A motion was made by Commissioner Smith, seconded by Commissioner Mengelberg, to support a 250 foot separation from public parks, licensed childcare and daycare facilities, and public transit centers for marijuana retailers. The motion carried by the following vote:

Aye: 3 - Commissioner Brian Shaw, Commissioner Rocky Smith and Commissioner Renate Mengelberg

Nay: 1 - Mayor Dan Holladay

There was discussion regarding a 1,000 foot separation between marijuana retailers.

Commissioner Shaw was in agreement as there were 25 sites available for retailers even with this buffer.

Mayor Holladay did not think there would be 25 marijuana retailers in the City. He did not have an issue with this buffer.

A motion was made by Commissioner Shaw, seconded by Commissioner Smith, to support a 1,000 foot separation between marijuana retailers. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

There was discussion regarding prohibiting marijuana retailers in the Canemah Historic District.

Commissioner Mengelberg did not think Canemah should be singled out for separate treatment than anywhere else in the City. She was not in favor of imposing this restriction.

Commissioner Smith discussed the results of the online survey regarding retail locations. Where these facilities were located was important, especially as tourists and residents were driving to certain destinations. He thought due to the buffers around parks, it took out locations like the McLoughlin neighborhood and downtown. The most important assets were the historic neighborhoods and he was in favor of the restriction on the Canemah District due to the historic value of the neighborhood.

Commissioner Shaw said Canemah was a historically designated area and it was the south entry to the City. He did not think they wanted a marijuana retailer at the entry to the City and agreed with the restriction.

Mayor Holladay agreed with Commissioner Mengelberg and thought the historic designation was not about exterior appearance. He wanted to keep the playing field as level as possible for all businesses. The Canemah business district was not currently attractive, but he supported all of those businesses existing. He did not see a connection between the historic district and this piece of the Code.

Commissioner Mengelberg said from a commerce standpoint the Canemah District was separate because of topography and was on a State highway without schools or parks nearby and she thought it was a good spot to put in a retail store.

Commissioner Smith said in 20 years Canemah would be the center of the most important development in the State.

Mayor Holladay said these regulations could be changed if needed. He did not want to set a precedent of giving the historic district more restrictions.

A motion was made by Commissioner Mengelberg, seconded by Mayor Holladay, to allow retail sales in the Canemah Historic District. The motion failed by the following vote:

Aye: 2 - Mayor Dan Holladay and Commissioner Renate Mengelberg

Nay: 2 - Commissioner Brian Shaw and Commissioner Rocky Smith

A motion was made by Commissioner Mengelberg, seconded by Commissioner Shaw, to support the change to the language that no portion of a marijuana business could be conducted outside except for temporary

ingress and egress of vehicles, persons, and materials associated with the permitted use. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

There was discussion regarding whether or not to allow outdoor personal cultivation of marijuana.

Commissioner Mengelberg was in favor of property rights, but this could be a potentially dangerous attractive nuisance for children. She thought it should only be grown indoors.

Mayor Holladay said the people in Oregon voted in favor of marijuana and there were some who wanted to grow it outside naturally without using any electricity or other resources to produce marijuana for themselves. It could be a financial burden to grow it indoors.

Commissioner Shaw had seen mature plants and they could get big. He thought it was up to the homeowner whether to grow outside or inside. If they grew outside, it would be their choice to deal with it if it became an attractive nuisance that they created.

Tony Konkol, City Manager, discussed how one person's property rights might impact the property rights of those around them. He was worried about the attractive nuisance component.

Mayor Holladay thought if it became a problem, this could be changed.

Jim Band, Police Chief, was worried about putting it on the homeowner to be responsible for making sure kids didn't steal the outdoor plants. There was also potential for robberies and he did not think the cost to grow marijuana inside would be prohibitive. There was a strong potential for neighbors not to feel safe because it was being grown in their neighbor's yard.

Mayor Holladay said it was supposed to be out of public view.

Mr. Konkol said this would come back to the Commission on September 7, 2016.

A motion was made by Commissioner Mengelberg, seconded by Commissioner Smith, to prohibit outdoor personal cultivation on private property and make it indoor only. The motion carried by the following vote:

Aye: 3 - Commissioner Brian Shaw, Commissioner Rocky Smith and Commissioner Renate Mengelberg

Nay: 1 - Mayor Dan Holladay

7. General Business

7f. Resolution No. 16-13, Authorizing Issuance of a Permanent but Revocable Obstruction Permit for Existing and Replacement Fencing within the McKinley Avenue and Promontory Avenue Rights-of-way (ROW)

Mr. Lewis said the Commission asked staff to bring this back as a property vacation, however staff suggested doing a permanent but revocable obstruction permit for the

fence area which was on the City's right-of-way. The property alignment had been in existence for over 40 years and parts of the fence were in need of replacement. The fence served as a landscape boundary and a protective barrier from a drop into Water Board Park. The property owners' use of the right-of-way was consistent with good stewardship of the land that would otherwise be difficult for the City to maintain. It was not on a pathway plan currently, but it could be added in the future. Many neighboring properties were encroaching into the right-of-way. This property had always encroached on the right-of-way as far back as the records went. The County Tax Assessor said taxes were based on the square footage of the lot and they were not currently paying taxes on the right-of-way portion. The value of an encroachment or unimproved right-of-way was a gray area and it was common practice that it happened. The obstruction permit would be revocable and there would be no costs associated with accessing the property in the future and removing the landscaping if needed. Staff recommended adoption of the resolution which would allow the residents to put the fence back in and continue the use of the property. He showed pictures of how other properties in the neighborhood were also encroaching into the right-of-way.

Virginia Harper, property owner, said they bought the house in 2009. After looking up the history, the house was built in 1968 and that was when the fences went in. As far as any neighbor remembered the fences had always been exactly as they were now. There was an area on the other side of the fence before the cliff that they were maintaining. The fence fell down because the wood was too old and it needed to be replaced. They were about 80% finished with the fence before the City came with a stop work order. They were never told that it was right-of-way. There was access on the other side of the fence for fire trucks or other large equipment and they were maintaining that area. They were trying to do the right thing.

Dorothy Dahlsrud, resident of Oregon City, walked Water Board Park on a regular basis and the walking pathway could be accessed on Promontory Avenue and there was a beautiful view from McKinley Avenue. She hoped to see the area of McKinley as part of a trail system. She recently walked by this fence and it did not look like an easement area, but that it was part of people's property. She did not think they should give away property as it was hard to get the property back even thought it was a revocable permit.

Denyse McGriff, resident of Oregon City, was a regular user of Water Board Park. The unbuilt public rights-of-way in McKinley and Promontory Avenue belonged to the public even though people were using it. She thought this should be reviewed by the Parks and Recreation Advisory Committee before a decision was made since it was directly adjacent to Water Board Park. They should not vacate this property as a path might be built there one day.

Mr. Lewis thought a revocable permit could be acted upon without issue. It could be taken to PRAC, but it was not currently on the trail plan. He thought it would be good for the property owners to have a decision made that night.

Bill Daniels, resident of Oregon City, said if the Commission allowed this to happen it would set a bad precedent.

Wesley Harper, property owner, said there was access to Water Board Park on McKinley and the fence would not limit that access. They only wanted to replace what was there before and they took the revocable permit seriously that if in the future the property was needed, they would take out the fence.

Commissioner Mengelberg was not in favor of people encroaching into the

right-of-way and thought it made sense to take this issue to PRAC.

Commissioner Smith did not have an issue with the permit as the fence could come down at any time. He thought at the time a trail was planned it could be taken to PRAC. He did not think they should make the property owners wait for an answer.

Commissioner Shaw said the fence had been in place for a long time and the permit was revocable if they needed the property for a trail. He was open to having PRAC look at it as well.

Mayor Holladay discussed how he found himself in a similar situation with a home he had. This was not the only place this was occurring. He thought it was a safety hazard to have people walking there with the cliff and no railing. While this was an issue, this particular situation did not call for not allowing a fence there. He thought the other neighbors who were also encroaching in the right-of-way should have a revocable permit as well.

A motion was made by Commissioner Shaw, seconded by Commissioner Smith, to approve Resolution No. 16-13, authorizing issuance of a permanent but revocable Obstruction Permit for existing and replacement fencing within the McKinley Avenue and Promontory Avenue rights-of-way (ROW). The motion carried by the following vote:

Aye: 3 - Commissioner Brian Shaw, Commissioner Rocky Smith and Mayor Dan Holladay

Nay: 1 - Commissioner Renate Mengelberg

7a. Second Reading of Ordinance No. 16-1006, Adopting a Public Facilities Strategy for the Linn Avenue and Hazelwood Drive Sewer Systems

Mr. Lewis said this ordinance would address the sanitary sewer moratorium that had been ongoing for a couple of years. The Public Facilities Strategy would continue projects that would correct the capacity issues.

A motion was made by Commissioner Mengelberg, seconded by Commissioner Shaw, to approve the second reading and final adoption of Ordinance No. 16-1006, adopting a Public Facilities Strategy for the Linn Avenue and Hazelwood Drive Sewer Systems. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

7b. Second Reading of Ordinance No. 16-1007, Adopting Amendments to the Oregon City Municipal Code Chapter 17.62, Site Plan and Design Review, and Chapter 17.50, Administration and Procedures

Ms. Terway said staff was proposing adoption of a streamlined process for minor exterior alterations for commercial, industrial, institutional, and multi-family buildings. No criteria or standards would be changed, but the timeline and cost would be reduced.

A motion was made by Commissioner Mengelberg, seconded by Commissioner Smith, to approve the second reading and final adoption of Ordinance No. 16-1007, adopting amendments to the Oregon City Municipal Code Chapter 17.62, Site Plan and Design Review, and Chapter 17.50,

Administration and Procedures. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

7c. Resolution No. 16-23, Amending the Planning Division Fee Schedule to Add Fees for the Newly Created Type I Site Plan and Design Review

Ms. Terway said the Commission had created a Type 1 process for a streamlined review for minor exterior alterations, and there should be a reduced fee. Staff proposed creating two fees depending on the amount of criteria an application had to meet. One fee would be for over the counter reviews and the other fee would be for those requiring more staff time.

A motion was made by Commissioner Shaw, seconded by Commissioner Smith, to approve Resolution No. 16-23, amending the Planning Division Fee Schedule to add fees for the newly created Type I Site Plan and Design Review. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

7d. Resolution No. 16-22, Supporting an Application for the Metro Equitable Housing Planning and Development Grant

Mr. Walter explained the Equitable Housing Grant requirements. The grant money would be used to look at the City's Code for barriers to and incentives for equitable housing, creating a series of maps for housing opportunities, creating educational materials, and developing model housing plans for accessory dwelling units. The grant application was turned in on Friday and other partners had given support. The grant would be awarded in November 2016 and he anticipated the work would take a year to complete.

Commissioner Mengelberg said affordable housing in Oregon City was getting to be a problem and she encouraged implementing some of the early findings or low hanging fruit sooner rather than later. She asked if there was consideration for tiny houses.

Mr. Walter said all options were being looked at.

A motion was made by Commissioner Mengelberg, seconded by Commissioner Smith, to approve Resolution No. 16-22, supporting an application for the Metro Equitable Housing Planning and Development Grant. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

7e. Resolution No. 16-25 Submitting a Proposed Initiative Charter Amendment to the Electors of Oregon City

Kattie Riggs, City Recorder, said there was a citizen initiative that was submitted to the City in April 2015 and since then the number of required signatures had been gathered to put it on the November ballot.

Commissioner Mengelberg wanted to make sure the measure was not retroactive and any money that was spent by the Economic Development Department between now and the election would not be a problem.

Ms. Richter clarified this ballot measure could not take effect until it was voted on and the election results were registered with the Secretary of State. It could not be retroactive.

Mayor Holladay said they were required by law to pass this resolution.

A motion was made by Commissioner Smith, seconded by Commissioner Shaw, to approve Resolution No. 16-25 submitting a proposed initiative Charter amendment to the electors of Oregon City. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

7g. Resolution No. 16-26, Supporting the Clackamas County Seven-year Motor Vehicle Fuel Tax

Tony Konkol, City Manager, said the County had removed the requirement for cities to pass a resolution and IGA in support of the motor vehicle fuel tax on the November ballot. Staff proposed adopting a new resolution to indicate support of the $.06 tax for a seven year limited term with 40% of the revenue going to all cities divided by population.

Mayor Holladay said since the County decided not to make this mandatory, the cities who were previously opposed agreed to give some support to the County for this measure.

A motion was made by Commissioner Mengelberg, seconded by Commissioner Smith, to approve Resolution No. 16-26, supporting the Clackamas County seven-year Motor Vehicle Fuel Tax. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

8. Consent Agenda

A motion was made by Commissioner Shaw, seconded by Commissioner Smith, to approve the consent agenda. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

8a. Personal Services Agreement (PSA) with Tetra Tech to Provide Engineering Services for the Beavercreek Road Sanitary Sewer Improvements Project

8b. Management, Supervisory and Confidential Employee Salary Cost of Living Allowance (COLA) Increase FY 2016-17

8c. Restrictive Covenant Non-Remonstrance Agreement for the Bespaly Building Project (Planning File No. SP14-04)

8d. Memorandum of Agreement with Clackamas County and Metro for

Managing the Environmental Protection Agency (EPA) Coalition Assessment Grant

8e. Resolution No. 16-24, Amending ByLaws for the Transportation Advisory Committee

8f. Minutes of the July 6, 2016 Regular Meeting

9. Communications

a. City Manager

Ms. Richter explained the Land Use Board of Appeals affirmed the City of Oregon City's decision in the Providence Willamette Falls Medical Center case. The argument was a number of the Comprehensive Plan policies related to needed housing were not satisfied as the zoning was changed to accommodate the hospital. LUBA thought all of the approval criteria had been met in the findings and the stormwater issues were to be addressed at the development stage, not the land use review stage. There was also a challenge in regard to the Commission and Mayor bias, but LUBA thought the comments were not raised to the level of bias. There were two other outstanding LUBA appeals, one for the Beavercreek Concept Plan and the other for the Historic Properties case.

Mr. Lewis gave an update on the Cove development. They were moving dirt on the site and were implementing erosion control.

Mr. Konkol said a meet and greet at Happy Valley City Hall would be held on September 12, 2016 to discuss important issues in preparation of the legislative session. The Volunteer Recognition event would be held tomorrow. The Willamette Falls vision document won an award from the Waterfront Center.

Maureen Cole, Library Director, discussed and showed pictures of the construction happening at the Carnegie Library building and outdoor landscaping.

b. Commission

Commissioner Shaw visited the Cove construction site, attended the Arts Festival, and invited everyone to the Oregon City/West Linn Breakfast on August 30, 2016 and Concert in the Park tomorrow night. The Clackamas County Fair had started.

Commissioner Mengelberg attended the Wesley Lynn Park event and Arts Festival.

Commissioner Smith attended the celebration of Barclay Hills Park and Oregon Trail Game Race. He announced the Oregon City/West Linn game on September 2, 2016, Pete's Cruise In on September 3, 2016, and the Antique Fair on August 28, 2016.

c. Mayor

Mayor Holladay attended the Barclay Hills Neighborhood Association Picnic and Arts Festival. He had been working behind the scenes with the Oregon City Business Alliance and Chamber.

10. Adjournment

Mayor Holladay adjourned the meeting at 9:50 PM.

Respectfully submitted,

_____

Kattie Riggs, City Recorder

City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Minutes - Final

City Commission

Dan Holladay, Mayor
Rocky Smith, Jr., Commission President
Brian Shaw and Renate Mengelberg

Wednesday, September 7, 2016 | **7:00 PM** | **Commission Chambers**

REVISED

1. Convene Regular Meeting and Roll Call

Mayor Holladay called the meeting to order at 7:00 PM.

Present: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

Staffers: 10 - Tony Konkol, City Attorney William Kabeiseman, City Recorder Kattie Riggs, Police Chief and Public Safety Director James Band, Public Works Director John Lewis, Economic Development Manager Eric Underwood, Pete Walter, Christina Robertson-Gardiner, Community Development Director Laura Terway and Library Director Maureen Cole

2. Flag Salute

3. Ceremonies, Proclamations

4. Citizen Comments

Bob Mahoney, resident of Oregon City, discussed how the City of Portland got in trouble for their position on the homeless and their solution to the problem. LUBA stepped in and corrected Portland, and he likened it to the Oregon City's whitewater park situation where they were not following the procedure. Portland did something that violated its own code, and he did not want the same thing to happen in Oregon City.

7a. Consider Appointment of Nancy Ide to fill the Current Vacancy on the City Commission

Mayor Holladay said Ms. Ide filed for a seat on the City Commission and did not receive an opponent for the seat. There was a vacancy on the Commission and it made sense since she would be on the Commission starting in January to allow her to take the position now. The Commission was considering that appointment tonight.

A motion was made by Commissioner Shaw, seconded by Commissioner Mengelberg, to appoint Nancy Ide to City Commission Position #3. The motion carried by the following vote:

Aye: 4 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay and Commissioner Renate Mengelberg

Judge McNiece administered the Oath of Office to Nancy Ide.

Commissioner Ide took her place at the dais.

5. Adoption of the Agenda

The agenda was adopted as presented.

6. Public Hearings

6a. First Reading of Ordinance No. 16-1009: Annexation of Approximately 0.46 Acres of Property Located at 19358 S. Columbine Court into the City (Annexation File AN-16-0001)

Pete Walter, Planner, said this was a request for annexation of .46 acres located at 19358 S. Columbine Court into the City. The Planning Commission recommended approval of the annexation by a vote of 4-1-1. He explained the subject site. If annexed, it would be zoned R-10. The Transportation Planning Rule analysis supported that zoning. There were utility hook-ups available to the property. There was currently one house on the property, and if annexed the applicant had the potential to divide the property into two and build another house. Staff recommended approval based on compliance with the criteria in the Code. There were no traffic impacts to this annexation and ODOT submitted a letter stating they had no conflict with the annexation proposal.

Mayor Holladay opened the public hearing.

There was no public testimony.

Mayor Holladay closed the public hearing.

Tony Konkol, City Manager, reminded the Commission that with the new State legislation, annexations would not go to a vote of the people. Should the Commission approve this annexation, it would not be placed on the ballot.

A motion was made by Commissioner Shaw, seconded by Commissioner Smith, to approve the first reading of Ordinance No. 16-1009: annexation of approximately 0.46 acres of property located at 19358 S. Columbine Court into the City (Annexation File AN-16-0001). The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

6b. Request to Continue: Time, Place and Manner Regulations for Marijuana Businesses and Personal Cultivation (Planning File LE-16-0001) to September 21, 2016

Mayor Holladay opened the public hearing.

Karen Blaha, resident of Oregon City, had lived in Canemah for two decades. She thought permitting cannabis dispensaries on Highway 99E in Canemah would adversely affect the neighborhood that was a national historic district. Neighbors of Canemah Park at the north end of Third Avenue suffered from drug users of all types who frequented the park whether it was open or closed. It had become a chronic

problem without an effective solution. It was a convenient location for users. Canemah had slowly been undergoing a renaissance. Canemah had a negative reputation, however renovations of historic homes had been made and lovely new homes had been built and the negative opinions were changing. Allowing dispensaries in Canemah would tarnish the positive image they were working hard to establish and maintain. She requested the Commission exempt Canemah as an allowed cannabis dispensary location.

Linda Baysinger, resident of Oregon City, had lived in Canemah for 19 years. She got 36 people to sign a petition opposing cannabis stores in Canemah. There were five people who did not sign because they were in favor. This was a residential neighborhood and there was not much parking available for stores.

A motion was made by Commissioner Smith, seconded by Commissioner Mengelberg, to continue the hearing for time, place and manner regulations for marijuana businesses and personal cultivation (Planning File LE-16-0001) to September 21, 2016. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

7. General Business

7b. Willamette Falls Legacy Project Whitewater Park Proposal Recommendation

Mr. Konkol said there had been discussion on how to process the proposed whitewater park into the Willamette Falls Legacy Project. The governance structure of the Partners Group for the project was consensus based. Three scenarios regarding the whitewater park were brought forward to the Partners Group and the Group asked for additional public testimony and each jurisdiction to come back with a recommendation.

Christina Robertson-Gardiner, Planner, explained the three scenarios. The first was the whitewater park becoming a public project, but because of the funding and delays to the Riverwalk project, this was not the preferred option. The second was the whitewater park would be a parallel process which would avoid Riverwalk costs and delays. A feasibility study would need to be done before a development proposal was created. The third was to investigate how kayaking and other river recreation could get access to the site. She described the feasibility questions that would have to be addressed including water rights, migratory fish protection, alignment, property acquisition and easements, financing, ownership of the facility, liability in the case the projections were not realized, agreement with PGE for access, safety concerns, support from the tribes, and flood plain impact analysis. If an alignment of the whitewater park could be identified and if the whitewater park proved to be legally, technically, and financially viable, the Partners could determine whether a whitewater park could integrate with the Riverwalk. Falls Legacy LLC had written support letters for the whitewater park and the owner of the property was interested in the idea, but he had not invested any money or made any legal commitment. Scenario 1 had been crossed off by the Partners group due to the substantial delays and might put funding in jeopardy. Staff was asking for direction on either Scenario 2 or 3. The Partners would meet at the end of September to make a decision on this issue.

Tom Hughes, Metro Council President, told a story of how he tried to restore economic vitality to downtown Hillsboro by building a Riverwalk. It was a controversial issue that had a lot of obstacles, and the idea was eventually dropped

because they did not have a river. Oregon City did have a river and there was the capability for funding to do some of the preliminary work and look for other funding sources. There was a great deal of concern regarding what the whitewater park would do to the Riverwalk project. There were many who did not think the whitewater park could be done, especially with the number of permits and agreements that would have to be made before the preliminary feasibility could be done. Scenario 2 might let the process move forward, but it would continue to hang over their heads. It was difficult to see the project move forward from a budgetary standpoint and the feasibility studies were onerous. There was also an issue with compatibility and following the four core values of the Willamette Falls site. The whitewater park met some of the values, but had a negative impact on others. He urged adoption of Scenario 3.

Tootie Smith, Clackamas County Commissioner, said a lot of work and due diligence had been put into the Willamette Falls site and the partnerships had come a long way. The addition of the whitewater park would pose some significant risks and hazards. Recreational immunity did not apply in this case. If someone got hurt, it opened up the possibility for lawsuits. The Special Districts Association had insured the whitewater park in the City of Bend and said it was the biggest mistake they ever made and the facility was now closed. The State had given most of the money for this project and the money was given in support of the four core values which did not include building an entertainment facility. Each jurisdiction had their specific function, such as Metro who would be building the Riverwalk, Oregon City who would do the permitting, land use, and infrastructure, and the County who would be doing the economic development of the site. Looking at the whitewater park from an economic point of view, it would cost a lot of money and would not produce family wage jobs the County was looking for. The County wanted the assessed value to go up to generate more tax revenue and an economic feasibility study would need to be conducted as well. She had been misquoted and made it clear that she was not planning to replace the locks with a whitewater facility but had mentioned it as an alternative.

Commissioner Mengelberg left the meeting at 7:34 PM.

Dennis Wiley, representing the Oregon Parks and Recreation Department, said the Department was a partner on the Riverwalk project. They were interested in this project as it would connect people to the river and was an opportunity for interpretation of the cultural and natural history of the site. Their main role was working with the tribes and their involvement in the project. They had an interest in the whitewater park and they were interested in what the Partners Group had to say later on in the month on this issue.

Thelma Haggenmiller, resident of unincorporated Clackamas County, said the group in favor of the whitewater park were only asking to be allowed to proceed with their own studies and meet the challenges those studies might present with their own interest and passion. After a lengthy discussion on this issue at a previous Commission meeting, the Commission voted to go with Scenario 2 which allowed the whitewater park feasibility study process to continue to run its course. Now they were being asked to change that vote and put a stop to work on this project. She encouraged the Commission not to be the ones to not allow them to try.

Sam Drevo, representing We Love Clean Rivers, invited everyone to the 14th annual Clackamas River Clean Up on Sunday. The whitewater park proposal had been going on for a few years with a $150,000 investment through Clackamas County Tourism. They had received wide support for the proposal. After the Commission meeting where this was discussed, the Technical Advisory Committee met and they

identified the Riverwalk and the whitewater proposal as separate initiatives. Those in support of the whitewater park did not want to delay the Riverwalk or compete with it. They wanted to enhance the community and the uniqueness of the falls and water rich environment. He thought there was a lot of possibility and he hoped the Commission would continue considering it.

Bill Clark, resident of unincorporated Clackamas County and a member of the Natural Resources Committee, had worked on a whitewater park in 1978 and thought the whitewater park and Riverwalk could be compatible uses. He supported further consideration of the park within the constraints of the migratory fish and cultural needs of the tribes. He thought it could be worked out and the seasonality of the falls could be compatible with whitewater use. The kayak community were strong supporters of the natural environment and the protection of fish. Whitewater parks had been big economic successes in other places. He would like to see further study on the park.

Alice Norris, Chair of the Rediscover the Falls Friends Group, said the Friends' purpose was to raise funds for the Riverwalk. This was a critical time for Willamette Falls and Oregon City. This diverse community had come together around a vision and shared values and there had been a massive public engagement process. The State of Oregon had confidence in the project and believed it was a good investment. They had strong partners in Metro and Clackamas County and the public was impatient to move this project forward. The public needed to maintain faith in their ability to deliver this world-class Riverwalk and Oregon City's ability to stay the course. There was a finite amount of funding and there was great potential for private investment, but it would not help their case to compete for funds for a separate effort with a huge price tag. It would be challenging to raise funds for the two projects together. It could be confusing to donors and the public. The first priority should be the Riverwalk. The Friends Group urged the Council to stay focused on the catalytic work of bringing people back to Willamette Falls and not squander this once in a lifetime opportunity.

James Nicita, resident of Oregon City, asked whether the Partners Group discussion of the whitewater park was a public discussion and if the meetings were open to the public with posted agendas and notices. Mayor Holladay said yes, they were.

Danielle Cowen, Executive Director of Clackamas County Tourism, was representing the Tourism Development Council. The Council had helped fund the whitewater park as it progressed through the process. She thought of it as a water trail that was controlled through a bladder system and was a natural flow from the top of the falls to the lower river. It was not a park or Disneyland ride. It was a water trail that would once again connect the upper and lower river. It had jobs connected to it, which were not low wage jobs, and could be an incentive for other companies to locate near the site. The vision was that the trail and Riverwalk work together. There was a great deal of interest in the concept and it was a new opportunity for the City, County, and State. She did not think the trail and Riverwalk would be in competition with each other. They each had different funding cycles and sources. The owner of the Willamette Falls property supported the whitewater park as well. She encouraged the Commission to continue with Scenario 2.

Frank O'Donnell, resident of Oregon City, was a kayaker and outdoorsman. He read the proposal and the 82 letters in support of the proposal and 2 letters with questions. He traveled for his job and had seen very successful towns with similar projects. However, he was against the whitewater park proposal. The projects needed to be kept distinct and he did not want any delays to the Riverwalk especially if it increased costs. He did not want an impact to the ancient petroglyphs and fish migration. He did

not think the whitewater park should be publicly funded. He did not see any credible private finance plan and the feasibility was questionable. Due to the potential for delay and lack of return on investment, he did not think this option should be pursued. If people wanted it, private funds should be used. They needed to stay focused on the goal.

Blane Meier, resident of unincorporated Oregon City, said the Oregon City Business Alliance was in favor of Scenario 2. There were concerns and obstacles and the Alliance wanted to see an objective decision making and analysis done on this proposal. As the design process continued for the Riverwalk, they thought the possibility of a whitewater park could continue. He wanted a fair and balanced analysis. He thought they should stick with Scenario 2 until they received hard data.

Betty Mumm, resident of Oregon City, said the last vote on this was not noticed and it was not on the agenda and the Commission did not have a chance to hear from the opposing side. There were a lot of unknowns in the whitewater park proposal. They did not have to include the whitewater park with the Riverwalk. They could say they wanted water flowing from one end of the river to the other and the design team could create access once there was funding and permits. It did not need to be a part of the Riverwalk.

Jesse Buss, resident of Oregon City, said regarding liability on the site, the City could not disclaim their own negligence in a liability waiver. That did not mean people could come after the City even if they were not negligent. He did not think they would put everyone at risk by putting in a whitewater park. He thought Scenario 3 said if feasibility studies showed the whitewater park was not viable, then they would proceed with the Riverwalk. The feasibility studies needed to be done for either scenario. It was premature to do anything but Scenario 2, continuing to study the option. Water flowing through the site was doable. He urged the Commission to continue with Scenario 2.

Bob Mahoney, resident of Oregon City, thought all of these comments should have been made before the Planning Commission. It was a land use decision and if the Commission decided in favor of the proposal, they would be setting a dangerous precedent. The Commission was being put into a position where they thought they had to authorize the continuation of feasibility studies. No permission was needed to do feasibility studies. He recommended not setting the precedent.

Harry Dalgaard, representing Travel Oregon, was in support of Scenario 2 as it was the right way forward for Oregon City and the Willamette Falls Legacy Project. It would develop increased recreational tourism assets for the State of Oregon. Not allowing for the whitewater project to continue would limit prospective travelers and limit the ability to entertain a recreational traveler that typically spent more than a leisure traveler.

Doug Neeley, resident of Oregon City, did not think this issue should go before any city committee because there was no design at this point.

Commissioner Smith clarified why he supported Scenario 2 the last time the Commission had this discussion. There were different versions of Scenario 2 and 3 and a previous Scenario 3 had left out the possibility to have a whitewater park. He wanted to make sure that in the future there would be the ability to have water flowing through the site as it fit the four core values and vision for the site. He had been concerned that choosing one scenario would negate that ability. Last time they discussed this, Scenario 3 did not allow for the possibility and he made a motion to proceed with Scenario 2. Afterwards there were multiple meetings and staff brought

back information on how the decision affected the partnership and site and a new Scenario 2 was created. Now tonight Scenario 2 and 3 were different again, and it seemed like they were saying the same thing. He did not want to limit the ability to have water running through the site. He asked that staff explain the difference between the two scenarios.

Mr. Konkol explained the scenarios came from the Technical Advisory Committee to address the concerns of all the partners. Ms. Robertson-Gardiner said the TAC met a couple of weeks ago and the scenarios had changed somewhat. The specific wording was in the matrix from the TAC. Mr. Konkol said the wording from the TAC was released on August 24 and staff prepared a memo to clarify the scenarios. Metro disagreed with the TAC's staff report as it related to Scenario 3. Metro would like Scenario 3 to say there would be no whitewater park.

Commissioner Shaw was not comfortable approving Scenario 3. He still thought Scenario 2 was the right choice.

Commissioner Ide was concerned that they had been hearing a lot from people who did not live in Oregon City. The feasibility study would need to be funded by We Love Clean Rivers and not through public funds.

Mayor Holladay said integrating a whitewater park was a wholesale change in what they had been thinking about for the site. The design collective was not seeing a clamoring for this kind of facility. They needed to listen to the design collective and staff that had been working on this project. Several of the partners were in favor of Scenario 3. He did not see any reason to use resources to look at the whitewater park idea. He wanted to continue to work on kayaking opportunities, portage trails, access to the river, and a water trail. A whitewater park did not fit with the Riverwalk at this time, but that did not preclude the work of private investors getting the permits and building it on their own.

Commissioner Smith said there were many ways to do a whitewater park and he wanted to be careful about saying a whitewater park would not be included.

Ms. Robertson-Gardiner discussed the design process for the Riverwalk and how they did not want to delay the project as there was a certain amount of funding that was tied to a timeline to be able to get to construction by 2018.

Mayor Holladay said they were not discussing different types of whitewater parks, but the one proposed by We Love Clean Rivers. That was different from water usage or movement that would come back through the design collective.

Commissioner Mengelberg returned to the meeting at 8:49 PM.

Mr. Konkol added an email from Ms. Govaars from We Love Clean Rivers that included an economic impact study, executive summary, additional letters of support, and frequently asked questions and a letter from Mike Hauk with questions about the process into the record.

Mayor Holladay thought this should have gone to the design collective. He was in support of Scenario 3.

There was discussion regarding the differences between Scenario 2 and 3. There was clarification that in Scenario 3, the whitewater park would not be included in the Riverwalk design.

A motion was made by Commissioner Shaw, seconded by Commissioner

Smith, to support Scenario 2, clarifying the Riverwalk and whitewater park proposal were two separate projects. The feasibility of the whitewater park was the responsibility of We Love Clean Rivers and the Partners Group could consider a whitewater park if it proved feasible and was at no cost or delay to the Riverwalk project. Included in the motion was agreement with the five statements in the staff report written by Mr. Konkol. Motion failed by the following vote:

Aye: 2 - Commissioner Brian Shaw and Commissioner Rocky Smith

Nay: 3 - Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

A motion was made by Commissioner Mengelberg, seconded by Commissioner Ide, to support Scenario 3. Motion passed by the following vote:

Aye: 3 - Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

Nay: 2 - Commissioner Brian Shaw and Commissioner Rocky Smith

7c. Code Enforcement Update on Residential Membrane (Fabric and Metal) Accessory Structures and Process for Amending the Code

Laura Terway, Community Development Director, provided an update on membrane structures. She discussed the applicable standards for membrane structures. In general people could not have metal or fabric structures permanently if they were visible from the public right-of-way. She then described the membrane structure code enforcement violations. Existing structures were supposed to have been taken down on January 1, 2011, and no new membrane structures were allowed. Some violations occurred, but the City was not proactive in going around to check for membrane structures and only responded to complaints. In June of 2016, 47 complaints were submitted. The Commission had requested staff to not take any action on the enforcement until they could give staff direction. Of the 47 complaints, 17 were left to address. The 17 had a lot of other issues besides the material, such as placement, setbacks, and height. Some had a place to move them on their property, and some did not. She asked if the Code should be changed and explained the costs for a legislative application. The items to be considered were specifying the scope of the amendment and getting as much public input as possible.

Mayor Holladay was on the side of property rights and allowing people to do what they wished on their property as long as they were not hurting their neighbors in some way and life and safety were considered. It was a poor decision not to grandfather in those who already had these structures. He thought there should be a way to make it fair to everyone.

Nancy Burke, resident of Oregon City, had a neighbor who had a metal structure. He was an outdoorsman and had a camper and boat that had been covered in tarps and when a windstorm came through, she heard the tarps flapping or they came off and ended up in her backyard. When they were covered in tarps, there were problems with critters living in the boat. After five years, her neighbor put up a metal structure. It was well anchored and there were no critter problems. As long as people were being respectful to their neighbors and it was decent looking, she thought these structures were acceptable. It was better to have something that looked permanent and decent than to have things covered in tarps that looked trashy. She was a proponent of allowing people to have these structures.

Jason and Jeannie Gee, residents of Oregon City, said people with these structures

were paying taxes and were viable citizens with investments. These investments needed to be covered and people had to go through so many hoops they started to do them illegally. These types of structures should be allowed with the cooperation of neighbors. The metal structures were an investment. There were multiple structures like this on public facilities, such as PGE, County, and school buildings.

Debra Kasnias, resident of Oregon City, said in 1994 she got a right-of-way permit for expansion of her driveway to park her boat and put a structure over it. It was nice looking with a chain link fence in front. She had elderly neighbors with cats who were using the boat for shelter. She did not want to have to tear the structure down and she had no extra property in the backyard to put it. Her neighbors did not have a problem with the structure.

Pam Laird, resident of Oregon City, had an awning with a toy hauler under it. It was nice and the neighbors did not have a problem with it. They have had it for about 10 years.

Kaye Lynch, resident of Oregon City, addressed a new structure that was put up mid-August on Cherry Street. It was in violation of the Code as the structure was in front of the house on the driveway and it was large. She did not have a problem with these types of structures as long as they did not compromise the neighborhood or visibility to the street. This particular structure should be looked at. Mayor Holladay said Code Enforcement was looking into it.

Frank O'Donnell, resident of Oregon City, said the goal of exempting these structures for public health, safety, and general welfare was admirable, but the unintended consequences were that it put the community in turmoil. Prior to 2010 the term membrane structure did not exist in the Code nor were they addressed. Setbacks did not apply to membrane structures before 2010 nor was there a definition for these types of structures. He did not think they qualified as nuisances. This was a poorly structured piece of Code and the retroactive application was offensive to citizens and was fairly unique to the Code. He had reviewed the historical minutes of the meetings where this was discussed and the focus was on controlling trash and hazardous substances and protecting the historic districts. He agreed with those sentiments. Clear direction was not given to staff and he challenged the statement that a robust public engagement process occurred. Most of the Code changes had more discussion, and very little time was dedicated to the discussion on membrane structures which was largely misunderstood by all involved. They lost focus on the goal and produced a piece of Code that did not deal with a true nuisance. He had helped to transcribe the minutes verbatim and he thought the minutes should be reviewed before a decision was made. He suggested grandfathering in these structures.

Lynn Andersen, resident of Oregon City, had watched several of the Planning Commission meetings where this issue was discussed and read the transcribed minutes. She thought the original intent was to clean up the long term storage of junk. This was the kind of mess that would be considered a nuisance or possibly a safety hazard. There were many complaints from neighbors who were tired of the mess and the Planning Commission became involved with the Code to enable enforcement to get these problems removed. However through the process, the focus changed from just nuisances and safety issues to encroachment on people's property rights. People cared about their neighborhoods and had invested in permanent covers that protected their investments, not junk. Many who owned these covers did not know about the discussions in 2010. She thought these structures should be grandfathered, and people should be allowed to install metal covers in the future as long as they were behind the fence line, were kept in good condition, and the content

being covered did not pose a safety hazard. She suggested repealing that part of the Code and rewriting it.

Commissioner Ide asked if there were any other options besides changing the Code, such as granting waivers until a Code change could be done.

Commissioner Shaw thought staff could come back with recommendations for how to proceed.

Commissioner Mengelberg thought a distinction needed to be made for those structures that were set back with fences in front and surrounded by landscaping which should be acceptable and those that were up against the house that didn't have a fence and were very tall which should not be acceptable.

Commissioner Smith thought it should be reviewed and there should be a distinction between a nice structure that people spent a large amount of money on and a metal container. He was willing to work through the changes that should be made. He did not think it should be retroactive. They needed to be consistent and apply the regulations to City property as well.

Mayor Holladay said no enforcement would be taken at this time and a Work Session would be scheduled to discuss the issue further. They needed to allow people to use their property as much as possible while not endangering neighbors.

There was consensus to move forward as proposed by the Mayor.

7d. Resolution No. 16-27, Adjustments to the 2015-17 Biennial Budget

Wyatt Parno, Finance Director, said this was a request for a budget adjustment due to some changes in staff positions.

A motion was made by Commissioner Ide, seconded by Commissioner Smith, to adopt Resolution No. 16-27, adjustments to the 2015-17 Biennial Budget. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

8. Consent Agenda

A motion was made by Commissioner Shaw, seconded by Commissioner Smith, to approve the consent agenda. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

8a. Public Improvement Contract for the Construction of the Linn Avenue Sewer Improvement Project (CI 15-018)

8b. Personal Services Agreement for Landscape Maintenance Services for the Stormwater Division of Public Works with C & R Reforestation

8c. First Amendment to a Settlement Agreement Between Oregon City,

South Fork Water Board, Clackamas River Water District, Sunrise Water Authority and the Clackamas Regional Water Supply Commission

8d. OLCC: Liquor License Application- On-Premises Sales, New Outlet, Applying as a Corporation, Geeks and Games, Inc., 1656-C Beavercreek Road, Oregon City, OR 97045

8e. Minutes of the July 20, 2016 Regular Meeting

8f. Minutes of the July 12, 2016 Work Session

9. Communications

a. City Manager

There was consensus to continue the meeting past 10 PM.

Mr. Konkol provided an update on the explanatory statement for the Urban Renewal ballot measure. The Commission discussed the statement at their last meeting and changes to the language had been made. Staff had talked with the County Assessor's Office and the following language had been proposed: "The frozen assessed value of the District was $50.7 million and the District was now valued at $180.1 million." Staff had not heard back from the Secretary of State's office for impartiality review. This issue was brought before the Circuit Court and the court date was set for tomorrow afternoon. If the judge did not issue a temporary restraining order or some other finding that prohibited the City from submitting the statement, Mr. Konkol would move forward with submitting it by the due date which was 5 PM tomorrow.

Bill Kabeiseman, City Attorney, thought the statement was fair, balanced, and unbiased. It accurately stated the effects of the measure.

Commissioner Smith was still concerned that the Secretary of State's office had not replied.

There was consensus to move forward as suggested by staff.

b. Commission

There was no Commission report.

c. Mayor

There was no Mayor's report.

10. Adjournment

Mayor Holladay adjourned the meeting at 10:04 PM.

Respectfully submitted,

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Kattie Riggs, City Recorder

City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Minutes - Final

City Commission

Dan Holladay, Mayor
Rocky Smith, Jr., Commission President
Brian Shaw, Nancy Ide, Renate Mengelberg

Wednesday, September 21, 2016 | **7:00 PM** | **Commission Chambers**

REVISED

1. Convene Regular Meeting and Roll Call

Mayor Holladay called the meeting to order at 7:20 PM.

Present: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

Staffers: 9 - Tony Konkol, City Attorney William Kabeiseman, Assistant City Recorder Jaime Reed, Captain Bill Kler, Public Works Director John Lewis, Economic Development Manager Eric Underwood, Pete Walter, Community Development Director Laura Terway and Library Director Maureen Cole

2. Flag Salute

3. Ceremonies, Proclamations

4. Citizen Comments

Carol Pauli, Vice President of the Main Street Board, announced Jonathan Stone was named Main Street Manager of the Year and the Snowflake Raffle was named the Fundraiser of the Year. She reported on the successes of the First City Celebration, Oregon Trail 5K Run, and Car Show. Upcoming events included the Tree Lighting and Snowflake Raffle.

Mayor Holladay welcomed Boy Scout Troop 890 in the audience.

5. Adoption of the Agenda

The agenda was adopted as presented.

6. Public Hearings

6a. First Reading of Ordinance No. 16-1010: Adopting a Ban on Outdoor Cultivation of Marijuana

Laura Terway, Community Development Director, said there had been a couple of hearings on proposed regulations for marijuana. This item was only relating to personal cultivation of marijuana.

Pete Walter, Planner, said as a result of the public hearing process and discussions among staff, staff recommended a ban on the outdoor cultivation of marijuana and placing it in the nuisance code rather than in the zoning code. The concern was outdoor cultivation of marijuana could be an attractive nuisance that could result in trespassing. The ban would go into effect on January 1, 2017, and would apply to all marijuana in place before, on, or after the effective date.

Commissioner Mengelberg and Shaw were in favor of the ordinance.

Mayor Holladay opened the public hearing.

There were no citizen comments.

Mayor Holladay closed the public hearing.

Mayor Holladay was conflicted about this because the voters passed the State law that allowed personal cultivation and he had a hard time going against that, however he would be voting in favor.

A motion was made by Commissioner Mengelberg, seconded by Commissioner Ide, to approve the first reading of Ordinance No. 16-1010: adopting a ban on outdoor cultivation of marijuana. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

6b. First Reading of Ordinance 16-1008: Time, Place and Manner Regulations for Marijuana Businesses (Planning File LE-16-0001)

Ms. Terway said some minor edits were made to the ordinance and there was not the seven day notice for the revised ordinance. There was one unanswered question, should retail marijuana stores be allowed in the Canemah National Historic Register District. Staff requested this item be continued to the October 5 meeting.

Mr. Walter said the Planning Commission recommended approval of the time, place, and manner regulations for marijuana businesses after holding several public hearings. The Commission already voted on requiring a 1,000 foot buffer from Clackamas Community College for retailers, requiring a 250 foot buffer from parks, childcare, and daycare facilities and transit centers from retailers, requiring a 1,000 foot separation between marijuana retailers, and allowing for the temporary ingress and egress of vehicles, people, and products associated with permitted businesses. The one issue to be resolved was whether or not to allow marijuana retailers in the Canemah National Historic Register District. The historic district had a commercial zone which was a mixed use zone. Staff prepared two versions of the Code amendment, one that would prohibit marijuana retailers and one that would allow marijuana retailers. It was not part of the ordinance language and the ordinance could be adopted whichever way the Commission chose. Staff recommended treating this as any mixed use zone.

Mayor Holladay opened the public hearing.

There was no public comment.

Mr. Walter clarified that due to the buffers, there were no available areas for marijuana retailers in the McLoughlin Historic District.

Commissioner Ide did not think the Canemah District should be treated any differently

than other areas in the City.

Commissioner Smith said it was a national historic neighborhood and should be preserved. It came down to livability and honoring history. It was overlooking the Willamette Falls Legacy Project site and was a gateway to the City. He thought it should be treated differently.

Commissioner Shaw said this was a national historic district. He was concerned about the image of the City and having a marijuana retailer at the entrance to the City.

Commissioner Mengelberg agreed that Canemah was a special place for its history and proximity to the Willamette Falls Legacy Project. Citizens had been vocal about not wanting it, and she was not in support of retailers in Canemah.

Mayor Holladay wanted to make it fair to all businesses in the City. Marijuana businesses did not increase crime and were not nuisances. He had a hard time treating one neighborhood differently than the rest of the City.

A motion was made by Commissioner Mengelberg, seconded by Commissioner Smith, to continue the first reading of Ordinance 16-1008: time, place and manner regulations for marijuana businesses (Planning File LE-16-0001) to October 5, 2016. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

7. General Business

7a. Second Reading of Ordinance No. 16-1009: Annexation of Approximately 0.46 Acres of Property Located at 19358 S. Columbine Court into the City (Annexation File AN-16-0001)

A motion was made by Commissioner Shaw, seconded by Commissioner Smith, to approve the second reading and final adoption of Ordinance No. 16-1009: annexation of approximately 0.46 acres of property located at 19358 S. Columbine Court into the City (Annexation File AN-16-0001). The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

7b. Resolution No. 16-29 Authorizing the Nomination of the Molalla Avenue Project for the Metro Regional Flexible Fund Allocation Program

John Lewis, Public Works Director, said staff was asking for support for nomination of the Molalla Avenue Project for the Metro Regional Flexible Fund Allocation Program. He thought this project was competitive and one of the requirements was to get support from the Commission. He explained the reasons for the Molalla Avenue improvements.

There was discussion regarding what was included in the project and other competing projects for the grant.

A motion was made by Commissioner Ide, seconded by Commissioner Smith, to approve Resolution No. 16-29, authorizing the nomination of the Molalla Avenue Project for the Metro Regional Flexible Fund Allocation Program. The

motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

7c. Personal Services Agreement with KPFF Consulting Engineers for Civil Engineering and Surveying Services for the 12th & Washington Street Traffic Signal Installation Project

Mr. Lewis said there had been several accidents at 12th and Washington. The City hired DKS and Associates to look at the intersection to see if a signalized intersection was warranted. Their recommendation was to move forward with signalization. This agreement would allow KPFF to do the engineering and survey work needed for the project. They would produce 90% of the design and give cost estimates.

A motion was made by Commissioner Shaw, seconded by Commissioner Smith, to approve the Personal Services Agreement with KPFF Consulting Engineers for civil engineering and surveying services for the 12th & Washington Street Traffic Signal Installation Project. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

8. Consent Agenda

A motion was made by Commissioner Mengelberg, seconded by Commissioner Smith, to approve the consent agenda. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

8a. Purchase and Sale Agreement Due Diligence Extension Request for the Twelfth & Main Street Project

8b. Personal Services Agreement with DeSantis Landscapes, Inc. for Street Division of Public Works Landscape Maintenance Services

8c. Minutes of the August 3, 2016 Regular Meeting

8d. Minutes of the August 9, 2016 Work Session

8e. Minutes of the August 17, 2016 Regular Meeting

9. Communications

a. City Manager

Tony Konkol, City Manager, announced a SOLV clean-up at High Rocks on September 24, 2016, rededication of the Larry Dahl Memorial on November 9, 2016, and Parents of Murdered Children event on September 23, 2016.

Mr. Lewis gave an update on algae bloom in the Cove. Notices would be posted at the site until the bloom was lifted.

Maureen Cole, Library Director, announced the Library Grand Opening would be held on October 15, 2016. The Library would close early on October 3 and 4 and would be closed October 5-11, 2016. She then described the work being done at the Library.

Mr. Konkol would be attending the ICMA Conference next week and Wyatt Parno, Finance Director, would be acting City Manager.

b. Commission

Commissioner Shaw attended the Tourism Summit, ribbon cuttings for the Petra Memory Care facility and Hope 360, boat ramp open house, and Main Street Car Show.

Commissioner Mengelberg attended the Willamette Falls Legacy Project partners meeting, We Love Clean Rivers' Clean Up Day of the Clackamas River, grand opening of the Hillendale Pickle Ball courts, Barclay Hills Neighborhood Association meeting, and Tourism Summit.

Commissioner Ide attended an Oregon Food Bank meeting, Willamette Falls Legacy Project partners meeting, and Barclay Hills Neighborhood Association meeting.

Commissioner Smith attended the Friends of Ermatinger House meeting, Tourism Summit, and Clackamas Heritage Partners meeting.

c. Mayor

Mayor Holladay attended the Willamette Falls Legacy Project partners meeting where it was decided the whitewater park would not be considered as part of the project. He also attended the Barclay Hills Neighborhood Association meeting, Canemah Neighborhood Association meeting, and boat ramp open house. The Commission would be discussing Measure 97 at the next regular meeting in October, 2016.

10. Adjournment

Mayor Holladay adjourned the meeting at 8:24 PM.

Respectfully submitted,

_____

Kattie Riggs, City Recorder

City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Minutes - Final

City Commission

Dan Holladay, Mayor
Rocky Smith, Jr., Commission President
Brian Shaw, Nancy Ide, Renate Mengelberg

Wednesday, October 5, 2016 | **7:00 PM** | **Commission Chambers**

REVISED

1. Convene Regular Meeting and Roll Call

Mayor Holladay called the meeting to order at 7:00 PM.

Present: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

Staffers: 10 - Tony Konkol, City Attorney William Kabeiseman, City Recorder Kattie Riggs, Police Chief and Public Safety Director James Band, Public Works Director John Lewis, Economic Development Manager Eric Underwood, Pete Walter, Community Development Director Laura Terway, Finance Director Wyatt Parno and Community Services Director Phil Lewis

2. Flag Salute

3. Ceremonies, Proclamations and Presentations

3a. Metro Update - Councilor Carlotta Collette

Carlotta Collette, Metro Councilor, discussed the projects the Metro Council was working on including Regional Snapshots, transportation planning, regional flexible funds process, parks and nature area projects, levy extension on the November ballot, Willamette Falls Legacy Project, regional equity, Convention Center Hotel, and Oregon Zoo improvements.

3b. Clackamas Fire District #1 Ballot Measure Presentation

Mike Corless, Division Chief for Clackamas Fire, gave a presentation on the Fire District ballot measures in the upcoming November election The vote was to annex the Boring Fire District into Clackamas Fire District #1. Clackamas Fire started a relationship with Boring Fire in 2009 for training and volunteer services. In 2014, they went into contract for full fire protection. Both Fire Boards met multiple times to discuss the annexation issue and decided it was time to put it to a vote of the people. Boring residents had to vote on two of the measures, one for the dissolution of the Boring Fire District and the other for annexing into the Clackamas Fire District. Clackamas Fire District residents would vote on one measure, to approve the annexation of the Boring Fire District area. All three measures had to pass in order for the annexation to take place. If it failed, Clackamas Fire would continue under the same contract with Boring Fire that they had now. The benefits to Boring Fire were increased staffing in the Damascus area and help with administration. The benefits to

Clackamas Fire would be increasing response times in the eastern areas of the district. There were a few projects in the City that would be fire bond projects including rebuilding Station 16, new roof for Station 15, and new fire engine for the South End Fire Station.

4. Citizen Comments

Tom Geil, resident of Oregon City, invited the Commission to be judges at the Scarecrow Contest for the Nightmare on Main Street event on October 22, 2016. He described the activities happening during the event. This was to draw attention to Main Street south of 7th Street. His store had been on the news twice and was on the cover of Oregon City News.

Mayor Holladay suggested creating a graphic map that had buttons showing where all the downtown businesses were located.

William Gifford, resident of Oregon City, announced the Tower Vista Neighborhood Association elected a new chair, vice chair, and treasurer at their meeting last night. The executive committee of the Hillendale Neighborhood Association would be coaching them on how to get their neighborhood association restarted.

Amber Holveck, Executive Director of the Oregon City Chamber of Commerce, said there was a State Representative Forum last night that was well attended. Clackamas Community College's media center recorded the Forum as well. Tomorrow night there would be an Oregon City Commission Candidate Forum. There would also be a presentation on Oregon City Measure 3-514 regarding the limitation of Urban Renewal funds. The Chamber would be hosting an Oregon City Walk next week.

Rita Mills, resident of Oregon City, was concerned about the homeless in Oregon City. There were homeless sleeping on the porch of her church, St. Paul's Episcopal, and her neighbors had called the police regarding homeless in her neighborhood several times. Our Father's Heart had a wonderful reputation for serving homeless people, but they were only open 24 hours per week. It invited homeless to the City and did not do enough to take care of them. There needed to be public toilets for homeless people.

5. Adoption of the Agenda

The agenda was adopted as presented.

Bill Kabeiseman, City Attorney, said an email had been received today regarding marijuana outdoor grows. He thought there was ambiguity in the law and it was up to the Commission to take the risk to be a test case for whether or not they could regulate outdoor grows. Mayor Holladay left the topic on the agenda for further discussion.

6. Public Hearings

6a. First Reading of Ordinance No. 16-1008: Time, Place and Manner Regulations for Marijuana Businesses (Planning File LE-16-0001)

Laura Terway, Community Development Director, said on the November ballot there was a measure asking Oregon City voters if they wanted to have marijuana businesses in the City. In preparation for that, staff had been working on time, place, and manner regulations. There had been open houses, online surveys, and Planning Commission

and City Commission public hearings on this issue.

Pete Walter, Planner, stated these draft regulations were based on extensive public input as well as input from the Oregon Liquor Control Commission, City Attorney, and League of Oregon Cities. A lot of the issues had already been resolved and he was confident the regulations were reasonable, fair, and would protect Oregon City businesses and residents. The final issue that needed to be addressed was whether or not to allow marijuana businesses in the Canemah National Register Historic District. The Canemah Neighborhood Association was in support of prohibiting marijuana businesses in the district. There was public testimony in the record from Karen Blaha from the Canemah Neighborhood Association. Staff recommended approval of the first reading of the Ordinance.

Mayor Holladay opened the public hearing.

Geo Haney III, resident of Oregon City, said the City had been fighting against him to have marijuana industry in the City. He would like to bring the money to the City that he was giving to Multnomah County for his marijuana business.

Karen Blaha, resident of Oregon City, said she was speaking as an individual that night, not for the Canemah Neighborhood Association. She was concerned about marijuana businesses being in dense residential areas and where children lived due to the robberies that came with these businesses. Canemah was a federally designated national historic district and marijuana was a federally prohibited drug. Were marijuana sales federally allowed in national historic districts? Would they be in danger of losing the national historic designation? She requested the Commission prohibit marijuana dispensaries in Canemah.

Mayor Holladay closed the public hearing.

Commissioner Shaw was in favor of excluding Canemah as Canemah was a national historic district and was an entry to the City.

Commissioner Smith said Canemah was a national historic district which made it different from other neighborhoods in the City. It was also adjacent to the Willamette Falls Legacy Project site. There were places for these types of businesses, but not in Canemah.

Commissioner Mengelberg agreed with the Commissioners Shaw and Smith.

Commissioner Ide was also in support of prohibition because of the future development of the Willamette Falls site.

Mayor Holladay did not think Canemah was an attractive gateway currently and redevelopment of the buildings along 99E would be an improvement. He was concerned about setting a precedent for giving Canemah special treatment in the future. If the citizens of Oregon City voted in favor of having marijuana businesses, it should be as fair as possible for everyone to participate.

Tony Konkol, City Manager, clarified currently marijuana businesses were allowed in the Willamette Falls District.

A motion was made by Commissioner Shaw, seconded by Commissioner Smith, to approve the first reading of Ordinance No. 16-1008: time, place and manner regulations for marijuana businesses (Planning File LE-16-0001)

including the amendment to Municipal Code Chapter 17.26, prohibiting marijuana businesses in Canemah. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

7. General Business

7a. Second Reading of Ordinance No. 16-1010: Adopting a Ban on Outdoor Cultivation of Marijuana

Mayor Holladay suggested continuing this item to give the City Attorney time to do additional research.

Ryan LaFrenier, resident of Oregon City, did not think outdoor grows would be a site nuisance as people should not be looking in his backyard or would be offended by what they saw in his backyard. He thought it was overstepping of the government to tell him what he could or could not grow in his backyard. The law had been passed in Oregon to allow marijuana. He thought forcing people to grow indoors created more costs for lights, fans, and space and made their home a target for burglary. It made people pay for things that the Earth provided naturally.

Cyrus Facchini, resident of Oregon City, wanted to take advantage of the availability of fertile land, rain, and sunshine to legally grow marijuana plants in his own personal backyard. Four of his neighbors could see the plants, but they had not had any issues. He should not have his rights taken due to the fear of future delinquency of his neighbor's children. It was expensive to grow marijuana indoors and some people had no space indoors to grow it. The plants flowered for about a month in late summer to early fall until they were harvested, and that was when it smelled the most. He wanted to grow his own, not purchase it at dispensaries.

Cynthia Towle, resident of Oregon City, referenced an article in Willamette Week regarding people's preference of growing marijuana outdoors instead of in greenhouses due to sustainability. The lights and equipment needed was devastating to sustainability practices. Many people grew their own marijuana because they could not afford it at dispensaries and they could not afford the equipment to bring the plants indoors. When she moved to Oregon City she looked into having chickens and was told they were allowed with the exception that if her neighbors complained about smell or flies she would have to get rid of them. She thought they could treat marijuana the same, that if there were community complaints then someone would have to get rid of their plants.

Tom Geil, resident of Oregon City, said the Planning Commission voted 4-1 in favor of recommending using State law as it stood. The Commission discussed the odor, safety, and crime, and found that four personal grow plants would not cause an issue. Code Enforcement and the Police Department already had enough to keep them busy and there was no inherent danger in growing a few plants. Marijuana was medically helpful. There were no regulations for growing hops for home brewing and that smelled as well and people grew all kinds of plants outdoors.

John Johnson, resident of Oregon City, was a cannabis grower. In the two years he had been growing it, no one had complained of the smell or noticed the plants. This was a hobby to him, and he had not had problems with people trying to steal his plants.

Julio Cotto, resident of Oregon City, had served in the military and was medically discharged. He had to take medication for the pain, but it affected his mind and he could not focus. The voters passed the law to make marijuana legal in Oregon and ever since he was introduced to cannabis he did not have to take any more pain pills. He was able to enjoy life again and it was important that he be able to grow it in his backyard. The pharmaceuticals had a lot worse side effects than the cannabis. He thought as long as he was growing it on his property in a place that would not be seen by the public, he thought it should be allowed. The smell was only temporary and happened when it was ready to be harvested. He was on a fixed income and could not afford to grow it inside or get it at a dispensary.

Jane Grimm, resident of Oregon City, thought the proposed ordinance was a misuse of City funds and time and was not in line with State rights. Growing marijuana indoors was more dangerous, especially in creating a fire hazard, than growing a few plants in a backyard. There were bigger issues that needed to be dealt with and citizens preferred not to have their rights stepped on.

Geo Haney III, resident of Oregon City, had been growing marijuana for several years and had never received a complaint about the smell. It was temporary, lasting about a month, and he did not think it was a crucial argument. Growing marijuana indoors did not help promote a green economy. It was better to grow it outdoors.

Matt Johnson, resident of Oregon City, had grown marijuana in his backyard and none of his neighbors had complained. Growing indoors could cause fires and he thought for environmental and safety reasons marijuana should be grown outdoors.

Jim Band, Police Chief, explained why this was being viewed as a nuisance. The use of marijuana to kids with developing brains was detrimental. For police it was about livability and what the community wanted. People had the right to feel safe in their yard regardless of their opinions about marijuana. He had received complaints about odor and visibility of marijuana in backyards. There had been robberies with indoor grows as well as outdoor grows. The biggest thing was keeping marijuana out of the hands of children. For any substance that could be dangerous, there was a difference between a backyard and behind a locked door. The question was what was the community expectation for how to protect kids.

Commissioner Smith was a school teacher who came from a family of police officers. He was weighing the conversation about protecting kids with the Commission's history of being reluctant to make decisions about what people could do on their property as well as the conversations about making changes retroactively which had not worked out well. There were citizens who were currently growing marijuana in their backyards. He appreciated the testimony that night. He was not sure if they needed to look into the legal question that was raised.

Mayor Holladay had asked the lawyer who drafted Measure 91 whether or not they had a legal standing to prohibit personal outdoor grows. He thought the intent of the legislature was that cities and counties would not be able to be more restrictive than the State law for personal grows.

Commissioner Shaw was concerned about protecting children. He was trying to weigh that against property rights.

Commissioner Ide was curious to see what the City Attorney had to say about the

email. They had not heard from people who wanted a ban on personal outdoor grows. She was concerned about the risk to the City in prohibiting the outdoor grows.

Commissioner Mengelberg said there had been testimony opposing the outdoor grows previously. It was not a simple decision. She was in favor of protecting children.

Mayor Holladay grew up in the 70s where marijuana was easy to get and it was no different now. The opportunity for someone to grow marijuana in their backyard would not present a greater risk to children as a whole. The voters had already spoken once and even if the voters in Oregon City passed the ban of commercial marijuana, it would not ban personal grows. He was in favor of deferring to State law and not discussing the issue further. He did not want to take the risk of being a test case for the issue.

Commissioner Smith was in favor of allowing outdoor personal grows, however the Commission might need more time to decide.

A motion was made by Commissioner Shaw, seconded by Commissioner Mengelberg, to continue the second reading of Ordinance No. 16-1010: adopting a ban on outdoor cultivation of marijuana to October 19, 2016. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

7b. Discussion Regarding Measure 97 - Proposed Corporate Tax Increase

Mayor Holladay had invited proponents and opponents of Measure 97 to the meeting that night.

Dale Hendrick was in favor of Measure 97. Oregon was last in the country for the number of corporate taxes collected per year and the largest corporations experiencing this lower tax rate were making more money than they ever had and working families were making $2,000 less per year than they did eight years ago. Income taxes had been steadily increasing to make up for lack of investment in critical services. Several years ago the revenue the State brought in was made up of 17% corporate taxes and now it was 7% from corporate taxes. Measure 97 was a corporate tax increase for those companies that made over $25 million in Oregon sales and would affect less than 1% of Oregon's businesses. The money would be used for schools, healthcare, and senior services. It would only affect two lines of tax code. He gave personal examples as reasons these critical services needed to be improved and encouraged the Commission to stay neutral on the issue and allow voters to make their own decision.

Mayor Holladay said the opponent representative was not able to come to the meeting. He then took public testimony.

Amber Holveck, representing the Oregon City Chamber of Commerce, stated the Chamber Board was opposed to the measure. Jerry Turner, founder of local businesses and part owner of the Wild Hare Saloon in Oregon City, was quoted as saying Measure 97 was a way to get a sales tax in without calling it a sales tax. Oregon's corporate taxes were not the lowest in the US, but were the middle of the pack. Don Lewis, representing General Distributors, stated common sense told them the tax would be passed through to the consumer. Ms. Holveck thought one of the key reasons opposition to Measure 97 was the right choice was that it would damage Oregon's economy due to loss of jobs and would make Oregon one of the worst states

to expand a business or locate a new business. There many ways to quantify Oregon's rank for corporate taxes, but in none of them did Oregon rank last.

Sue Stein, representative of Stein Oil, said the climate of Oregon's economy made it difficult for medium sized businesses like Stein Oil. She thought they would be affected if Measure 97 passed. There was a high potential for loss of jobs. The government was not calling the proposed measure what it was, a sales tax. She did not think the tax would get to the needs of the State and more money would be needed. The State needed to be fiscally responsible.

Betty Mumm, resident of Oregon City, was concerned that there was no guarantee that the money would go to schools, seniors, or healthcare. She thought the money would go into the general fund and to PERS. The tax would get passed on to all citizens in the form of higher gas and grocery prices. These services needed to have funding, but this was not the answer.

Tom Geil, resident of Oregon City, said anytime taxes were placed on a corporation, they were passed down to the customers. There was a lot of confusing information in the media regarding this measure and he hoped more citizens would be able to hear the information presented tonight.

Debbie DeRusha, resident of Oregon City, said this would be a tax on the gross sales of larger corporations. She did not think it made sense and the side in favor of the measure seemed to be blaming the deficits in critical services on the inability to collect taxes from large corporations. The issues did not have anything to do with the ability to collect taxes. There was no plan to make sure the funds would go to these services and the measure would not fix the problems.

Joyce Gifford, resident of Oregon City, was a substitute teacher and agreed they needed to fix school funding. She did not think this measure was the way to do it, especially because it was taxing gross sales. If it was taxing net sales that would be different, but taxing gross sales would have to be passed on to customers.

William Gifford, resident of Oregon City, thought there were two flaws in the measure. One was taking from the gross receipts rather than from profits and the other was the money was not dedicated to go to these services. He thought the money would be used to fill the biggest gap, which would be PERS. He did not think it would be used to help the school system.

Mr. Hendrick said it was written directly in the measure that the funding would go to these services. There were numerous small businesses and community organizations that were advocates of the measure and they would not have gotten behind this measure if they didn't think the funds would be going to the right place. Most of the money would be coming from companies that made over $100 million in sales and many were located outside of Oregon but did business in Oregon. He did not think it would be passed on to customers or would cause businesses to leave the State.

There was discussion regarding campaign funding including out of state funding for the opposition and unions funding in favor of the measure. There was further discussion about the lack of a mechanism to ensure the money would be spent on these services.

Commissioner Shaw said they were a business friendly city and were also pro-schools. He was concerned that there was no guarantee for use of the funds.

Commissioner Mengelberg said her economic development colleagues were against Measure 97 as it would be a deterrent to business recruitment. She thought the tax system had been broken for a long time and property tax revenues were falling behind due to the system. She was concerned if the measure did not pass many programs would be cut. She thought this was a good shot for a solution and was in support.

Commissioner Smith had been teaching for 16 years and class sizes were continuing to grow. It was overwhelming and difficult. He did not think this measure would fix it, however this was a way the State was trying to resolve the situation. He was not hearing a unanimous opinion on it from the Commission.

Commissioner Ide supported businesses and education. She thought she needed to study this issue more before she could offer an opinion.

Mayor Holladay said the State's general fund had been increasing, but they were not spending it well. He had heard from businesses in Oregon City that they would consider going somewhere else if the measure passed. That meant jobs for Oregon City residents moving out of state. He thought it gave some businesses advantage over others as some would have to pay the tax and others wouldn't. A retail sales tax in conjunction with lower property tax and income tax was a better solution. He was opposed to Measure 97 as he did not think the money would be spent wisely.

Kattie Riggs, City Recorder, announced the Commission received an email from Shawnda Horn, Owner of Double J Construction Inc. that was entered into the record.

8. Consent Agenda

A motion was made by Commissioner Ide, seconded by Commissioner Smith, to approve the consent agenda. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

8a. Personal Services Agreement Amendment #4 with Brown and Caldwell - Sanitary Sewer Inflow and Infiltration Characterization Planning

8b. Intergovernmental Agreement (IGA) between Clackamas River Water (CRW) and Oregon City for Water Service Supplied by CRW through Proposed Glen Oak Road Master Meter Intertie at Beavercreek Road

8c. Restrictive Covenant Non-Remonstrance Agreement for the Small Slope Subdivision Project (Planning File No. TP14-06)

8d. Restrictive Covenant Non-Remonstrance Agreement for the Ed's Orchard Subdivision Project (Planning File No. TP15-07)

8e. Restrictive Covenant Non-Remonstrance Agreement for the PGE Abernethy Substation Addition Project (306 and 308 18th Street - Planning File No. SP15-10)

8f. OLCC: Liquor License Application- On-Premises Sales, New Outlet,

Applying as a Corporation, 88 Nails and Spa, 2050 Beavercreek Road, #104, Oregon City, OR 97045

8g. Minutes of the October 7, 2008 Work Session

8h. Minutes of the August 30, 2016 Special Meeting

9. Communications

a. City Manager

John Lewis, Public Works Director, gave updates on the Cove, smoke testing, and NPDES Annual Report. The Cove project was moving forward and would most likely not be completed by October 31, 2016 to reopen Main Street as previously thought due to the wet weather and starting later in the season than they wanted to. Staff would continue to work with the developer to get the project done. Most likely it would be done in January or February 2017. Smoke testing was currently occurring around the City in order to test the sanitary sewer system for imperfections. The National Pollutant Discharge Elimination System (NPDES) Annual Report was completed and posted on the City's website for public input. This was a requirement for the City's permit.

Mr. Konkol said the City was hosting the Clackamas Cities Association Dinner on October 25, 2016. The library was currently closed in order to get ready for the grand opening on October 15, 2016. The Fire Station across from the library would also have an open house on October 15, 2016. He introduced Phil Lewis, new Community Services Director.

b. Commission

Commissioner Mengelberg attended the Metro meeting regarding transportation funding, Oregon City Business Alliance Urban Renewal discussion, League of Oregon Cities Conference, and Economic Restructuring Committee meeting.

Commissioner Shaw attended the Greater Oregon City Watershed Council fundraiser, Boy Scout Troop meeting, National Day of Remembrance, OCBA Urban Renewal discussion, League of Oregon Cities Conference, Atkinson Church ribbon cutting, and CIC meeting.

Commissioner Ide attended the League of Oregon Cities Conference where the City received a Gold Standard Safety Award from City County Insurance recognizing Oregon City for excellence in safety practices resulting in few or no occupational injuries. She also attended a legislative forum with state representative candidates concerning human services programs and needs in the County related to seniors and those with disabilities, a community meeting to discuss solutions and options to address homelessness, and the annual day of observance for parents of murdered children.

Commissioner Smith led a few ghost tours and a parade last weekend.

c. Mayor

Mayor Holladay had been working with members in the community to defeat Measure

3-514. This measure would basically kill the ability to use Urban Renewal to do the kinds of good things they were doing downtown or possibly the Legacy project in the future. This was a badly crafted measure and would do damage to the economy of Oregon City. He urged people to vote no. He attended a meeting of mayors and city councils in Clackamas County to discuss the C4 bylaws. He urged people to vote yes on the police bond so they could get started on the new police facility.

10. Adjournment

Mayor Holladay adjourned the meeting at 9:48 PM.

Respectfully submitted,

_____

Kattie Riggs, City Recorder

City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Minutes - Final

City Commission

Dan Holladay, Mayor
Rocky Smith, Jr., Commission President
Brian Shaw, Nancy Ide, Renate Mengelberg

Wednesday, October 19, 2016 | **7:00 PM** | **Commission Chambers**

1. Convene Regular Meeting and Roll Call

Mayor Holladay called the meeting to order at 7:03 PM.

Present: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

Staffers: 11 - City Manager Tony Konkol, Assistant City Attorney Carrie Richter, City Recorder Kattie Riggs, Police Chief and Public Safety Director James Band, Public Works Director John Lewis, Economic Development Manager Eric Underwood, Library Director Maureen Cole, Human Resources Director Jim Loeffler, Community Development Director Laura Terway, Finance Director Wyatt Parno and Community Services Director Phil Lewis

2. Flag Salute

3. Ceremonies, Proclamations

3a. Proclamation Declaring November 1, 2016 as Extra Mile Day

Mayor Holladay declared November 1, 2016, as Extra Mile Day.

4. Citizen Comments

Sherry Morisch, resident of Molalla, said she recently became the marketing representative for WFMC Studios. WFMC was trying to reach out more to the community and offering their services. WFMC was celebrating Free Speech Week this week and tomorrow would be Community Media Day where the studio would be open to the community to produce projects.

Tom Geil, resident of Oregon City, encouraged the Commission to get on Oregon City Chit Chat. There had been a discussion regarding why Oregon City residents often did not go downtown and suggestions for how to change it.

5. Adoption of the Agenda

The agenda was adopted as presented.

6. General Business

6a. Second Reading of Ordinance No. 16-1008: Time, Place and Manner Regulations for Marijuana Businesses (Planning File LE-16-0001)

Laura Terway, Community Development Director, stated this was the process for adopting time, place, and manner regulations for marijuana businesses. There would be a measure on the November 2016 ballot asking if marijuana businesses should be allowed in the City and this provided a framework for where and how those businesses would operate. There had been a series of open houses, public hearings, and online surveys and the feedback had been implemented into the proposed regulations. If approved, this ordinance would go into effect on December 30, 2016 and marijuana businesses would be allowed in the City on January 1, 2017. The 1,000 foot buffer between retail stores would be on a first application basis, the first application in would determine where the buffer would be.

Jane Grimm, resident of Oregon City, said there was concern in the community regarding homelessness and disadvantaged youth. These types of businesses would bring revenue to the City which could be used for a warming house or a friendly house for children or a community center where children could go.

A motion was made by Commissioner Ide, seconded by Commissioner Smith, to approve the second reading and final adoption of Ordinance No. 16-1008: time, place and manner regulations for marijuana businesses (Planning File LE-16-0001). The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

6b. Ordinance No. 16-1010: Adopting a Ban on Outdoor Cultivation of Marijuana

Ms. Terway said in the discussions regarding marijuana regulations, there had been input on personal outdoor cultivation of marijuana. Outdoor cultivation was not allowed for marijuana businesses, but could be allowed for personal cultivation. The Planning Commission recommended allowing it, but after more public input there was concern that it could be a nuisance due to the odor, possible trespassing and theft, and visual exposure to kids. Staff was directed to come up with regulations prohibiting personal outdoor cultivation and this was the second reading of the ordinance. If approved, the ban would go into effect in 30 days. If the ordinance was not approved, personal outdoor cultivation would still be allowed.

Carrie Richter, City Attorney, said most of the marijuana regulations related to regulating businesses, not personal use. A few cities had prohibited outdoor personal grows, and there was a challenge right now in Grants Pass about that issue. People were allowed to grow four plants for personal use and the HB 4014 said a city may not limit that privilege. It was unclear whether a city could put time and manner restrictions on it. State law did say that the homegrown marijuana could not be readily seen by normal unaided vision from a public place. The cities that had put the outdoor restriction on personal grows did so before the new legislation came out in 2016.

Mayor Holladay said all of the challenges were happening before the final signing of Measure 91. He was concerned about Oregon City being challenged on this and he did not want to be a test case on this issue.

Ms. Richter summarized the choices for the Commission. They could adopt the ordinance to ban outdoor personal grows as it was drafted, direct staff to come back

with an ordinance that restated State law, direct staff to draft an odor nuisance regulation, or abandon the effort.

Mayor Holladay suggested not passing the ordinance and monitoring this for a year to see if there were any complaints and then deal with the problem if there was one.

Matthew Sulser, resident of Oregon City, said marijuana provided medical benefits and many depended on it as an alternative to more costly and sometimes addictive or harmful pharmaceutical drugs. Marijuana was a non-toxic medicinal resource. Growing the plant outside was relatively inexpensive as indoor growing required expensive lighting and proper ventilation. Dispensaries were expensive and some people might not have the indoor space. The aroma from the plant was string dependent and it only appeared at the end of the plant's growth and lasted only a few weeks. An indoor grow might produce more odor as the heavily saturated air was vented outside. Rather than theft of a plant from the yard, an indoor grow could encourage a burglary and possibly endanger the lives of the residents. Marijuana was easily accessible to youth and had been for decades. Outdoor cultivation of the plant created no new threat to the health of children. Voters passed Measure 91 in 2014 allowing people to grow four plants per household. The logical place to grow a plant was in the yard and a marijuana plant posed no public hazard or nuisance.

Ryan LaFrenier, resident of Oregon City, had no interest in growing marijuana. He was concerned about the violation of property rights and being told what he could or could not grow on his property when he paid taxes to the City. It was not right to do this on a what if basis. People had been given the right through the State and he thought there should be no more discussion about it.

Paige Hirt, resident of Oregon City, was representing Oregon City Together, a local coalition to reduce youth substance abuse. She was concerned about access to the marijuana plants in people's yards. The state of Colorado did not allow outdoor grows for personal use. It had to be in an enclosed locked area that could not be viewed openly. For homes with minor children it had to be locked in a separate space that youth could not access. She thought outdoor grows would increase access to youth. If they took no action on this ordinance and monitored to see if there was a problem, how would they measure that. It was the adults' responsibility to take care of their youth.

Jane Grimm, resident of Oregon City, thought drug education should come from the home and there were parents who were not watching out for their kids. There were a lot of disadvantaged youth, but she did not think that fact should impinge upon her rights as an Oregonian. She thought they should open up a friendly house center to help with the issue instead of taking a hardnosed approach.

Tom Geil, resident of Oregon City, had worked with children in juvenile facilities and the problem was not marijuana but access to pills and alcohol. There was already a way to deal with nuisances in the Code and if someone wanted to report a nuisance, that was a way to watch the numbers. If they let the existing Code for nuisances be their guide, it would be a good way to find out if there was a problem.

Jim Band, Police Chief, said there had been complaints, but he had been telling everyone that staff was waiting for a decision from the Commission.

Mayor Holladay said the complaints needed to be documented.

Commissioner Smith thanked everyone for the public testimony. He was concerned about making decisions on other people's property. He thought they would end up in

court. People should be educated about keeping the plants away from public view if they were planted outdoors, but he did not think they needed to limit it to indoor growing only.

Commissioner Shaw was on the side of the kids. He would rather see it be an outside nuisance than inside where the children were.

Commissioner Mengelberg did not want to be a test case. Most of the public testimony had been in favor of allowing outdoor growing. The Planning Commission recommendation was to allow outdoor growing, and she thought the State law should stand and not force it to only be grown indoors.

Commissioner Ide was not eager to invite a law-suit and did not want to prohibit outdoor personal grows. She was an advocate of property rights and thought prohibiting it would lead to a law-suit.

The consensus was to leave this as it was for the time being, collect data about complaints or other issues, and revisit it in a year.

6c. First Reading of Ordinance No. 16-1011: Amendment of Oregon City Municipal Code Chapter 12.16 to Include a New Section 12.16.070 - Park Exclusions

Phil Lewis, Community Services Director, said due to the high rate of repeat offenders in Oregon City parks, this ordinance was being proposed to exclude the offenders from the parks for a certain amount of time. Police Officers would be giving the exclusions after the offender received a warning. A first time offender would receive a 30 day exclusion, the second time would be 90 days, and the third time would be 120 days. There was also an appeals process.

A motion was made by Commissioner Shaw, seconded by Commissioner Smith, to approve the first reading of Ordinance No. 16-1011: amendment of Oregon City Municipal Code Chapter 12.16 to include a new section 12.16.070 - park exclusions. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

6d. First Reading of Ordinance No. 16-1012: to Ban the use of Tobacco in Oregon City Public Parks

Mr. Lewis said there were some questions that came up during the Work Session on the tobacco free parks ordinance. The Parks and Recreation Advisory Committee had recommended tobacco products be banned from the City's parks. He talked with the County's Tobacco Prevention Coordinator regarding why a city would have tobacco free parks, and he was told it was for health, environmental, and fire risk benefits. There were several other jurisdictions nationally that had similar ordinances including many neighboring cities. The North Clackamas Park District conducted a tobacco survey for their 2012 Master Plan. In the survey 78% were in support of a tobacco free policy and 89% were neutral or supportive. This would be peer enforced and there would be signage placed at the parks.

Commissioner Smith said smoking marijuana was included, but not the consumption of edibles. Ms. Richter said they could add banning any type of tobacco or cannabis product to the ordinance.

Commissioner Shaw said there was a lot of education regarding how bad smoking was and when kids saw the behavior, they thought it was ok. He agreed with the ordinance as written.

Commissioner Ide asked if there had been complaints about smoking in parks. She was hesitant to take away people's rights to smoke outside. She was not in support of the ordinance. Mr. Lewis did not know the number of complaints. The ordinance was brought forward by the Parks and Recreation Advisory Committee. Smoking was prevalent in parks, but he did not know the extent of it being a nuisance to park users.

Mike Mitchell, resident of Oregon City, was a member of PRAC. On more than one occasion members of the public came to PRAC to request a ban on smoking in parks. PRAC looked at what other cities did, and it looked like there was a trend to have this kind of ordinance in place.

Commissioner Mengelberg asked where else in the City was smoking banned. Tony Konkol, City Manager, said there was a ban on some of the campuses, like City Hall and the Pioneer Center.

Mayor Holladay thought the Commission's job was restricting as little as possible the public's rights and freedoms while maintaining order and discipline inside the City. He was not in support of this ordinance.

Commissioner Shaw was in favor of the ordinance. Commissioner Smith thought the ordinance should be consistent for both tobacco and marijuana products.

Commissioner Mengelberg said the point of the ordinance was to address the perceived nuisance and litter problems and second hand smoke impacts that some people found objectionable. The edible marijuana products were not nuisances or maintenance problems like other tobacco products were. She did not see a need to add edibles to the list.

A motion was made by Commissioner Shaw, seconded by Commissioner Mengelberg, to approve the first reading of Ordinance No. 16-1012: to ban the use of tobacco in Oregon City public parks. The motion passed by the following vote:

Aye: 3 - Commissioner Brian Shaw, Commissioner Rocky Smith and Commissioner Renate Mengelberg

Nay: 2 - Mayor Dan Holladay and Commissioner Nancy Ide

7. Consent Agenda

A motion was made by Commissioner Smith, seconded by Commissioner Mengelberg, to approve the consent agenda. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

7a. Interim Agreement with Rediscover the Falls and Metro

7b. Personal Services Agreement with DECA Architecture, Inc. for the

2016 Public Works Operations Master Plan Update (CI 16-015)

7c. Resolution 16-30 Supporting the National Flood Insurance Program's Community Rating System 2016 Recertification for Oregon City

7d. OLCC: Liquor License Application- On-Premises Sales, New Outlet, Applying as a Corporation, Ruby's Pub and Grill, 527 Main Street, #B, Oregon City, OR

7e. Minutes of the August 7, 2016 Regular Meeting

7f. Minutes of the August 17, 2016 Special Meeting

7g. Minutes of the September 7, 2016 Special Meeting

8. Communications

a. City Manager

John Lewis, Public Works Director, gave an update on the Molalla Avenue completion project. He applied for a Metro grant to do the project and right now they were taking public comments on the application. There would be a presentation on the project on November 3, 2016. They needed to get as much support as possible.

Chief Band discussed the procurement of C-800 equipment for Dispatch and how there was concern about sole source contracting and that the same issues that happened in Washington State would happen in this purchase. In Washington it was a statewide system and there were huge cost overruns. For this purchase a needs assessment had been done as well as an RFP process and Motorola was chosen. Motorola was going to demonstrate that Oregon City would be getting the same pricing as other agencies. If at any time they would not get a better price, then an RFP process would be done. Citizen oversight was also built into this program to make sure there were no cost overruns. There needed to be communications between all of the jurisdictions and this new equipment would allow for that.

Mayor Holladay thought Motorola had a long history of quality engineering in radio communications and there was a need for jurisdictions to communicate with each other especially in emergency situations.

Commissioner Mengelberg said the towers were large and obtrusive and she thought that more would be placed in Oregon City.

Mr. Konkol said there would be a kid's pumpkin decorating contest on October 29, 2016 at the Caufield House and trick or treating on Main Street on October 31, 2016. The Clackamas Cities Association Dinner would be held on October 25, 2016. The Work Session on November 8, 2016 was cancelled due to the election, and there would be Work Sessions before the November 2, 2016 and November 16, 2016 meetings.

b. Commission

Commissioner Mengelberg attended the MPAC (Metro Policy Advisory Committee)

meeting where disposing of food waste and converting it into energy was discussed, the C4 (Clackamas County Coordinating Committee) meeting where she helped advocate for the Molalla Avenue project, and Library Grand Opening.

Commissioner Shaw attended the Ribbon Cutting for the Windermere Real Estate office, Clackamas County Business Alliance meeting, Canby Library Grand Opening, Oregon City Library Grand Opening, and Park Place Neighborhood Association meeting.

Commissioner Smith also attended the Library Grand Opening.

Commissioner Ide attended the Park Place Neighborhood Association meeting, Optimist Club meeting, Library Grand Opening, and Downtown Oregon City Board meeting.

c. Mayor

Mayor Holladay appointed Commissioner Ide to the Downtown Oregon City Board. He attended the C4 subcommittee meeting. He encouraged everyone to vote in the November 2016 Election.

9. Adjournment

Mayor Holladay adjourned the meeting at 8:38 PM.

Respectfully submitted,

_____

Kattie Riggs, City Recorder

625 Center Street
Oregon City, OR 97045
503-657-0891

City of Oregon City

Meeting Minutes - Final

Planning Commission

Monday, July 11, 2016 | **7:00 PM** | **Commission Chambers**

Public Open House - Marijuana Regulations

16-413 Planning Commission Worksession - Marijuana Regulations (Planning File LE-16-0001)

Work Session - Marijuana Regulations

Chair Kidwell called the Work Session to order at 5:30 PM.

Present: Charles Kidwell, Tom Geil, Denyse McGriff, and Damon Mabee
Absent: Robert Mahoney, Zachary Henkin, and Paul Espe
Staffers: Laura Terway and Pete Walter

Pete Walter, Planner, said a set of marijuana regulations had been drafted based on the results of some surveys, League of Oregon Cities recommendations, and review of other cities' codes. He explained the new definitions that would be added to the zoning code. The City had statutory authority to regulate marijuana. Currently there was a temporary local ban on marijuana businesses and the ban was going to a vote on the November ballot. These regulations would go into effect if the ban was lifted. Personal grows up to four plants would be allowed indoors only. Producers, processors, laboratories, wholesalers, and retailers would not permitted in any residential zones. Producers, processors, laboratories, and wholesalers would not be permitted in any mixed use or commercial zones, however retailers would be allowed in those zones. Producers would be permitted in the genral industrial zone. Processors would be allowed in the mixed use employment zone and campus industrial.

There was discussion regarding the environmental impact of producing and processing marijuana and the County's and neighboring cities' regulations.

Mr. Walter said the State required a 1,000 foot buffer from schools and staff was recommending a 250 foot buffer from any licensed daycare facility, public park, or transit center. Marijuana businesses could not abutt residential zones unless the property was on a freeway, expressway, major arterial, minor arterial, or collector. Because of the buffers, all of the McLoughlin Historic District was off limits for marijuana businesses. The institutional zone did not allow any marijuana uses.

There was discussion about allowing a laboratory use in the institutional zone.

Mr. Walter discussed the standards of operation for marijuana businesses. Anything other than personal medical grows would be treated the same as production and would not be permitted in residential zones.

There was discussion regarding allowing personal grows to be outdoors. There was

further discussion regarding the 250 foot buffer to daycares, parks, and transit center and whether or not it should be expanded. There was also discussion on whether or not to allow exemptions for marijuana businesses to abut residential areas if they were on major roads.

Mr. Walter said there would be a public hearing on these regulations at the next Planning Commission meeting.

Chair Kidwell adjourned the Work Session at 6:45 PM.

Regular Meeting

1. Call to Order

Chair Kidwell called the meeting to order at 7:00 PM.

Present: 6 - Charles Kidwell, Tom Geil, Robert Mahoney, Zachary Henkin, Denyse McGriff and Damon Mabee

Absent: 1 - Paul Espe

Staffers: 3 - Laura Terway, John Lewis and Pete Walter

2. Public Comments

John Lewis, Public Works Director, gave an update on the Cove project. Meetings had been held regarding the geotechnical work, land use work, and phasing and site development work for the project. The developer wanted to get started with construction soon starting with the Garden Cove Apartments. For most of the project, part of Main Street would be closed. Signage would be posted regarding the closures. He explained the excavation that would take place on the site. The first permit for the development would be an Erosion Control Permit. There would be a pedestrian trail that would be open during construction. Staff would be regularly monitoring the project.

3. Public Hearing

3a. PC 16-073 Planning Files US 16-02 / NR 16-04 / SP 16-04 / VR 16-01: Retaining Wall to Mitigate a Landslide at Berryhill Apartments.

Chair Kidwell opened the public hearing and read the hearing statement. He asked if any Commission had ex parte contacts, conflicts of interest, bias, or statements to declare including a visit to the site.

Commissioner Mabee said his wife used to live in these apartments. Commissioner McGriff had visited the site on many occasions and had a long history with this piece of property. Commissioner Geil and Chair Kidwell were familiar with the site.

Pete Walter, Planner, presented the staff report. This proposal would mitigate the landslide between the Forest Edge apartments and Berry Hill apartments. He explained the subject site. This was a landslide zone that needed to be mitigated in order to stop movement on the slope. He then discussed the proposed site and exploration plan with retaining wall and Geologic Hazard Overlay District criteria. The applicant's geologic consultant recommended a soldier pile wall with tiebacks be installed at the top of the upper slope near the active head scarp to stablize the

ground beneath the duplex and eightplex to avoid possibl future damage to these structures. David Evans and Associates reviewed the application based on a natural resources assessment by AKS Engineers. AKS did an on-site and off-site delineation to determine the intermittent water feature in the Natural Resources Overlay District was actually not within the 200 foot vegetative corridor but 334 feet from the tributary to the edge of the tax lot. David Evans and Associates agreed with the assessment that there would be no impact to the vegetative corridor or any natural resource. The wall was reviewed against the minor site plan and design review criteria. The components of the wall were found to be appropriate. Staff added a condition of approval for the applicant to provide some tree and vertical components to the landscaping plan for additional screening. A variance was required because this was a six foot fence on top of a retaining wall that made it 15 feet tall. The fence code said the combined height of a fence and retaining wall should be no more than eight and a half feet. In the Geologic Hazard Overlay District there was a requirement for cut and fill slopes to be terraced. Each face of the terrace could not exceed 7 feet and in this case the design requirement was such that it could not be terraced. Staff found that the variance criteria had been met. The wall would alleviate the hardship based on the data that stated the slope would continue to move even with the retaining wall and the wall could not be terraced. The six foot fence on top of the retaining wall was for security of the residents of the apartments. The applicant's landscaping plan as conditioned would do a good job of mitigating the impact of the wall. This was not a highly visible area and the wall would be a permanent structure. Staff recommended approval with conditions. Initially the applicant had not expected to remove any trees, but after looking at the site, a few trees might need to be removed. If trees were removed, they would be mitigated for as per code. The soldier pile material the applicant wanted to use was not readily available and they were going to use a slightly smaller diameter soldier pile which required cross-brace pieces. The applicant included an additional narrative for that as well as photographs to show how much existing screening vegetation there was, which was Exhibit 8. A coating might need to be put on the wall for corrosion resistance which could enhance the look of the wall.

David Higgins, geotech consultant who was representing the applicant, discussed the current condition of the site, where the retaining wall would be located, vicinity, and topography and showed aerial photographs of the area. The landslide began at the Forest Edge apartments and then crept uphill to the Berry Hill apartments. This led to the evacuation of the apartments in January. The retaining wall would retain everything up-slope and would prevent anything up-slope from moving. All the land below the retaining wall would continue to move. He then discussed a landslide map which showed the Forest Edge Apartments entirely within the mapped ancient landslide and that there were many ancient landslides in the area. He showed photographs of the Berryhill Apartments from 2011 which showed small cracks forming. The decks were removed from the building and grass was planted. December 2015 was one of the wettest Decembers on record, the slide reactivated, more cracks formed, and the apartments were evacuated. The retaining wall would be built behind the eightplex and duplex. An inclinometer casing was installed that measured movement and showed there was a small amount of movement. At the location of the wall, the landslide was 36 feet deep and the wall was designed to go through that sheer plane and cut it off and the movement would be stabilized. He explained the aerial and cross section, proposed vegetative screening, site plan, slope stability analysis, and sample wall photo. They did not submit a landscape plan because they thought the wall was not visible due to the vegetation already there. Any trees planted on the other side of the wall would be subject to movement and too much vegetation would cause the water to have to be irrigated. Staff's condition was to add more vegetation, and they would work with the landscape architect to find shrubs and trees that did not require a lot of water and would be flexible to the ground movement. He then described the retaining wall general plan, retaining wall tieback

plan, and view of the downslope area and vegetation.

Tim Pfeiffer, City's Geotechnical Consultant, said based on his observations he thought the retaining wall would mitigate the landslide problem. It was standard practice and was the least risky option. Mr. Higgins explained the existing drainage system would not be made worse by installing this wall; they would build the wall to continue the existing runoff conditions.

Chair Kidwell closed the public hearing and the Commission took a short break.

Commissioner Mabee said they had been assured by engineering reports that the wall met the standards. It might not work long-term, but he was supportive of the plan.

Commissioner Henkin hoped properties in similar circumstances were paying attention to this property and were proactive. He thought the wall would work to mitigate the problem and thought the variances made sense.

Commissioner Mahoney was also in support as something needed to be done at the site.

Commissioner Geil agreed it needed to be fixed. People in landslide zones could not get slide insurance. He was concerned that if the land moved again, who would be responsible, the City or the property owner. He was in favor of this plan.

Commissioner McGriff wished she had all of the information submitted for review so she had time to read it. She did not think she had sufficient information to make a decision.

Chair Kidwell said his biggest reservation was how the piles were going to be installed especially if the vibration exacerbated the movement on the slope, but he felt comfortable with the method being proposed.

A motion was made by Commissioner Henkin, seconded by Commissioner Geil, to approve Planning Files US 16-02 / NR 16-04 / SP 16-04 / VR 16-01: Retaining Wall to Mitigate a Landslide at Berryhill Apartments. The motion passed by the following vote:

Aye: 5 - Charles Kidwell, Tom Geil, Robert Mahoney, Zachary Henkin and Damon Mabee

Nay: 1 - Denyse McGriff

3b. PC 16-072 AN-16-0001: Annexation of one property of 0.5 acres into the City Limits.

Chair Kidwell opened the public hearing. He asked if any Commissioner had ex parte contacts, conflicts of interest, bias, or statements to declare including a visit to the site.

Commissioner McGriff visited the site. Commissioner Mabee drove by the site.

Mr. Walter presented the staff report. This was a request to annex one property of .5 acres on Columbine Court into the City limits. The site was in the Urban Growth Boundary and had a Comprehensive Plan designation of low density residential and Clackamas County designation of Future Urban 10. He described the subject site. The property owner wanted to annex into the City in order to make some expansions to his house. The property was contiguous to the City limits, did not create any

islands, had one existing house, and had a sewer line running across the back. Currently the property was receiving water from Clackamas River Water. This annexation did not require voter approval due to the change in State law. The property owner was requesting R-10 zoning, however that required compliance with the Transportation Planning Rule and findings which had not been submitted yet. Staff recommended approval of the annexation and retaining the FU-10 zoning. There would be time for the property owner to submit the findings before the final zoning was placed on the property.

There was discussion regarding how a property that was annexed into the City could retain a County zone.
Chair Kidwell did not think they should bring a property into the City with a non-compliant zone.

Ms. Terway said the applicant was not proposing to do anything on the property. If he wanted to subdivide the property, the zoning would need to be changed. The applicant had chosen not to submit findings at this time. There were other properties with the FU-10 zoning in the City that were in a holding pattern currently.

Commissioner Mabee was comfortable with it since there was a precedent of allowing this zoning.

Commissioner McGriff asked why upon annexation would the applicant have to start paying stormwater utility fees. Mr Lewis said it was part of the City's stormwater management program.

Mr. Walter then discussed the approval criteria. Staff recommended approval of the application.

There was no public testimony.

Chair Kidwell closed the public hearing.

Commissioner Mahoney thought they had a better opportunity to work with the property owner if he was in the City than if he was out. There was no impact to this annexation.

Commissioner Henkin said this was half an acre and was next to other properties that had been annexed into the City. It was contiguous and would not create an island. Properties had been annexed before with County zoning.

Commissioner Mabee was in support of the annexation.

Chair Kidwell thought the policy should be changed so that non-conforming zones were not taken into the City. Either applicants needed to provide the study before they were approved for annexation or the properties would go to a default City zoning automatically.

A motion was made by Commissioner Henkin, seconded by Commissioner Mahoney, to approve AN-16-0001: Annexation of one property of 0.5 acres into the City Limits. The motion passed by the following vote:

Aye: 4 - Charles Kidwell, Robert Mahoney, Zachary Henkin and Damon Mabee

Nay: 1 - Tom Geil

Abstain: 1 - Denyse McGriff

4. Adoption of the Minutes

4a. 16-417 Approval of Planning Commission minutes for 11/30/2015,12/14/2015, 01/11/2016, and 02/22/2016.

A motion was made by Commissioner McGriff, seconded by Commissioner Mabee, to approve the January 11, 2016 Planning Commission minutes. The motion carried by the following vote:

Aye: 5 - Charles Kidwell, Tom Geil, Zachary Henkin, Denyse McGriff and Damon Mabee

Abstain: 1 - Robert Mahoney

A motion was made by Commissioner McGriff, seconded by Commissioner Mabee, to approve the February 22, 2016 Planning Commission minutes. The motion carried by the following vote:

Aye: 6 - Charles Kidwell, Tom Geil, Robert Mahoney, Zachary Henkin, Denyse McGriff and Damon Mabee

A motion was made by Commissioner McGriff, seconded by Commissioner Mabee, to approve the November 30, 2015 Planning Commission minutes. The motion carried by the following vote:

Aye: 6 - Charles Kidwell, Tom Geil, Robert Mahoney, Zachary Henkin, Denyse McGriff and Damon Mabee

5. Communications

Ms. Terway said the City was able to apply for the equitable housing grant and would soon turn in the application. She had been hired as the City's new Community Development Director. There would be a joint Work Session with the Planning and City Commissions on the Willamette Falls Legacy project on July 25. Staff was working on identifying solutions for the intersection of Beavercreek and Highway 213.

Carrie Richter, City Attorney, discussed three LUBA cases. One regarding the Willamette Falls Hospital zone change, plan amendment, and master plan amendment. The record had been settled in this case and the briefing had been filed. Oral argument would be on July 21. The second case was regarding Historic Properties LLC's zone change. The City had submitted the record, but there was a record objection and the City was still sorting out the record. A decision would most likely not be made until October. The third case was the Beavercreek Concept Plan. A supplemental record was being filed. The decision would most likely be made in October.

Commissioner McGriff suggested for excerpts from the application that were in the staff report, to put them in a different font or italics. She asked that original reports that were referenced in the staff report be included in the packet. She thought consultants needed to do site visits so they did not miss something important.

There was discussion regarding relying on staff expertise when making decisions and that the Commission did not have to be experts on the technical issues in order to make a decision.

6. Adjournment

Chair Kidwell adjourned the meeting at 10:00 PM.

City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Minutes - Final

Planning Commission

Monday, July 25, 2016 | **7:00 PM** | **Commission Chambers**

City Commission and Planning Commission Work Session - 5:30pm - 7:00pm

1. PC 17-015 The Willamette Falls riverwalk design team is holding a work session to discuss riverwalk elements and design objectives with the Planning Commission and City Commission. The discussion will include:

- River Access and Docks
- Arts/Civic Space/Gathering Space
- Interim Uses
- Connecting and integrating the riverwalk to downtown

2. 17-111 Discussion of Type I Site Plan and Design Review Process

Planning Commission Hearing - 7:00pm

1. Call to Order

Vice Chair McGriff called the meeting to order at

Present: 4 - Tom Geil, Robert Mahoney, Zachary Henkin and Denyse McGriff

Absent: 3 - Charles Kidwell, Paul Espe and Damon Mabee

2. Public Comments

Sam Drevo spoke on behalf of We Love Clean Rivers. He played a clip from a Planning Commission meeting on September 8, 2014, where Commissioner Mabee suggested the idea of a whitewater park at the Willamette Falls Legacy Project site which had started momentum on the idea. Since then, they had spent over $100,000, received grants, and had delivered results through technical studies and documentation. Up to to this point, the idea had been viewed positively. It had been publicly funded through the County, through a tourism development grant, and PGE contributed money as well. A significant number of resources, time, and energy had gone into this project and he was asking the Planning Commission to recommend to the City Commission to continue work on the project. Without any discussion or research, the City Commission had voted for an option that did not allow this project to continue as an element of the redevelopment. They wanted to keep the option alive. There was a lot of community support for the whitewater park.

Laura Terway, Community Development Director, stated comments on this issue could be directed to Kelly Reid, Planner, which would be taken to the Partners group in August where a final decision would be made.

Travis Kruger, resident of Oregon City, was in support of incorporating a whitewater channel into the Willamette Falls project. He did not want the Riverwalk to preclude the possibility for this channel. He was a whitewater slolum racer and spent a lot time outdoors with his family. They often had to go outside of Oregon City to do outdoor activities. This was an opportunity to make Oregon City a destination for outdoor tourism. He worked on the feasibility study for a whitewater facility on the Clackamas, but learned there was no feasible site on the Clackamas. The Willamette Falls site was the most feasible due to the flows, vertical drop, and population center proximity, and they had the support of the community and the property owner. It would be able to function without pumping. The facility would be for a diverse range of ages and uses. He had worked on the City of Bend's whitewater park, and that site had many hurtles to overcome but was now a success.

Don Smith, resident of Oregon City, had served on PRAC previosly where he noted the City had good Parks staff, but not enough money for parks. This was a solid revenue opportunity and he gave examples of other communities where these facilities had brought economic success. There was a strong market for this and it would bring in many visitors. He thought the private/public partnership would work well and he did not want to lose this once in a lifetime opportunity. He asked the Planning Commission to urge the City Commission to keep the option open.

Nathan Modlin, resident of Oregon City, said tradition and legacy were important to long-term residents like his family. The Willamette Falls were part of the reason his family had lived here so long. It was the wish of many Oregon City families that the falls remain a source of recreation, education, and economic success while paying homage to the traditions of the people who lived here before us. A whitewater park would be good for fish, trees, and wildlife; good for humans as a source of healthy activities; and good for future generations as an educational center and place to experience the falls firsthand. It would expand the number of living wage jobs and would honor the history and traditions of past generations. He supported the option being allowed to continue.

Duane Felix, resident of Oregon City, had received a letter about his shed which had a metal roof that was no longer acceptable. In March of 2013 he had discussed putting a metal roof over the shed structure with the City and got approval. He was willing to put a wooden fence around it, but it would not meet the fence height requirement where they could not see it.

Ms. Terway would look into the issue. Code had been adopted that stated membrane structures, including both fabric and metal, that were visible in the right-of-way had to be removed by January 1, 2011. The City had received 37 complaints regarding membrane stuctures in the last 30 days which was unusually high. There was no grandfathering in any of these structures.

Curtis Degner, resident of Oregon City, also recieved a letter regarding his RV structure. It was there when he bought his home a few years ago and he had paid more for the home because it had this metal structure. It could be seen from the street and was installed in 2008 and he purchased the house in 2013. It would not be an easy structure to remove.

Ms. Terway would also look into this issue.

3. 16-448 Planning File LE-16-0001 - Adoption of Time, Place and Manner Regulations for Marijuana Businesses.

Vice Chair McGriff opened the public hearing.

Pete Walter, Planner, presented the staff report. He discussed the State laws and bills regarding marijuana. Measure 91 passed in Oregon City 52% to 47% and under State law the City was permitted to temporarily ban recreational and medical marijuana businesses provided a measure was submitted to the voters. The measure would be on the November ballot. The temporary ban allowed time to draft time, place, and manner regulations. If the voters lifted the temporary ban, these regulations would go into effect. He explained what reasonable regulations were. The proposed regulations would not apply to personal cultivation and use of recreational marijuana provided those activities were done indoors. He reviewed the definitions that would be included in the code, the legislative review process and criteria, the public process since May 2016 to the present, surveys that were conducted, survey summary, and zoning. Retailers and dispensaries would be prohibited in residential zones or abutting any residential zones except if it was located on a corridor. Retailers and dispensaries were not allowed within 250 feet of any public parks, licensed child care and day care facilities, and public transit centers and they were not allowed within 1,000 feet of a public, private, or parochial elementary and secondary school. He showed what these buffers would look like on maps, showing where these facilities would and would not be allowed. These facilities would be permitted in retail use zones and in zones that already had limitations on retail. Production would be prohibited in all zones except for General Industrial. Processing was prohibited in all the residential zones, all mixed use corridor, and commercial zones. It was permitted in General Industrial, Mixed Use Employment, and Campus Industrial. Wholesaling would be prohibited in all residental zones, mixed use corridor, and commercial zones and would be permitted in General Industrial, Mixed Use Employment, and Campus Industrial. Regarding standards of operation, these facilities needed to be in compliance with other laws, would be in good standing with OLCC and OHA, no portion of any business would be conducted outside, and the hours of operation would be in accordance with OLCC and OHA. Any businesses that would produce an odor would have an odor control system, doors and windows would remain closed, secure disposal was required, the business could not have a drive-through or walk-up, and they needed to show proof of security with OLCC. He then explained the State tax revenue from recreational marijuana. Medical marijuana was not being taxed. The funds would go to the common school fund, mental health, alcoholism, and drug service account, State police, cities for local law enforcement,counties for local law enforcement, and Oregon Health Authority for alcohol and drug abuse prevention, early intervention, and treatment. The disbursement to the cities was currently based on population, but after July 2017, it would change to be based on the number of licenses. A local sales tax could also be imposed up to 3%, which had to be approved by the voters. This tax was also on the November ballot. He entered the testimony from Dr. Kendall Evans, summary of the Planning Commission Work Session from July 11, 2016, revised draft map of potential retail locations, revised draft map of potential retail locations with buffers, and Mr. Walter's PowerPoint presentation into the record. He read the correction to the definition of a marijuana business. In proposed Chapter 17.54.110 subsections 3 and 4 there was incorrect reference to sections 6, 7, and 8. Staff recommended approval of these text amendments.

Doug Neeley, resident of Oregon City, was on the board of Oregon City Together, an organization dedicated to reducing substance abuse. He distributed a pie diagram showing the substance abuse of youth. He thought the 1,000 foot buffer from schools was not enough and did not include Clackamas Community College. Many under-age students attended classes at the college and there was a daycare on campus. He thought there should be an additional 1,000 foot buffer around the college.

Kendall Evans, resident of Oregon City, did an evaluation of Clackamas County

marijuana regulations and came up with 15 corrections that needed to be made. Regarding ventilation, all the air inside a grow facility needed be filtered for carcinogens and heavy metals.

Mr. Walter said the City would defer to OLCC and OHA for compliance with those standards.

Dr. Evans said OLCC and OHA had not done the proper testing for those elements and baseline studies needed to occur. Regarding waste management, businesses did not know what to do with the waste due to the chemical compounds in it. It could not be given to animals and it could not be composted or burned or hauled away. He encouraged the City to look at what Lake Oswego had done with their regulations. He thought there should be a larger buffer between retail facilities and parks. He thought it should be at least 500 feet. He discussed what Duschutes County did and thought Clackams County should have similar regulations. He thought there should be a general liability policy for grow facilities. He recommended hiring a part time industrial hygenist to help them through the codes.

There was discussion regarding the sources of information that could be found on these topics for further review.

Eric Nelson, resident of Oregon City, said many states were preparing to legalize marijuana and a number of studies had been done looking at safety issues. The federal government was looking at having marijuana as a Schedule 1 to a Schedule 2. The overall tax benefits would be beneficial to the City. He thought the proposed zoning was appropriate and he hoped the City did not pass up the opportunity. The Police Department would have more time chasing down bigger issues.

Ian Watson, resident of Portland, said his family owned a marijuana dispensary. He thought the City was doing a good job balancing local needs with those of OLCC and not wasting resources or duplicating regulations. He encouraged the Commission to visit his store to see how it functioned.

Vice Chair closed the public hearing.

Commissioner Geil thought personal grows should be allowed outside. These regulations were for businesses, not personal grows, and he did not think the regulation on personal grows should be included.

Commissioner Henkin thought cigarettes and alcohol were more harmful than marijuana. He agreed there should be a buffer around the college, however he did not think there needed to be a buffer around parks. It was already illegal to smoke in a public park, and if there was a problem it could be enforced by the police. The enemy to youth was hard drugs and they needed to create channels where people were not getting marijuana illegally when they were the right age.

Commissioner Mahoney discussed unintended consequences. He was concerned about what it would mean for police enforcement and the message they were sending youth. Down the road they would be sorry about this decision. He had no problem with medical marijuana, but not recreational. He thought the proposed zoning would work, but wanted more time to think about it.

Vice Chair McGriff wanted to know what the County and other nearby cities were doing for marijuana regulations. She thought a buffer should be established around the college. She was not in favor of allowing personal cultivation outdoors.

There was consensus to add a 1,000 foot buffer around the college, to continue the hearing, and to have staff come back with an alternative that allowed outdoor personal cultivation with setbacks.

to continue Planning File LE-16-0001 - Adoption of Time, Place and Manner Regulations for Marijuana Businesses to August 8, 2017. The motion passed by the following vote:

Aye: 3 - Tom Geil, Robert Mahoney and Zachary Henkin

Nay: 1 - Denyse McGriff

4. Communications

Ms. Terway said there was a vacancy on the Urban Renewal Commission and applications were due by July 29. She gave an update on the Cove project. There would be a groundbreaking ceremony on July 27. National Night Out would be on August 2. She gave an update on three LUBA cases. Oral argument for the hospital case was given last week and a final decision would be given on August 15. The record for the Beavercreek Road Concept Plan was being settled. The record was still being settled for the Comprehensive Plan amendment and zone change for the property near Beavercreek and Highway 213. Pete Walter had received a service award for his 10 years of working for the City. Photos of the Community Development Department were taken and would soon be posted on the City's website. The Concerts in the Park were well attended. The Library would reopen on July 27.

5. Adjournment

Vice Chair McGriff adjourned the meeting at 9:10 PM.

City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Minutes - Final

Planning Commission

Monday, August 8, 2016 | **7:00 PM** | **Commission Chambers**

1. Call to Order

Chair Kidwell called the meeting to order at 7:05 PM.

Present: 5 - Charles Kidwell, Tom Geil, Paul Espe, Denyse McGriff and Damon Mabee

Absent: 2 - Robert Mahoney and Zachary Henkin

Staffers: 2 - Laura Terway and Pete Walter

2. Public Comments

There were no public comments on non-agenda items.

3. Public Hearings

3a. PC 16-082 Planning File LE-16-0001 - Adoption of Time, Place and Manner Regulations for Marijuana Businesses and Personal Cultivation.

Chair Kidwell opened the public hearing.

Pete Walter, Planner, presented the staff report. He reviewed what was discussed at the last Planning Commission meeting. Some issues that came up were personal outdoor cultivation with the direction for staff to draft regulations to allow personal cultivation outdoors, adding a 1,000 foot buffer around Clackamas Community College, and questions regarding what other jurisdictions did. Regarding personal outdoor cultivation, the concerns had to do with sight, smell, tresspass, theft, and attractive nuisance. There was also a desire to follow the intent of State law to allow personal use and not regulate it. Staff proposed to allow personal outdoor cultivation per State law up to four plants per residence out of public view with a 10 foot setback that would be measured from the property line to the edge of the plant. If odor rose to the level of a nuisance, it could be pursued as a Code violation. Regarding the 1,000 foot buffer around the college, the concern was that there were students under 21 attending the college and could be influenced by the proximity of retail marijuana facilities close to the college. The 1,000 foot buffer was the same as what would be applied around an elementary or secondary school. Retail uses would be prohibited in all residential zones, abutting any residential zone unless the tax lot abutted a major street, prohibted within 250 feet of any public parks, licensed childcare or daycare facilities, and public transit centers, and prohibited within 1,000 feet of any public, private, or parochial elementary or secondary school and Clackamas Community College. He then showed a map of retailer permitted areas. Producers would be prohibited in all zones except for General Industrial. Wholesalers and Processors would be prohibited in all residential zones and all mixed use corridor and commercial zones. They would be permitted in General Industrial, Mixed Use Employment, and Campus Industrial zones.

There was discussion regarding adding a regulation that no marijuana businesses would be allowed within the waterways.

Mr. Walter discussed the proposed standards of operation. Marijuana businesses would have to be in compliance with other laws, would have to maintain registration compliance with State law, no portion of any marijuana business would be conducted outside, the hours of operation would be in compliance with OLCC or OHA, and the business would have an odor control system designed by a licensed mechanical engineer. The standard for judging an odor problem would be that of an average reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor was made and detected. Doors and windows would remain closed except for the minimum time requred for egress and ingress, there would be secure disposal of remnants and byproducts, there would be no drive through or walk up window, and they would maintain all of the applicable OLCC security requirements. He then described what Portland, Gladstone, Lake Oswego, Milwaukie, and West Linn were doing for marijuana regulations. Staff recommended approval of the Code amendments.

There was discussion regarding these businesses meeting Business License regulations.

Doug Neeley, resident of Oregon City, was representing Oregon City Together. He had put forward the recommendation for a buffer around the college due to the number of high school students who took classes at the college. Those who rode school buses had to live at least a mile away, and there was potential for students to be walking by dispensaries to and from school at just 1,000 feet. He suggested the Commission consider adopting Lake Oswego's buffers, which were 1,500 feet from schools and 500 feet from daycares.

Commissioner Mabee said Lake Oswego also had a 1,000 foot separation between marijuana retailers. He thought that would be an equitable compromise so students would only be passing one retailer as opposed to several.

Mario Mamone, resident of West Linn, was a dispensary owner in Clackamas County. The City of Fairview was being sued for banning medical marijuana grows as there was no law that allowed cities to ban them. The odor issue had been settled in the appeals court who had stated that the smell of marijuana was not an offensive odor. Just because people did not like it, that did not make it an offensive odor. He suggested the Commission rethink the odor nuisance regulation as it might be something that ended up in court. He discussed the medical marijuana growers and patients in Oregon City. He wanted to make sure they were being represented fairly. To minimize access to their medicine was not right or responsible. The Commission would be forcing them to go someplace else to get their medicine and many were low income who did not have the means to go somewhere else. These people had medical reasons to use the marijuana and they should not be denied their medicine. The Commission needed to allow these businesses to succeed in Oregon City.

Mr. Walter said there would be a City Commission Work session on these regulations on August 9 and the first City Commission public hearing would be August 17.

Chair Kidwell closed the public hearing.

There was discussion regarding the retail permitted areas map and mixed use employment areas.

Commissioner Mabee was concerned about allowing retailers in the Canemah National Historic District. He thought it should be excluded as it was a special place and needed extra protection.

Commissioner Espe said it seemed where the retailers were allowed were in far flung areas of the City and not conveniently located or easily accessible. He wanted to make sure Canemah Park was listed on the buffer map and wanted to know what the effect of a larger buffer would be as propsed by Mr. Neeley. He wanted to make sure children were being protected, the buffers were adequate, and that these facilities were centrally located.

Mr. Walter stated adding another 500 feet to the buffer would further shrink the available areas. The impact on children had been heavily discussed. Staff thought the buffers proposed were adequate and an additional 500 feet would not do that much more.

Commissioner McGriff said not every community needed to have everything someone might want. Because of the nature of this particular retail product, there were additional regulations. People might need to drive further to get what they wanted. She thought Mr. Neeley had a sound basis for his suggestions. She was concerned about odor and how it affected residents. Some people had respiratory problems and to her it was a health hazard. She questioned if a ten foot setback for personal cultivation outdoors was adequate. She did not want people to be prohibited from using their property due to what someone was growing in their backyard. She thought personal cultivation should be indoors only.

Commissioner Geil did not think it would be a nuisance to have personal cultivation outdoors. He was allergic to pollen from plants next door to him and he did not tell his neighbor what they could or could not grow. He thought people should have the freedom to grow what the State allowed. This plant had a short growing season in this area.

Commissioner McGriff said it would depend on the market, but she did not think there would be a mad dash to fill every retail vacancy with a marijuana business.

Chair Kidwell did not think they were preventing the opportunity for these businesses with these regulations. He was opposed to having personal cultivation outdoors due to possible theft of the plants.

Commissioner Mabee thought if there was a problem with theft, people would stop planting marijuana outdoors or move the plants to a more secure location.

Commissioner Espe did not have a problem with personal cultivation outdoors as it would be a minimal impact.

There was consensus not to increase the 1,000 foot buffer to 1,500 feet, to require a 1,000 foot separation between marijuana businesses, to prohibit retailers in the Canemah Historic District, and to allow outdoor personal cultivation and that a 10 foot setback was not necessary, but plants should not be visible from public view.

A motion was made by Commissioner Geil, seconded by Commissioner Mabee, to approve Planning File LE-16-0001 - adoption of time, place and manner regulations for marijuana businesses and personal cultivation as amended. The motion carried by the following vote:

Aye: 4 - Tom Geil, Paul Espe, Denyse McGriff and Damon Mabee

Abstain: 1 - Charles Kidwell

4. Approval of the Minutes

4a. 16-454 Approval of Planning Commission Minutes for May 18, 2015, June 8, 2015, August 24, 2015, September 14, 2015 and September 28, 2015.

A motion was made by Commissioner McGriff, seconded by Commissioner Espe, to approve the May 18, 2015 minutes. The motion carried by the following vote:

Aye: 5 - Charles Kidwell, Tom Geil, Paul Espe, Denyse McGriff and Damon Mabee

Commissioner McGriff said she had declared a visit to the Moss campus site, but it was not noted in the minutes.

A motion was made by Commissioner McGriff, seconded by Commissioner Mabee, to approve the June 8, 2015 minutes as amended. The motion carried by the following vote:

Aye: 5 - Charles Kidwell, Tom Geil, Paul Espe, Denyse McGriff and Damon Mabee

A motion was made by Commissioner Mabee, seconded by Commissioner McGriff, to approve the August 24, 2015 minutes. The motion carried by the following vote:

Aye: 5 - Charles Kidwell, Tom Geil, Paul Espe, Denyse McGriff and Damon Mabee

A motion was made by Commissioner Espe, seconded by Commissioner McGriff, to approve the September 14, 2015 minutes. The motion carried by the following vote:

Aye: 5 - Charles Kidwell, Tom Geil, Paul Espe, Denyse McGriff and Damon Mabee

A motion was made by Commissioner Geil, seconded by Commissioner McGriff, to approve the September 28, 2015 minutes. The motion carried by the following vote:

Aye: 5 - Charles Kidwell, Tom Geil, Paul Espe, Denyse McGriff and Damon Mabee

5. Communications

Laura Terway, Community Development Director, said the City was submitting an application for an equitable housing grant. Mr. Walter stated the City was requesting $90,000 to look at potential changes to the City's codes and processes and to look at incentives and options for equitable housing. An advisory committee would be set up to give input on this issue as well.

There was consensus to pursue the grant.

Ms. Terway explained the upcoming Planning Commission meeting agenda items. The August 22 and September 12 meetings were cancelled. She then discussed recent issues regarding membrane structures and the proposal to streamline some applications to be Type 1 reviews.

Commissioner McGriff asked about regulations for short term rentals such as air b&b's. Ms. Terway clarified the regulation was in all residential zones if a place was rented out for less than 30 consecutive days it required a Conditional Use Permit. If it

was rented for 30 or more consecutive days it did not require a Conditional Use. There were not any bed and breakfasts or boarding houses in the City.

6. Adjournment

Chair Kidwell adjourned the meeting at 9:18 PM.

City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Staff Report

File Number: PC 17-097

Agenda Date: 9/11/2017

Status: Agenda Ready

To: Planning Commission

Agenda #: 3b.

From: Community Development Director Laura Terway

File Type: Land Use Item

SUBJECT:
Abernethy Place Hotel and Mixed Use Development - Planning Files CP-17-0002, DP-17-0003, and NR-17-0004 (Continuance).

RECOMMENDED ACTION (Motion):
Accept and consider the supplemental Findings, take further testimony and continue the public hearing to the date certain of September 25, 2017.

BACKGROUND:
The Planning Commission continued this item from August 14, 2017.

The hearing on September 11 should be to limited to the introduction of supplemental findings for two additional adjustment requests to the design standards in OCMC 17.62.055 for the Phase I hotel, to take further public testimony including written comments recieved since the August 14 hearing, and to discuss the applicant's requests for revisions to the recommended Conditions of Approval.

A full revised staff report will be not be presented on September 11, and will be presented at the continued public hearing on September 25, 2017. The findings presented on September 25 will include staff's recommendations regarding the applicant's submitted requests for revisions to the current recommended Conditions of Approval.

The applicant requests approval of a General Development Plan and Detailed Development Plan in two phases located close to the intersection of 17th Street and Washington Street directly across from the End of the Oregon Trail Interpretive Center.

Phase 1 which is the subject of the Detailed Development Plan consists of a 5-story hotel with approximately 99 rooms with associated parking lot, site improvements and street frontage improvements.

Phase 2 consists of 181 apartment units, 9,500 square-feet of retail space, a 2,500 coffee shop and associated parking and site improvements.

The project proposal includes preservation and retention of the Hackett House, a designated historic landmark which is currently used for offices.

The applicant seeks approval for two additional adjustments from development standards in addition to the previous four adjustments discussed in the original staff report through the General Development Plan adjustment process in OCMC 17.65.070.

17.65.070 Adjustments to Development Standards.

Adjustment #6

Code: 17.62.055.H.2 - Institutional and commercial building standards. Minimum Wall Articulation. Facades greater than one hundred feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the facade and extending at least twenty percent of the length of the facade. No uninterrupted length of any facade shall exceed one hundred horizontal feet.

Requested adjustment:

Adjust the Minimum Wall Articulation in 17.62.055.H.2 to reduce the depth of required wall plane projections or recesses from three percent to 2.8 percent.

17.65.070.D. Approval Criteria. A request for an adjustment to one or more applicable development regulations under this section shall be approved if the review body finds that the applicant has shown the following criteria to be met.

1. Granting the adjustment will equally or better meet the purpose of the regulation to be modified;

Applicant's Response:

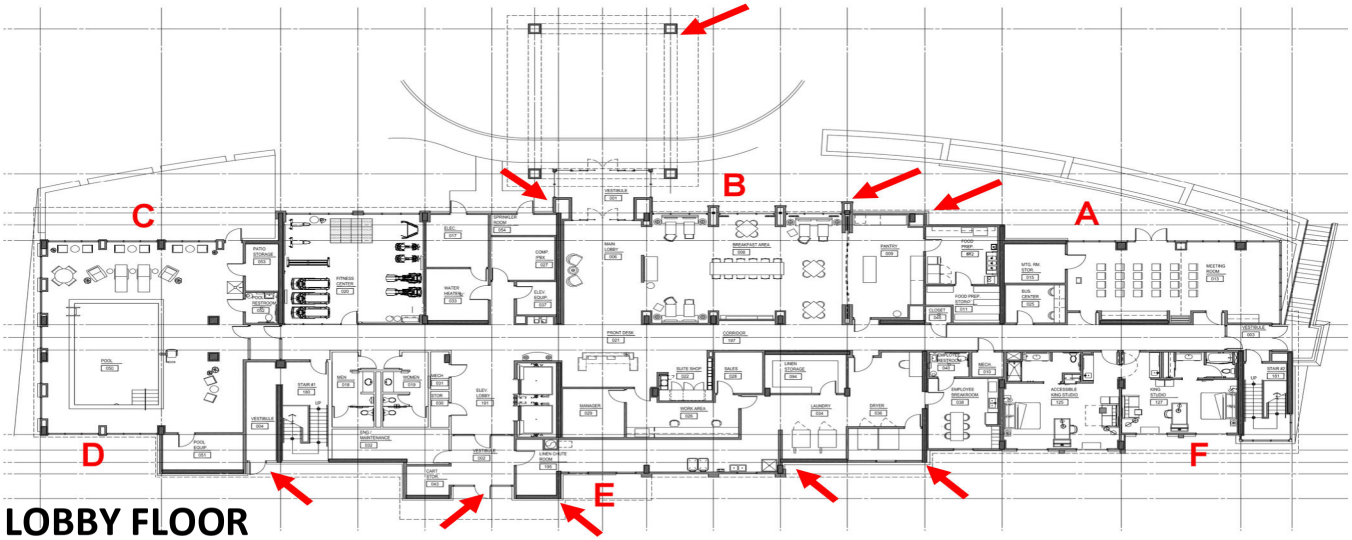
The stated purpose of 17.62.55 is:

> *Purpose. The primary objective of the regulations contained in this section is to provide a range of design choices that promote creative, functional, and cohesive development that is compatible with surrounding areas. Buildings approved through this process are intended to serve multiple tenants over the life of the building, and are not intended for a one-time occupant. The standards encourage people to spend time in the area, which also provides safety though informal surveillance. Finally, this section is intended to promote the design of an urban environment that is built to human scale by creating buildings and streets that are attractive to pedestrians, create a sense of enclosure, provide activity and interest at the intersection of the public and private spaces, while also accommodating vehicular movement.*

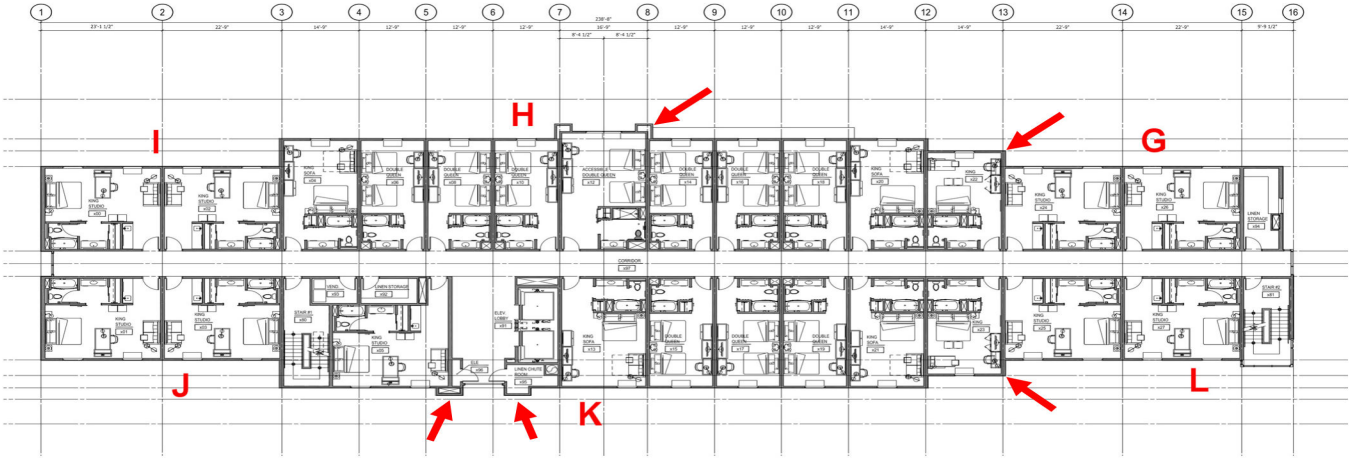
The North and South facades are both approximately 238 feet long. The standard requires a projection or recess of 3% of 238 feet or 7.14' for a minimum length of 20% of the length of the façade, or 47.6 feet.

North Facade: At the lobby level, the large windows located at 'A' and 'C' are recessed approximately 7.23 feet back from the wall plane located at 'B' meeting the depth standard. The recessed wall at 'A' is approximately 55 feet long, and 'C' is approximately 45 feet long. At the top of the building the face of the wall and parapet are recessed between 7.7 feet and 11.5 feet back from the face of the parapet at the center of the building, a distance of approximately 68 feet, which meets the standard. At floors 2 thru 5 the wall planes located at 'G' and 'I' are recessed approximately 6.8 feet back from the wall plane at 'H' [a recess of 2.8%] for a length of 56 feet and 45.5 feet respectively. Additional recesses also occur at several locations [see arrows], further adding to visual relief of the facade.

South Façade: At the ground level, the wall planes located at 'D' and 'F' are recessed approximately 9.5 feet back from the wall plane located at 'E', meeting the depth standard. The recessed wall at 'D' is approximately 23 feet long, and 'F' is approximately 33 feet for a total of approximately 56 feet, which meets the standard. At the top of the building the face of the wall and parapet are recessed between 7.7 feet and 11.5 feet back from the face of the parapet at the center of the building, a distance of approximately 68 feet, which meets the standard. At floors 2 thru 5 the wall planes located at 'L' and 'J' are recessed approximately 6.8 feet back from the wall plane at 'K' [a recess of 2.8%] for a length of 56 feet and 45.5 feet respectively. Additional recesses also occur at several locations [see arrows], further adding to visual relief of the facade.



LOBBY FLOOR



FLOORS 2 thru 5

The proposed design provides building articulation at the parapet which exceeds the requirements of the code. This parapet articulation will be the most visible when the building is viewed either from a distance or from pedestrians in close proximity to the building. The proposed design also provides building articulation at the ground level which exceeds the requirements of the code. This ground level articulation will be most visible to pedestrians when they are in close proximity

complying with the standard. The articulation at floors 2 through 5 will be difficult for people viewing the building to perceive since it cannot be judged at either the ground level or at the parapet, and it is difficult to assess the depth of the articulation of these floors when viewed either from a distance or from close proximity to the building. Furthermore the design includes additional architectural features which, although they do not technically comply with the design standard, add depth and interest to floors 2 through 5.

2. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zone;

Applicant's Response:

The cumulative effect of the requested adjustments results in a project consistent with the overall purpose of the MUD zone. The adjustments enhance security, increase buildability, and promote project feasibility, allowing for a mixed use project including lodging and retail/service with residential uses on upper floors appropriate to the MUD zone per 17.34.010.

As proposed the design provides an attractive, well articulated, response to difficult site conditions including; shape of site, flood zone and; existing historic residence.

3. City-designated Goal 5 resources are protected to the extent otherwise required by Title 17;

Applicant's Response:

City designated goal 5 resources include the historic Hackett House, Abernethy Creek, and a wetland adjacent to the I-205 freeway . These resources are protected to the extent otherwise required by Title 17 in compliance with the following sections:

17.40 – Historic Overlay District. The Hackett House is a locally designated historic structure and landmark. The Historic Review Board reviewed and approved the project. The historic Hackett House will remain in its original site location without modification. Development of a hotel serving the needs of visitors to the End of the Oregon Trail Interpretive Center across the street supports economic development in the area. Redevelopment of underutilized property within the MUD zone relieves development pressure on existing open space, while protecting natural resources, conserving scenic and historic areas.

17.49 – Natural Resources Overlay District [NROD]: Abernethy Creek is located across 17th Street to the southwest of the project site. A wetland adjacent to I-205 is located across the railroad right-of-way to the northwest of the project site. The attached "NROD Boundary Verification Report" describes these resources and concurrence has been requested that no wetlands, waterways, or other protected features exist on the subject properties and that the NROD buffers do not project onto the subject properties.

4. Any impacts resulting from the adjustment are mitigated; and

Applicant's Response:

At the lobby floor and parapet where the articulation will be most visible, the wall articulation standard is met or exceeded. At floors 2-5 the length of required articulation exceeds the minimum, while the recess is approximately 4" less than required. Additional articulation is provided at all floors providing cumulative façade articulation exceeding the requirements. Variation between articulation at lobby, roof, and upper floors adds additional variation, further mitigating façade articulation.

5. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

Applicant's Response:

There are no officially inventoried resources or resource values present on the subject property. Property is located within the Natural Resources Overlay District [NROD] per City maps. See Exhibit E, "NROD Boundary Verification Report" for background data and information supporting the following requested actions:

1. Concurrence that no wetlands, waterways, other protected features exist on the subject properties.
2. Concurrence that NROD buffers do not project onto the subject properties. In the case of Abernethy Creek, 17th Street constitutes a physical barrier. In the case of the wetland area to the North, the wetland buffers per table 17.49.110 fall about 150FT from the project.

Erosion and sediment control measures required by section 17.47, including an erosion control plan are provided. 17th Street separates Abernethy Creek from the project site and surface drainage from approximately the street centerline flows away from Abernethy Creek, further minimizing detrimental environmental impacts on the resource. The wetland adjacent to I-205 is on the opposite side and is separated from the project site by the existing railroad tracks. The railroad tracks are elevated above the wetland and form a physical barrier between the wetland and the project site.

6. The proposed adjustment is consistent with the Oregon City Comprehensive Plan and ancillary documents.

Applicant's Response:

The proposed adjustment is consistent with the Oregon City Comprehensive Plan and ancillary documents by meeting the following comprehensive plan goals & supporting the following policies:

Goal 1.1 Citizen Involvement Program

Policy 1.1.1 - Utilize neighborhood associations as the vehicle for neighborhood-based input to meet the requirements of the Land Conservation and Development Commission (LCDC) Statewide Planning Goal 1, Citizen Involvement.

The project design team has received input from the neighborhood association, resulting in review and approval of the project as submitted.

Goal 1.4 Community Involvement

Policy 1.4.1 - Notify citizens about community involvement opportunities when they occur.

Public notice for community involvement in the land use process, including requested adjustments has been issued.

Policy 2.1.3 - Encourage sub-area master planning for larger developments or parcels, including re-development, where it may be feasible to develop more mixed uses, or campus-style industrial parks, with shared parking and landscaping areas. Allow developments to vary from prescriptive standards if planned and approved under this provision.

The proposed project supports policy 2.1.3 by being designed and submitted under the Master Plans provisions of Section 17.65, with adjustments as provided by Section 17.65.070.

Goal 2.2 Downtown Oregon City

Develop the Downtown area, which includes the Historic Downtown Area, the "north end" of the Downtown, Clackamette Cove, and the End of the Oregon Trail area, as a quality place for shopping, living, working, cultural and recreational activities, and social interaction. Provide walkways for pedestrian and bicycle traffic, preserve views of Willamette Falls and the Willamette River, and preserve the natural amenities of the area.

The proposed adjustment enables the proposed hotel entrance to be connected by walkway and drive aisle to Washington Street and future development. The proposed development will provide shopping, living, working activities, and walkways for pedestrian traffic.

> *Policy 2.2.3 - Develop and promote a vision for the economic development and redevelopment of the Downtown area that solidifies the Oregon City Downtown Community Plan and Oregon City Waterfront Master Plan.*

The proposed adjustment enables the proposed hotel project to be oriented to complement the End of the Oregon Trail, providing convenient access, while preserving views. The proposed development provides an example vision for redevelopment of the Downtown area within the flood plain, supporting tourism and The End of the Oregon Trail in accordance with the Oregon City Downtown Community Plan.

> *Policy 2.2.8 - Implement the Oregon City Downtown Community Plan and Oregon City Waterfront Master Plan with regulations and programs that support compatible and complementary mixed uses, including housing, hospitality services, restaurants, civic and institutional, offices, some types of industrial and retail uses in the Regional Center, all at a relatively concentrated density.*

The proposed adjustment enables the proposed hotel project to be situated as a complementary housing and hospitality use to the End of the Oregon Trail, the historic Hackett House, and proposed mixed-use housing and retail in accordance with the Oregon City Downtown Community Plan.

> *Policy 2.2.9 - Improve connectivity for vehicles, bicycles, and pedestrians within the Oregon City Downtown community and waterfront master plan areas and improve links between residential areas and the community beyond.*

The proposed adjustment enables the proposed hotel project to have vehicular bicycle, and pedestrian access to the front entry at an elevation above the flood elevation. The proposed development will include public street and onsite improvements designed to improve connectivity for vehicles, bicycles, and pedestrians.

Goal 5.3 Historic Resources

> *Encourage the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.*
> *Policy 5.3.7 - Encourage property owners to preserve historic structures in a state as close to their original construction as possible while allowing the structure to be used in an economically viable manner.*

The proposed adjustment enables the proposed hotel project to be situated to allow the continued preservation of the historic Hackett House. By orienting the hotel as proposed the historic Hackett House can remain in place as is, with an adjacent use that is economically complementary. Preservation of the Hackett House, while providing an economically viable development has been a major part of the proposed master plan.

> *Policy 5.3.8 - Preserve and accentuate historic resources as part of an urban environment that is being reshaped by new development projects.*

The proposed adjustment enables the proposed hotel project to form a visual backdrop for the historic Hackett House, while complimenting the End of the Oregon Trail. The proposed hotel orientation accentuates both these historic resources, while providing needed redevelopment of the urban environment.

Goal 9.2 Cooperative Partnerships

> *Create and maintain cooperative partnerships with other public agencies and business groups interested in promoting economic development.*
> *Policy 9.2.1 - Seek input from local businesses when making decisions that will have a significant economic impact on them.*

The project as proposed, was reviewed by the Board of Directors of the Clackamas Heritage Partners, operators and stewards of the End of the Oregon Trail development, located directly across the street from the project site. The Board has provided a unanimous letter recommending approval. The proposed building heights, site orientation, and building design were discussed.

Goal 9.6 Tourism

Promote Oregon City as a destination for tourism.
Policy 9.6.2- Ensure land uses and transportation connections that support tourism as an important aspect of the City's economic development strategy. This could include connections to the End of the Oregon Trail Interpretive Center and the train depot.

The proposed adjustment enables the proposed hotel project to support tourism at the End of the Oregon Trail, providing lodging and transportation connections to Washington Street and the End of the Oregon Trail Interpretive Center and through the phase 2 site development to the train depot.

Policy 9.6.3 - Provide land uses in the Downtown Historic Area, 7th Street corridor, and the End of the Oregon Trail Interpretive Center that support tourism and visitor services.

The proposed adjustment enables the proposed hotel project, directly providing land uses supporting tourism and visitor services.

Policy 9.6.6 - Encourage private development of hotel, bed and breakfast, restaurant facilities and other visitor services.

The proposed adjustment enables the development of a hotel project, supporting policy 9.9.6 encouraging private hotel, bed and breakfast, restaurant facilities and other visitor services.

Adjustment #7

Code: 17.62.055.D - Relationship of Buildings to Streets and Parking

1. Buildings shall be placed no farther than five feet from the front property line. A larger front yard setback may be approved through site plan and design review if the setback area incorporates at least one element from the following list for every five feet of increased setback requested:
2. The front most architecturally significant facade shall be oriented toward the street and shall be accessed from a public sidewalk. Primary building entrances shall be clearly defined and recessed or framed by a sheltering element such as an awning, arcade or portico in order to provide shelter from the summer sun and winter weather.
3 -Entryways. The primary entranceway for each commercial or retail establishment shall face the major street. The entrance may be recessed behind the property line a maximum of five feet unless a larger setback is approved pursuant to Section 17.62.055.D.1 and shall be accessed from a public sidewalk. Primary building entrances shall be clearly defined, highly visible and recessed or framed by a sheltering element including at least four of the following elements, listed below.

Requested adjustment:

The hotel's most architecturally significant facade is the one facing Washington Street and the two main entranceways include the entranceway on that facade and the lobby entranceway at the porte cochere. However, the primary entranceway is the porte cochere and it will not face the major street, Washington Street, and it will be set back more than 5' from the major street. The applicant seeks an adjustment to the standard requiring that the primary entranceway to face the major street and allowing it to be set back more than 5' from the major street.

The project faces Washington Street and 17th Street. In comparison, Washington Street is the major street as shown in the table below :

Street	Washington	17th
Classification	Minor Arterial	Local
Width	Wider	Narrower
Transit	Yes	No
Type	Through	Dead-End

17.65.070.D. Approval Criteria. A request for an adjustment to one or more applicable development regulations under this section shall be approved if the review body finds that the applicant has shown the following criteria to be met.

1. Granting the adjustment will equally or better meet the purpose of the regulation to be modified;

Applicant's Response:

The stated purpose of 17.62.55 is:

> *Purpose. The primary objective of the regulations contained in this section is to provide a range of design choices that promote creative, functional, and cohesive development that is compatible with surrounding areas. Buildings approved through this process are intended to serve multiple tenants over the life of the building, and are not intended for a one-time occupant. The standards encourage people to spend time in the area, which also provides safety through informal surveillance. Finally, this section is intended to promote the design of an urban environment that is built to human scale by creating buildings and streets that are attractive to pedestrians, create a sense of enclosure, provide activity and interest at the intersection of the public and private spaces, while also accommodating vehicular movement.*

The proposed project is a hotel requiring passenger vehicle loading at the lobby entry with weather protection provided by a porte cochere. Washington Street is the major street, providing direct vehicular access to the porte cochere entry. Functionally, this is the primary hotel entry. The entry drive rises up from the street which is in the 100 year flood plain, to the porte cochere, which is located to provide at grade access to the lobby floor, above the flood elevation.

As designed the hotel provides a creative, functional, and cohesive development that is compatible with surrounding areas. The required vehicular loading and porte cochere function properly when setback sufficiently from the street to allowing gradual grade change, minimizing pedestrian / vehicle conflicts, and accommodating vehicular movement and stacking. The building orientation with long axis perpendicular to Washington Street provides a view corridor to the End of the Oregon Trail, compatible with that use.

The exterior patio outside the hotel meeting room encourages people to spend time in the area, while providing safety through informal surveillance. An additional building entry with exterior stairs connecting to the public sidewalk provides activity at the intersection of public and private spaces, while planters and a wall mural provide interest.

2. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zone;

Applicant's Response:

The cumulative effect of the requested adjustments results in a project consistent with the overall purpose of the MUD zone. The adjustments enhance security, increase buildability, and promote project feasibility, allowing for a mixed use project including lodging and retail/service with residential uses on upper floors appropriate to the MUD zone per 17.34.010.

As proposed the design provides an attractive, well articulated, response to difficult site conditions including; shape of site, flood zone and; existing historic residence.

3. City-designated Goal 5 resources are protected to the extent otherwise required by Title 17;

Applicant's Response:

City designated goal 5 resources include the historic Hackett House, Abernethy Creek, and a wetland adjacent to the I-205 freeway . These resources are protected to the extent otherwise required by Title 17 in compliance with the following sections:

17.40 – Historic Overlay District. The Hackett House is a locally designated historic structure and landmark. The Historic Review Board reviewed and approved the project. The historic Hackett House will remain in its original site location without modification. Development of a hotel serving the needs of visitors to the End of the Oregon Trail Interpretive Center across the street supports economic development in the area. Redevelopment of underutilized property within the MUD zone relieves development pressure on existing open space, while protecting natural resources, conserving scenic and historic areas.

17.49 – Natural Resources Overlay District [NROD]: Abernethy Creek is located across 17th Street to the southwest of the project site. A wetland adjacent to I-205 is located across the railroad right-of-way to the northwest of the project site. The attached "NROD Boundary Verification Report" describes these resources and concurrence has been requested that no wetlands, waterways, or other protected features exist on the subject properties and that the NROD buffers do not project onto the subject properties.

Applicant's Response:

4. Any impacts resulting from the adjustment are mitigated; and

Applicant's Response:

The main porte cochere entry is a highly visible, clearly defined, prominent feature. An second pedestrian entry directly facing Washington Street, has been provided to provide additional pedestrian access to the street. This entry has been enhanced with detailing to increase visibility, providing a second sheltered, recessed entry.

Wall mounted artwork compatible with the End of the Oregon Trail is proposed along the sidewalk, providing additional pedestrian level interest. The artwork is planned to be themed to complement the End of the Oregon Trail across Washington Street. Artwork to be approved by the Community Development Director without additional review by the Planning Commission.

If located within five feet of the property line the primary entry would not be able to accommodate a porte cochere and would either require a building entry below the flood elevation which is not allowed by the building codes, or an entry to the lobby accessible only by stairs, elevator, or long ramps which is either not practical, and/or not allowed by the Americans With Disabilities Act.

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If the primary building entry is recessed from the primary street, Washington Street, sufficiently to allow the port cochere to be located between the sidewalk and the building entry, the vehicular circulation will conflict with the pedestrian circulation on the sidewalk, and the stated purpose of promoting an urban environment including "streets that are attractive to pedestrians".

The adjustment will reduce impacts by providing a creative, functional development built to human scale, with buildings and streets that are attractive to pedestrians, providing activity and interest at the intersection of the public and private spaces, while also accommodating vehicular movement that would not be possible if designed in strict compliance with the code.

5. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

Applicant's Response:

There are no officially inventoried resources or resource values present on the subject property. Property is located within the Natural Resources Overlay District [NROD] per City maps. See Exhibit E, "NROD Boundary Verification Report" for background data and information supporting the following requested actions:

1. Concurrence that no wetlands, waterways, other protected features exist on the subject properties.
2. Concurrence that NROD buffers do not project onto the subject properties. In the case of Abernethy Creek, 17th Street constitutes a physical barrier. In the case of the wetland area to the North, the wetland buffers per table 17.49.110 fall about 150FT from the project.

Erosion and sediment control measures required by section 17.47, including an erosion control plan are provided. 17th Street separates Abernethy Creek from the project site and surface drainage from approximately the street centerline flows away from Abernethy Creek, further minimizing detrimental environmental impacts on the resource. The wetland adjacent to I-205 is on the opposite side and is separated from the project site by the existing railroad tracks. The railroad tracks are elevated above the wetland and form a physical barrier between the wetland and the project site.

Applicant's Response:

There are no officially inventoried resources or resource values present on the subject property. Property is located within the NROD per City maps. See Exhibit E, "NROD Boundary Verification Report" for background data and information supporting the following requested actions:
1. Concurrence that no wetlands, waterways, other protected features exist on the subject properties.
2. Concurrence that NROD buffers do not project onto the subject properties. In the case of Abernethy Creek, 17th Street constitutes a physical barrier. In the case of the wetland area to the North, the wetland buffers per table 17.49.110 fall about 150FT from the project.

6. The proposed adjustment is consistent with the Oregon City Comprehensive Plan and ancillary documents.

Applicant's Response:

The proposed adjustment is consistent with the Oregon City Comprehensive Plan and ancillary documents by meeting the following comprehensive plan goals & supporting the following policies:

Goal 1.1 Citizen Involvement Program

Policy 1.1.1 - Utilize neighborhood associations as the vehicle for neighborhood-based input to meet the requirements of the Land Conservation and Development Commission (LCDC) Statewide Planning Goal 1, Citizen Involvement.

The project design team has received input from the neighborhood association, resulting in review and approval of the project as submitted.

Goal 1.4 Community Involvement

Policy 1.4.1 - Notify citizens about community involvement opportunities when they occur.

Public notice for community involvement in the land use process, including requested adjustments has been issued.

Goal 2.1 Efficient Use of Land

Policy 2.1.1 - Create incentives for new development to use land more efficiently, such as by having minimum floor area ratios and maximums for parking and setbacks.

The proposed adjustment enables the proposed project to efficiently use the land. The proposed hotel site orientation allows for an efficient arrangement of building and parking.

Policy 2.1.3 - Encourage sub-area master planning for larger developments or parcels, including re-development, where it may be feasible to develop more mixed uses, or campus-style industrial parks, with shared parking and landscaping areas. Allow developments to vary from prescriptive standards if planned and approved under this provision.

The proposed project supports policy 2.1.3 by being designed and submitted under the Master Plans provisions of Section 17.65, with adjustments as provided by Section 17.65.070.

Goal 2.2 Downtown Oregon City

Develop the Downtown area, which includes the Historic Downtown Area, the "north end" of the Downtown, Clackamette Cove, and the End of the Oregon Trail area, as a quality place for shopping, living, working, cultural and recreational activities, and social interaction. Provide walkways for pedestrian and bicycle traffic, preserve views of Willamette Falls and the Willamette River, and preserve the natural amenities of the area.

The proposed adjustment enables the proposed hotel entrance to be connected by walkway and drive aisle to Washington Street and future development. The proposed development will provide shopping, living, working activities, and walkways for pedestrian traffic.

Policy 2.2.3 - Develop and promote a vision for the economic development and redevelopment of the Downtown area that solidifies the Oregon City Downtown Community Plan and Oregon City Waterfront Master Plan.

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Policy 2.2.8 - Implement the Oregon City Downtown Community Plan and Oregon City Waterfront Master Plan with regulations and programs that support compatible and complementary mixed uses, including housing, hospitality services, restaurants, civic and institutional, offices, some types of industrial and retail uses in the Regional Center, all at a relatively concentrated density.

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Policy 2.2.9 - Improve connectivity for vehicles, bicycles, and pedestrians within the Oregon City Downtown community and waterfront master plan areas and improve links between residential areas and the community beyond.

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Policy 5.3.8 - Preserve and accentuate historic resources as part of an urban environment that is being reshaped by new development projects.

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Goal 9.2 Cooperative Partnerships
Create and maintain cooperative partnerships with other public agencies and business groups interested in promoting economic development.
Policy 9.2.1 - Seek input from local businesses when making decisions that will have a significant economic impact on them.

The project as proposed, was reviewed by the Board of Directors of the Clackamas Heritage Partners, operators and stewards of the End of the Oregon Trail development, located directly across the street from the project site. The Board has provided a unanimous letter recommending approval. The proposed building heights, site orientation, and building design were discussed.

Goal 9.6 Tourism
Promote Oregon City as a destination for tourism.
Policy 9.6.2- Ensure land uses and transportation connections that support tourism as an important aspect of the City's economic development strategy. This could include connections to the End of the Oregon Trail Interpretive Center and the train depot.

The proposed adjustment enables the proposed hotel project to support tourism at the End of the Oregon Trail, providing lodging and transportation connections to Washington Street and the End of the Oregon Trail Interpretive Center and through the phase 2 site development to the train depot.

Policy 9.6.3 - Provide land uses in the Downtown Historic Area, 7th Street corridor, and the End of the Oregon Trail Interpretive Center that support tourism and visitor services.

The proposed adjustment enables the proposed hotel project, directly providing land uses supporting tourism and visitor services.

Policy 9.6.6 - Encourage private development of hotel, bed and breakfast, restaurant facilities and other visitor services.

The proposed adjustment enables the development of a hotel project, supporting policy 9.9.6 encouraging private hotel, bed and breakfast, restaurant facilities and other visitor services.

221 Molalla Ave. Suite 200 | Oregon City OR 97045
Ph (503) 722-3789 | Fax (503) 722-3880

TYPE III –Master Plan and Detailed Development Plan
SUPPLEMENTAL FINDINGS FOR ADDITIONAL ADJUSTMENTS
STAFF REPORT AND RECOMMENDATION
September 1, 2017

FILE NUMBER: CP-17-0002: General Development (Concept) Plan
DP-17-0003: Detailed Development Plan for Phase 1
NR-17-0004: Natural Resource Overlay District Verification

APPLICANT: 1750 Blankenship Rd, Ste. 400
West Linn, OR 97068

OWNER: Hackett Hospitality Group, LLC
1419 W. Main Street
Battleground, WA 98604

REQUEST: The applicant has proposed two additional adjustments to the Development Approval Criteria which are explained in this report and recommendation. This report supplements the original staff report dated 08.07.2017.

Approval for General Development Plan for Abernethy Place, a mixed-use project including Hotel, Multi-Family, Retail/Commercial and Office Use to be constructed in two phases over 10-years as well as a Detailed Development Plan for Phase 1 which includes construction of a Hotel and parking lots.

LOCATION: 415 17th Street + no address on Washington Street
Clackamas Assessor Map 2-2E-29CA, Tax Lots 601, 900, 1000, 1100, 1200, 1300, 1301

REVIEWERS: Pete Walter, AICP, Planner

RECOMMENDATION: Approval with Conditions.

PROCESS: Type III Quasi-Judicial Public Hearing. Pursuant to OCMC 17.50. C. Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not required to be heard by the city commission, except upon appeal. In the event that any decision is not classified, it shall be treated as a Type III decision. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission or the historic review board hearing is published and mailed to the applicant, recognized neighborhood association(s) and property owners within three hundred feet. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission or the historic review board, all issues are addressed. The decision of the planning commission is appealable to the city commission, on the record. The city commission decision on appeal from the planning commission is the city's final decision and is appealable to LUBA within twenty-one days of when it becomes final.

17.65.070 Adjustments to Development Standards.
The applicant has requested two additional adjustment requests pursuant to this section. These include:

- Adjustment #5. Adjust the Minimum Wall Articulation in 17.62.055.H.2 to reduce the depth of required wall plane projections or recesses from 3 percent to 2.8 percent.
- Adjustment #6. Adjust the requirement in 17.62.055.D.3 to allow an enhanced façade and pedestrian entry facing Washington Street with a primary vehicular entry Porte Cochere on the side of the building for Phase 1.

Findings for approval of the additional requested adjustments are provided below.

Adjustment #5

Applicant's Response:

Code: 17.62.055.H.2 - Institutional and commercial building standards. Minimum Wall Articulation. Facades greater than one hundred feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the facade and extending at least twenty percent of the length of the facade. No uninterrupted length of any facade shall exceed one hundred horizontal feet.

Requested adjustment:

Adjust the Minimum Wall Articulation in 17.62.055.H.2 to reduce the depth of required wall plane projections or recesses from 3 percent to 2.8 percent for Floors 2 through 5 on the north and south facades.

17.65.070.D. Approval Criteria. A request for an adjustment to one or more applicable development regulations under this section shall be approved if the review body finds that the applicant has shown the following criteria to be met.

1. Granting the adjustment will equally or better meet the purpose of the regulation to be modified;

Applicant's Response:

The stated purpose of 17.62.55 is:

Purpose. The primary objective of the regulations contained in this section is to provide a range of design choices that promote creative, functional, and cohesive development that is compatible with surrounding areas. Buildings approved through this process are intended to serve multiple tenants over the life of the building, and are not intended for a one-time occupant. The standards encourage people to spend time in the area, which also provides safety though informal surveillance. Finally, this section is intended to promote the design of an urban environment that is built to human scale by creating buildings and streets that are attractive to pedestrians, create a sense of enclosure, provide activity and interest at the intersection of the public and private spaces, while also accommodating vehicular movement.

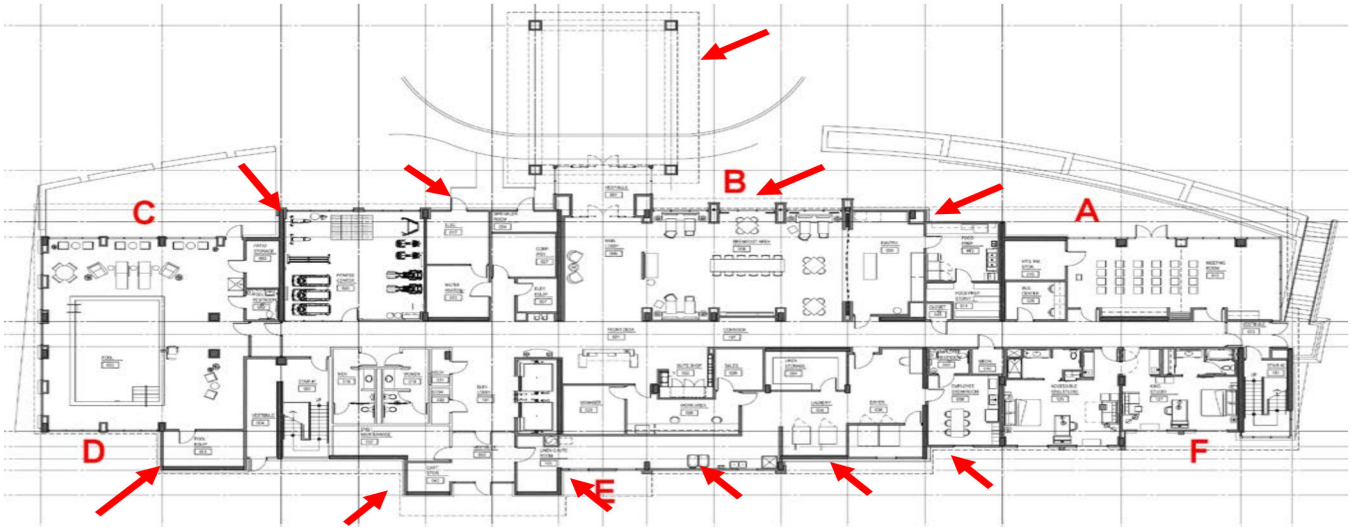
The North and South facades are both approximately 238 feet long. The east and west facades are less than 100 feet in length. The standard applies to the North and South facades and requires a projection or recess of 3% of 238 feet or 7.14' for a minimum length of 20% of the length of the façade, or 47.6 feet.

North Facade: At the lobby level, the large windows located at 'A' and 'C' are recessed approximately 7.23 feet back from the wall plane located at 'B' meeting the depth standard. The recessed wall at 'A' is approximately 55

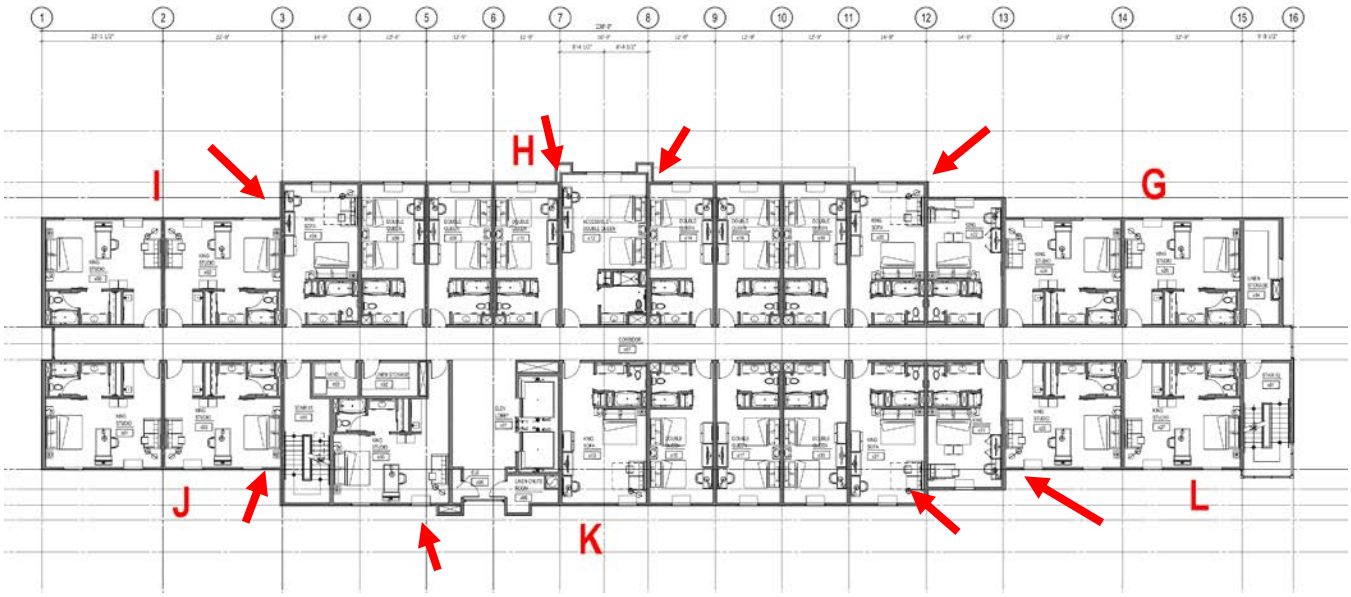
recessed between 7.7 feet and 11.5 feet back from the face of the parapet at the center of the building, a distance of approximately 68 feet, which meets the standard. At floors 2 thru 5 the wall planes located at 'G' and 'I' are recessed approximately 6.8 feet back from the wall plane at 'H' [a recess of 2.8%] for a length of 56 feet and 45.5 feet respectively. Additional recesses also occur at several locations [see arrows], further adding to visual relief of the facade.

South Façade: At the ground level, the wall planes located at 'D' and 'F' are recessed approximately 9.5 feet back from the wall plane located at 'E', meeting the depth standard. The recessed wall at 'D' is approximately 23 feet long, and 'F' is approximately 33 feet for a total of approximately 56 feet, which meets the standard. At the top of the building the face of the wall and parapet are recessed between 7.7 feet and 11.5 feet back from the face of the parapet at the center of the building, a distance of approximately 68 feet, which meets the standard.

At floors 2 thru 5 the wall planes located at 'L' and 'J' are recessed approximately 6.8 feet back from the wall plane at 'K' [a recess of 2.8%] for a length of 56 feet and 45.5 feet respectively. Additional recesses also occur at several locations [see arrows], further adding to visual relief of the facade.



LOBBY FLOOR



FLOORS 2 thru 5

The proposed design provides building articulation at the parapet which exceeds the requirements of the code. This parapet articulation will be the most visible when the building is viewed either from a distance or from pedestrians in close proximity to the building. The proposed design also provides building articulation at the ground level which exceeds the requirements of the code. This ground level articulation will be most visible to pedestrians when they are in close proximity to the building. Finally the proposed design provides articulation at floors 2 through 5 which is within a few inches of complying with the standard. The articulation at floors 2 through 5 will be difficult for people viewing the building to perceive since it cannot be judged at either the ground level or at the parapet, and it is difficult to assess the depth of the articulation of these floors when viewed either from a distance or from close proximity to the building. Furthermore the design includes additional architectural features which, although they do not technically comply with the design standard, add depth and interest to floors 2 through 5.

Finding: Complies as proposed. In addition to the purpose of the MUD District, the purpose of the requirement is to allow for visual interest and provide visual relief by breaking up the massing of a large wall into smaller segments. As described by the applicant, the adjustment is proposed for floors 2 thru 5. The applicant has met the intent of the standard by providing more than the minimum length of the articulation and by offsetting the articulation. In addition, the proposed design includes a variety of building materials, windows, and landscaping which create the same overall effect of providing visual relief and deconstructing a large building into smaller segments. The applicant's description of the proposed adjustment #5 to reduce the depth of required wall plane projections or recesses from three percent to 2.8 percent, and further clarify that multiple projections or recesses have been added to achieve the required percentage overall on the various facades has adequately addressed the purposes of the MUD zone.

2. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zone;

Applicant's Response:

The cumulative effect of the requested adjustments results in a project consistent with the overall purpose of the MUD zone. The adjustments enhance security, increase buildability, and promote project feasibility, allowing for a mixed use project including lodging and retail/service with residential uses on upper floors appropriate to the MUD zone per 17.34.010. As proposed the design provides an attractive, well-articulated, response to difficult site conditions including; shape of site, flood zone and; existing historic residence.

Finding: Complies as proposed. Staff finds that cumulative effect of the adjustments #5-6, as described in the applicant's responses, results in a project that is still consistent with the overall purpose of the zone.

3. City-designated Goal 5 resources are protected to the extent otherwise required by Title 17;

Applicant's Response:

City designated goal 5 resources include the historic Hackett House, Abernethy Creek, and a wetland adjacent to the I-205 freeway . These resources are protected to the extent otherwise required by Title 17 in compliance with the following sections:

17.40 – Historic Overlay District. The Hackett House is a locally designated historic structure and landmark. The Historic Review Board reviewed and approved . The historic Hackett House will remain in its original site location without modification. Development of a hotel serving the needs of visitors to the End of the Oregon Trail Interpretive Center across the street supports economic development in the area. Redevelopment of underutilized property within the MUD zone relieves development pressure on existing open space, while protecting natural resources, conserving scenic and historic areas.

17.49 – Natural Resources Overlay District [NROD]: Abernethy Creek is located across 17th Street to the southwest of the project site. A wetland adjacent to I-205 is located across the railroad right-of-way to the northwest of the project site. The attached "NROD Boundary Verification Report" describes these resources and concurrence has been requested that no wetlands, waterways, or other protected features exist on the subject properties and that the NROD buffers do not project onto the subject properties.

Finding: Complies as proposed. Staff finds that proposal has adequately addressed the relevant City-designated Goal 5 resources for adjustment #5. Staff finds that an adjustment to the wall articulation will have no greater impact on these identified Goal 5 resources.

4. Any impacts resulting from the adjustment are mitigated; and

Applicant's Response:

At the lobby floor and parapet where the articulation will be most visible, the wall articulation standard is met or exceeded. At floors 2-5 the length of required articulation exceeds the minimum, while the recess is approximately 4" less than required. Additional articulation is provided at all floors providing cumulative façade articulation exceeding the requirements. Variation between articulation at lobby, roof, and upper floors adds additional variation, further mitigating façade articulation.

Finding: Complies as Proposed. The standard requires a projection or recess of 3% of 238 feet or 7.14' for a minimum length of 20% of the length of the façade, or 47.6 feet. This standard could met by providing a single recess of the required depth and length on all building walls. Instead, the applicant's proposal for floors 2 thru 5 the wall planes located at 'L' and 'J' are recessed approximately 6.8 feet back from the wall plane at 'K' [a recess of 2.8%] for a length of 56 feet and 45.5 feet respectively. Additional recesses also occur at several locations [see arrows], further adding to visual relief of the facade.

There are in total 7 changes in plane varying in length from 14' long to 52' long on floors 2 through 5. Therefore, while the depth of any single articulation does not meet the full 3% depth for 20% of the length in all cases, the cumulative effect of these additional articulations is provided at all floors. Furthermore, the applicant has proposed to exceed the minimum 30% transparency requirement on the North side façade at the pedestrian level with 42% transparency. Multiple building material texture changes consisting of wood texture, fiber cement panels, smooth plaster, and architectural metal have been proposed. Four rows of 18 windows per floor are proposed on floors 2 through 5 on both the North and South facades. Cumulatively, these design aspects adequately mitigate for the adjustment.

5. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

Applicant's Response:

There are no officially inventoried resources or resource values present on the subject property. Property is located within the Natural Resources Overlay District [NROD] per City maps. See Exhibit E, "NROD Boundary Verification Report" for background data and information supporting the following requested actions:

1. Concurrence that no wetlands, waterways, other protected features exist on the subject properties.
2. Concurrence that NROD buffers do not project onto the subject properties. In the case of Abernethy Creek, 17th Street constitutes a physical barrier. In the case of the wetland area to the North, the wetland buffers per table 17.49.110 fall about 150FT from the project.

Erosion and sediment control measures required by section 17.47, including an erosion control plan are provided. 17th Street separates Abernethy Creek from the project site and surface drainage from approximately the street centerline flows away from Abernethy Creek, further minimizing detrimental environmental impacts on the resource. The wetland adjacent to I-205 is on the opposite side and is separated from the project site by the existing railroad tracks. The railroad tracks are elevated above the wetland and form a physical barrier between the wetland and the project site.

Finding: Not applicable. The applicant has already addressed the relevant overlay districts that apply to the building and its location, however, staff finds that adjustment #5 has no effect on environmental resource values since these are architectural features located above the ground that do not impact the NROD or the floodplain.

6. The proposed adjustment is consistent with the Oregon City Comprehensive Plan and ancillary documents.

Applicant's Response:

The proposed adjustment is consistent with the Oregon City Comprehensive Plan and ancillary documents by meeting the following comprehensive plan goals & supporting the following policies:

Goal 1.1 Citizen Involvement Program

Policy 1.1.1 - Utilize neighborhood associations as the vehicle for neighborhood-based input to meet the requirements of the Land Conservation and Development Commission (LCDC) Statewide Planning Goal 1, Citizen Involvement.

The project design team has received input from the neighborhood association, resulting in review and approval of the project as submitted.

Goal 1.4 Community Involvement

Policy 1.4.1 - Notify citizens about community involvement opportunities when they occur.

Public notice for community involvement in the land use process, including requested adjustments has been issued.

> *Policy 2.1.3 - Encourage sub-area master planning for larger developments or parcels, including re-development, where it may be feasible to develop more mixed uses, or campus-style industrial parks, with shared parking and landscaping areas. Allow developments to vary from prescriptive standards if planned and approved under this provision.*

The proposed project supports policy 2.1.3 by being designed and submitted under the Master Plans provisions of Section 17.65, with adjustments as provided by Section 17.65.070.

Goal 2.2 Downtown Oregon City

> *Develop the Downtown area, which includes the Historic Downtown Area, the "north end" of the Downtown, Clackamette Cove, and the End of the Oregon Trail area, as a quality place for shopping, living, working, cultural and recreational activities, and social interaction. Provide walkways for pedestrian and bicycle traffic, preserve views of Willamette Falls and the Willamette River, and preserve the natural amenities of the area.*

The proposed adjustment enables the proposed hotel entrance to be connected by walkway and drive aisle to Washington Street and future development. The proposed development will provide shopping, living, working activities, and walkways for pedestrian traffic.

> *Policy 2.2.3 - Develop and promote a vision for the economic development and redevelopment of the Downtown area that solidifies the Oregon City Downtown Community Plan and Oregon City Waterfront Master Plan.*

The proposed adjustment enables the proposed hotel project to be oriented to complement the End of the Oregon Trail, providing convenient access, while preserving views. The proposed development provides an example vision for redevelopment of the Downtown area within the flood plain, supporting tourism and The End of the Oregon Trail in accordance with the Oregon City Downtown Community Plan.

> *Policy 2.2.8 - Implement the Oregon City Downtown Community Plan and Oregon City Waterfront Master Plan with regulations and programs that support compatible and complementary mixed uses, including housing, hospitality services, restaurants, civic and institutional, offices, some types of industrial and retail uses in the Regional Center, all at a relatively concentrated density.*

The proposed adjustment enables the proposed hotel project to be situated as a complementary housing and hospitality use to the End of the Oregon Trail, the historic Hackett House, and proposed mixed-use housing and retail in accordance with the Oregon City Downtown Community Plan.

> *Policy 2.2.9 - Improve connectivity for vehicles, bicycles, and pedestrians within the Oregon City Downtown community and waterfront master plan areas and improve links between residential areas and the community beyond.*

The proposed adjustment enables the proposed hotel project to have vehicular bicycle, and pedestrian access to the front entry at an elevation above the flood elevation. The proposed development will include public street and onsite improvements designed to improve connectivity for vehicles, bicycles, and pedestrians.

Goal 5.3 Historic Resources

> *Encourage the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.*

Policy 5.3.7 - Encourage property owners to preserve historic structures in a state as close to their original construction as possible while allowing the structure to be used in an economically viable manner.

The proposed adjustment enables the proposed hotel project to be situated to allow the continued preservation of the historic Hackett House. By orienting the hotel as proposed the historic Hackett House can remain in place as is, with an adjacent use that is economically complementary. Preservation of the Hackett House, while providing an economically viable development has been a major part of the proposed master plan.

Policy 5.3.8 - Preserve and accentuate historic resources as part of an urban environment that is being reshaped by new development projects.

The proposed adjustment enables the proposed hotel project to form a visual backdrop for the historic Hackett House, while complimenting the End of the Oregon Trail. The proposed hotel orientation accentuates both these historic resources, while providing needed redevelopment of the urban environment.

Goal 9.2 Cooperative Partnerships

Create and maintain cooperative partnerships with other public agencies and business groups interested in promoting economic development.

Policy 9.2.1 - Seek input from local businesses when making decisions that will have a significant economic impact on them.

The project as proposed, was reviewed by the Board of Directors of the Clackamas Heritage Partners, operators and stewards of the End of the Oregon Trail development, located directly across the street from the project site. The Board has provided a unanimous letter recommending approval. The proposed building heights, site orientation, and building design were discussed.

Goal 9.6 Tourism

Promote Oregon City as a destination for tourism.

Policy 9.6.2- Ensure land uses and transportation connections that support tourism as an important aspect of the City's economic development strategy. This could include connections to the End of the Oregon Trail Interpretive Center and the train depot.

The proposed adjustment enables the proposed hotel project to support tourism at the End of the Oregon Trail, providing lodging and transportation connections to Washington Street and the End of the Oregon Trail Interpretive Center and through the phase 2 site development to the train depot.

Policy 9.6.3 - Provide land uses in the Downtown Historic Area, 7th Street corridor, and the End of the Oregon Trail Interpretive Center that support tourism and visitor services.

The proposed adjustment enables the proposed hotel project, directly providing land uses supporting tourism and visitor services.

Policy 9.6.6 - Encourage private development of hotel, bed and breakfast, restaurant facilities and other visitor services.

The proposed adjustment enables the development of a hotel project, supporting policy 9.9.6 encouraging private hotel, bed and breakfast, restaurant facilities and other visitor services.

Finding: Complies as proposed. The applicant has adequately addressed the applicable Comprehensive Plan Goals and Policies for Adjustment #5.

Adjustment #6

Code: 17.62.055.D - Relationship of Buildings to Streets and Parking

1. Buildings shall be placed no farther than five feet from the front property line. A larger front yard setback may be approved through site plan and design review if the setback area incorporates at least one element from the following list for every five feet of increased setback requested:
2. The front most architecturally significant facade shall be oriented toward the street and shall be accessed from a public sidewalk. Primary building entrances shall be clearly defined and recessed or framed by a sheltering element such as an awning, arcade or portico in order to provide shelter from the summer sun and winter weather.
3 -Entryways. The primary entranceway for each commercial or retail establishment shall face the major street. The entrance may be recessed behind the property line a maximum of five feet unless a larger setback is approved pursuant to Section 17.62.055.D.1 and shall be accessed from a public sidewalk. Primary building entrances shall be clearly defined, highly visible and recessed or framed by a sheltering element including at least four of the following elements, listed below.

Requested adjustment:

The hotel's most architecturally significant facade is the one facing Washington Street and the two main entranceways include the entranceway on that facade and the lobby entranceway at the Porte Cochere. However, the primary entranceway is the Porte Cochere and it will not face the major street, Washington Street, and it will be set back more than 5' from the major street. The applicant seeks an adjustment to the standard requiring that the primary entranceway to face the major street and allowing it to be set back more than 5' from the major street.

The project faces Washington Street and 17th Street. In comparison, Washington Street is the major street as shown in the table below :

Street	Washington	17th
Classification	Minor Arterial	Local
Width	Wider	Narrower
Transit	Yes	No
Type	Through	Dead-End

17.65.070.D. Approval Criteria. A request for an adjustment to one or more applicable development regulations under this section shall be approved if the review body finds that the applicant has shown the following criteria to be met.

1. Granting the adjustment will equally or better meet the purpose of the regulation to be modified;

Applicant's Response:

The stated purpose of 17.62.55 is:

> *Purpose. The primary objective of the regulations contained in this section is to provide a range of design choices that promote creative, functional, and cohesive development that is compatible with surrounding areas. Buildings approved through this process are intended to serve multiple tenants over the life of the building, and are not intended for a one-time occupant. The standards encourage people to spend time in the area, which also provides safety through informal surveillance. Finally, this section is intended to*

promote the design of an urban environment that is built to human scale by creating buildings and streets that are attractive to pedestrians, create a sense of enclosure, provide activity and interest at the intersection of the public and private spaces, while also accommodating vehicular movement.

The proposed project is a hotel requiring passenger vehicle loading at the lobby entry with weather protection provided by a Porte Cochere. Washington Street is the major street, providing direct vehicular access to the Porte Cochere entry. Functionally, this is the primary hotel entry. The entry drive rises up from the street which is in the 100 year flood plain, to the Porte Cochere, which is located to provide at grade access to the lobby floor, above the flood elevation.

As designed the hotel provides a creative, functional, and cohesive development that is compatible with surrounding areas. The required vehicular loading and Porte Cochere function properly when setback sufficiently from the street to allowing gradual grade change, minimizing pedestrian / vehicle conflicts, and accommodating vehicular movement and stacking. The building orientation with long axis perpendicular to Washington Street provides a view corridor to the End of the Oregon Trail, compatible with that use.

The exterior patio outside the hotel meeting room encourages people to spend time in the area, while providing safety through informal surveillance. An additional building entry with exterior stairs connecting to the public sidewalk provides activity at the intersection of public and private spaces, while planters and a wall mural provide interest.

Finding: Complies with Condition. Proposed adjustment #6, as mitigated through the modifications that the applicant has made to the lobby floor plan and the entire Washington Street façade, meets the stated purpose of 17.62.55. As described in the applicant responses and as discussed in the original staff report regarding this standard, staff finds that applicant has adequately addressed the standard. Staff only recommends a condition to add additional pedestrian amenity features on the wall adjacent to the sidewalk. The overall effect of the Washington Street façade for the hotel will invite pedestrians to spend time in the area. Pedestrian activity in this area will depend not solely on this project but also will depend on the future infill and redevelopment of similarly zoned land on both sides of Washington Street. Obviously, hotels rely on a vehicle pick up and drop off area, since the majority of their customer drive or ride in vehicles. The application has proposed that the Porte Cochere which will serve as the main entry for this purpose, however, the proposed Washington Street entry will comply with the overall design intent of this zone to provide for a significant main entry for pedestrians on the Washington Street elevation. The primary entrance shall not be required to face the major street, Washington Street, and shall be recessed behind the property line approximately 145 feet. Pedestrian access to the primary entrance shall be by a sidewalk that connects to the public sidewalk. **It is reasonable, practicable, and likely that the applicant can meet this standard through the Conditions of Approval.**

2. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zone;

Applicant's Response:

The cumulative effect of the requested adjustments results in a project consistent with the overall purpose of the MUD zone. The adjustments enhance security, increase buildability, and promote project feasibility, allowing for a mixed use project including lodging and retail/service with residential uses on upper floors appropriate to the MUD zone per 17.34.010. As proposed the design provides an attractive, well-articulated, response to difficult site conditions including; shape of site, flood zone and; existing historic residence.

Finding: Complies as proposed. Staff finds that cumulative effect of the adjustments #5-6, as described in the applicant's responses, results in a project that is still consistent with the overall purpose of the zone.

3. City-designated Goal 5 resources are protected to the extent otherwise required by Title 17;

Applicant's Response:

City designated goal 5 resources include the historic Hackett House, Abernethy Creek, and a wetland adjacent to the I-205 freeway . These resources are protected to the extent otherwise required by Title 17 in compliance with the following sections:

17.40 – Historic Overlay District. The Hackett House is a locally designated historic structure and landmark. The Historic Review Board reviewed and approved . The historic Hackett House will remain in its original site location without modification. Development of a hotel serving the needs of visitors to the End of the Oregon Trail Interpretive Center across the street supports economic development in the area. Redevelopment of underutilized property within the MUD zone relieves development pressure on existing open space, while protecting natural resources, conserving scenic and historic areas.

17.49 – Natural Resources Overlay District [NROD]: Abernethy Creek is located across 17th Street to the southwest of the project site. A wetland adjacent to I-205 is located across the railroad right-of-way to the northwest of the project site. The attached "NROD Boundary Verification Report" describes these resources and concurrence has been requested that no wetlands, waterways, or other protected features exist on the subject properties and that the NROD buffers do not project onto the subject properties.

Finding: Complies as proposed. Staff finds that applicant's response has adequately addressed the relevant City-designated Goal 5 resources for adjustment #6. The location of the primary entranceway will not have any impact on these identified Goal 5 resources.

4. Any impacts resulting from the adjustment are mitigated; and

Applicant's Response:

The main Porte Cochere entry is a highly visible, clearly defined, prominent feature. An second pedestrian entry directly facing Washington Street, has been provided to provide additional pedestrian access to the street. This entry has been enhanced with detailing to increase visibility, providing a second sheltered, recessed entry.

Wall mounted artwork compatible with the End of the Oregon Trail is proposed along the sidewalk, providing additional pedestrian level interest. The artwork is planned to be themed to complement the End of the Oregon Trail across Washington Street. Artwork to be approved by the Community Development Director without additional review by the Planning Commission.

If located within five feet of the property line the primary entry would not be able to accommodate a Porte Cochere and would either require a building entry below the flood elevation which is not allowed by the building codes, or an entry to the lobby accessible only by stairs, elevator, or long ramps which is either not practical, and/or not allowed by the Americans With Disabilities Act.

If the primary building entry is recessed from the primary street, Washington Street, sufficiently to allow the Porte Cochere to be located between the sidewalk and the building entry, the vehicular circulation will conflict with the pedestrian circulation on the sidewalk, and the stated purpose of promoting an urban environment including "streets that are attractive to pedestrians".

The adjustment will reduce impacts by providing a creative, functional development built to human scale, with buildings and streets that are attractive to pedestrians, providing activity and interest at the intersection of the public and private spaces, while also accommodating vehicular movement that would not be possible if designed in strict compliance with the code.

Finding: Complies as proposed. Staff finds that applicant has adequately mitigated the impact of adjustment #6 through the features described.

5. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable.

Applicant's Response:

There are no officially inventoried resources or resource values present on the subject property. Property is located within the Natural Resources Overlay District [NROD] per City maps. See Exhibit E, "NROD Boundary Verification Report" for background data and information supporting the following requested actions:

1. Concurrence that no wetlands, waterways, other protected features exist on the subject properties.
2. Concurrence that NROD buffers do not project onto the subject properties. In the case of Abernethy Creek, 17th Street constitutes a physical barrier. In the case of the wetland area to the North, the wetland buffers per table 17.49.110 fall about 150FT from the project.

Erosion and sediment control measures required by section 17.47, including an erosion control plan are provided. 17th Street separates Abernethy Creek from the project site and surface drainage from approximately the street centerline flows away from Abernethy Creek, further minimizing detrimental environmental impacts on the resource. The wetland adjacent to I-205 is on the opposite side and is separated from the project site by the existing railroad tracks. The railroad tracks are elevated above the wetland and form a physical barrier between the wetland and the project site.

Finding: Complies with conditions. Staff finds that adjustment #6 has been adequately addressed through the verification of the NROD in compliance with OCMC 17.49. As the applicant has discussed, erosion control measures required by Chapter 17.49 and the floodplain overlay district requirements of OCMC Chapter 17.42 will be imposed to fully protect water resources and assure development will meet floodplain construction and development standards. **It is reasonable, practicable and likely that the applicant can meet this standard through the Conditions of Approval.**

6. The proposed adjustment is consistent with the Oregon City Comprehensive Plan and ancillary documents.

Applicant's Response:

The proposed adjustment is consistent with the Oregon City Comprehensive Plan and ancillary documents by meeting the following comprehensive plan goals & supporting the following policies:

Goal 1.1 Citizen Involvement Program

Policy 1.1.1 - Utilize neighborhood associations as the vehicle for neighborhood-based input to meet the requirements of the Land Conservation and Development Commission (LCDC) Statewide Planning Goal 1, Citizen Involvement.

The project design team has received input from the neighborhood association, resulting in review and approval of the project as submitted.

Goal 1.4 Community Involvement

Policy 1.4.1 - Notify citizens about community involvement opportunities when they occur.

Public notice for community involvement in the land use process, including requested adjustments has been issued.

Goal 2.1 Efficient Use of Land

Policy 2.1.1 - Create incentives for new development to use land more efficiently, such as by having minimum floor area ratios and maximums for parking and setbacks.

The proposed adjustment enables the proposed project efficiently use the land. The proposed hotel site orientation allows for an efficient arrangement of building and parking.

Policy 2.1.3 - Encourage sub-area master planning for larger developments or parcels, including re-development, where it may be feasible to develop more mixed uses, or campus-style industrial parks, with shared parking and landscaping areas. Allow developments to vary from prescriptive standards if planned and approved under this provision.

The proposed project supports policy 2.1.3 by being designed and submitted under the Master Plans provisions of Section 17.65, with adjustments as provided by Section 17.65.070.

Goal 2.2 Downtown Oregon City

Develop the Downtown area, which includes the Historic Downtown Area, the "north end" of the Downtown, Clackamette Cove, and the End of the Oregon Trail area, as a quality place for shopping, living, working, cultural and recreational activities, and social interaction. Provide walkways for pedestrian and bicycle traffic, preserve views of Willamette Falls and the Willamette River, and preserve the natural amenities of the area.

To the extent the proposed adjustments enable the proposed project to be realized, the proposed development will provide shopping, living, working activities, and walkways for pedestrian traffic.

Policy 2.2.3 - Develop and promote a vision for the economic development and redevelopment of the Downtown area that solidifies the Oregon City Downtown Community Plan and Oregon City Waterfront Master Plan.

To the extent the proposed adjustments enable the proposed project to be realized, the proposed development provides an example vision for redevelopment of the Downtown area within the flood plain, supporting tourism and The End of the Oregon Trail in accordance with the Oregon City Downtown Community Plan.

Policy 2.2.8 - Implement the Oregon City Downtown Community Plan and Oregon City Waterfront Master Plan with regulations and programs that support compatible and complementary mixed uses, including housing, hospitality services, restaurants, civic and institutional, offices, some types of industrial and retail uses in the Regional Center, all at a relatively concentrated density.

To the extent the proposed adjustments enable the proposed project to be realized, the proposed development provides compatible and complementary mixed uses, including housing and hospitality in accordance with the Oregon City Downtown Community Plan.

Policy 2.2.9 - Improve connectivity for vehicles, bicycles, and pedestrians within the Oregon City Downtown community and waterfront master plan areas and improve links between residential areas and the community beyond.

To the extent the proposed adjustments enable the proposed project to be realized, the proposed development will include public street and onsite improvements designed to improve connectivity for vehicles, bicycles, and pedestrians.

Goal 5.3 Historic Resources

Encourage the preservation and rehabilitation of homes and other buildings of historic or architectural significance in Oregon City.
Policy 5.3.7 - Encourage property owners to preserve historic structures in a state as close to their original construction as possible while allowing the structure to be used in an economically viable manner.

The proposed adjustment enables the proposed hotel project to be situated to allow the continued preservation of the historic Hackett House. By orienting the hotel as proposed the historic Hackett House can remain in place as is, with an adjacent use that is economically complementary. Preservation of the Hackett House, while providing an economically viable development has been a major part of the proposed master plan.

Policy 5.3.8 - Preserve and accentuate historic resources as part of an urban environment that is being reshaped by new development projects.

The proposed adjustment enables the proposed hotel project to form a visual backdrop for the historic Hackett House, while complimenting the End of the Oregon Trail. The proposed hotel orientation accentuates both these historic resources, while providing needed redevelopment of the urban environment.

Goal 9.2 Cooperative Partnerships
Create and maintain cooperative partnerships with other public agencies and business groups interested in promoting economic development.
Policy 9.2.1 - Seek input from local businesses when making decisions that will have a significant economic impact on them.

The project as proposed, was reviewed by the Board of Directors of the Clackamas Heritage Partners, operators and stewards of the End of the Oregon Trail development, located directly across the street from the project site. The Board has provided a unanimous letter recommending approval. The proposed building heights, site orientation, and building design were discussed.

Goal 9.6 Tourism
Promote Oregon City as a destination for tourism.

Policy 9.6.2- Ensure land uses and transportation connections that support tourism as an important aspect of the City's economic development strategy. This could include connections to the End of the Oregon Trail Interpretive Center and the train depot.

The proposed adjustment enables the proposed hotel project to support tourism at the End of the Oregon Trail, providing lodging and transportation connections to Washington Street and the End of the Oregon Trail Interpretive Center and through the phase 2 site development to the train depot.
Policy 9.6.3 - Provide land uses in the Downtown Historic Area, 7th Street corridor, and the End of the Oregon Trail Interpretive Center that support tourism and visitor services.

The proposed adjustment enables the proposed hotel project to support tourism at the End of the Oregon Trail, providing lodging and transportation connections to Washington Street and the End of the Oregon Trail Interpretive Center and through the phase 2 site development to the train depot.
Policy 9.6.6 - Encourage private development of hotel, bed and breakfast, restaurant facilities and other visitor services.

The proposed adjustment enables the development of a hotel project, supporting policy 9.9.6 encouraging private hotel, bed and breakfast, restaurant facilities and other visitor services.

Finding: Complies as proposed. The applicant has adequately addressed the applicable Comprehensive Plan Goals and Policies for Adjustment #6.

APPLICANT'S REQUESTS FOR REVISIONS TO THE RECOMMENDED CONDITIONS OF APPROVAL

Planning Files: CP-17-0002**,** DP-17-0003, NR-17-0004

(P) = Verify that condition of approval has been met with the Planning Division.
(DS) = Verify that condition of approval has been met with the Development Services Division.
(B) = Verify that condition of approval has been met with the Building Division.
(F) = Verify that condition of approval has been met with Clackamas Fire Department.

The applicant shall include the following information with submittal of a public improvement and/or grading permit associated with the proposed development. The information shall be approved prior to issuance.

1. Existing service connection to the 48-inch sewer pipe on site shall be usable and meet the minimum inside diameter requirement of 6" for serving commercial buildings. Any new connection to the Tri-City Service District (TCSD) main will require permission from TCSD with all approved permits provided to the City. (DS)
2. Extension of the 8-inch sanitary sewer main within Washington Street, to and through the site frontage will be required. (DS)
3. The applicant shall confirm that no buildings have sewer service running within the subject site. If other buildings have a sewer service running through the subject site, the applicant shall provide a new service line from the required 8-inch sanitary sewer main extension within its frontage. (DS)
4. The existing 6-inch water main in 17TH Street shall be upsized to the City's standard 8-inch diameter ductile iron water main. A fee-in-lieu of construction of the new 8-inch water main will be considered if upsizing of 6-inch pipe is shown to not be feasible. An adequate easement shall be provided for the water main along the frontage of 17th Street. (DS)
5. Overhead utilities along the site frontage shall be relocated underground. (DS)
6. The applicant will need to submit a photometric plan with the construction plan submittal to facilitate design of the streetlights by PGE. Streetlights shall be decorative and match the style of existing decorative streetlights found along Washington Street. (DS)
7. The applicant shall perform all cuts and restoration to pavement within the right-of-way in accordance with the City's Pavement Cut Standards. (DS)
8. All development shall be in conformance with the policies and design standards established by the Oregon City Municipal Code and with applicable standards in the city's public facility master plans and city design standards and specifications. (DS)
9. The applicant shall dedicate sufficient right-of-way (ROW) to provide, at minimum, a ROW width 43 feet north of the centerline for Washington Street. Improvements required north of the centerline along the frontage of Washington Street are: a 6-foot-wide half center lane, a 12-foot-wide travel lane, a 6-foot-wide bike lane, 8-foot-wide on-street parking, 0.5-wide curb, 4-foot-wide furnishing zone/planter strip, 6-foot-wide sidewalk and 0.5-foot public access. (DS)
10. 17th Street shall have a 24-foot wide street section, as can be accommodated without extending street pavement towards Abernethy Creek. The improvements required along 17th Street are 0.5-wide curb with gutter, 5-foot-wide curb-tight sidewalk and 0.5-foot public access. Portions of the sidewalk will be allowed to meander around the existing tree but shall be provided a public sidewalk easement. (DS)
11. The project shall meet water quality standards of Oregon City Stormwater and Grading Design Standards but is not required to meet flow control standards. (DS)

12. Applicant shall submit engineering calculation of cut and fill for the development for review and approval based on criteria outlined in Section 17.42.160.D of Oregon City Municipal Code. (DS)
13. Regarding construction standards within flood management areas, applicant shall adhere to Section 17.42.160.E of Oregon City Municipal Code. (DS)
14. Applicant shall obtain Erosion Control permit from the City and a 1200-C permit from Oregon Department of Environmental Services prior to commencing construction activities. (DS)
15. The applicant shall submit an engineered grading plan and geotechnical report for review and approval prior to approval of public improvement plans.(DS)
16. The applicant shall provide a memo or exhibit to demonstrate exemption from OCMC chapter 17.44, for excavation or fill within the Geologic Hazard overlay zone. However, should the applicant propose any work which is not exempt, requiring excavation or fill which is more than two feet in depth, or which involves more than twenty-five cubic yards of volume within the Geologic Hazard overlay Zone the project will be subject to Geologic Hazard review as outlined in OCMC Chapter 17.44. (DS)
17. The applicant shall construct Washington Street along the site frontage including a center turn lane to provide for left turns into the site. Applicant shall provide additional traffic engineering analysis relating to the location of the site access that shows the location of proposed access will not interfere with queuing or traffic operations at adjacent traffic signals through the TSP planning horizon. (DS)
18. With the exception of recommendations that conflict with Oregon City emergency egress requirements, the applicant shall comply with the Oregon Department of Transportation's comments and recommendations in the memorandum provided on July 14, 2017. (P)
19. The applicant shall submit documentation demonstrating compliance with one or more of the options for Tree Removal and Mitigation in Chapter 17.41. Compliance with these standards shall be demonstrated in a tree mitigation plan report prepared by a certified arborist, horticulturalist or forester or other environmental professional with experience and academic credentials in forestry or arboriculture. The project arborist preparing the tree mitigation plan shall coordinate with the project landscape architect to ensure that any trees to be preserved are indicated on the revised landscaping plans for the site and that all protective measures are property installed pursuant to OCMC 17.41.130 - Regulated tree protection procedures during construction. The applicant shall provide a revised arborist report indicating recommendations for tree protection procedures during construction or as a minimum show compliance with protective measures in OCMC 17.41.130 B(1-9). (P)
20. The applicant shall provide a clear schedule for timing of all public improvements related to mitigation thresholds, including transportation, sewer, water, stormwater facilities for approval by the Public Works Department prior to issuance of a grading or construction permit for public improvements.(DS)

The applicant shall include the following information prior to issuance of the grading permit associated with the proposed development.

21. The applicant shall coordinate with the Confederated Tribes of the Grande Ronde as needed to confirm the measures that will be taken to address the Tribes concerns regarding disturbance of possible archaeological sites.(P)

The applicant shall include the following information with submittal of a Building Permit associated with the proposed development. The information shall be approved prior to issuance.

22. For any multi-family building which would be subject to OCM 17.52.057 multi-family design standards, when the Detailed Development Plan for Phase II of the development is proposed the applicant shall provide additional mitigation for adjustment #4 (window design) such as increased minimum transparency, trim details, higher quality materials, greater articulation or modulation, or landscaping. (P)
23. The applicant shall provide revised plans that include signs at the north main entrance to the hotel that indicate the location of the covered bicycle parking at the south entrance. (P)
24. The applicant shall comply with conditions of the Historic Review Board approval for file HR-17-002. (P)
25. The applicant shall demonstrate compliance with the minimum of 10% landscaping for phase 1 on all revised landscaping plans. The applicant shall provide landscaping percentage calculations for the parking lot interior and all other landscaped areas on the site prior to issuance of a building permit. (P)
26. The applicant shall provide a revised landscaping plan indicating that within three years the landscaping will cover one hundred percent of the Landscaped areas including landscaping within the parking lot, and that no mulch, bark chips, or similar materials shall be allowed at the time of landscape installation except under the canopy of shrubs and within two feet of the base of trees. (P)
27. The applicant shall provide a revised landscaping plan in conformance with OCMC 17.52.060.B with an evergreen hedge or shrubs at the parking lot entryway on 17th Street. (P)
28. The applicant shall provide revised plans that indicate the use of a change in textural material or height of the pedestrian accessway within the parking lot drive aisle adjacent to the hotel to alert the driver of the pedestrian crossing area. (P)
29. The applicant's photometric engineer shall provide revised lighting plans in compliance with OCMC 17.62.065.D.2., which indicate the use of full-cut-off style lighting fixtures or approved alternatives. The revised lighting plans shall include the min./max. Foot-candle ratio required to be shown in Table 1-17.62.065. (P)
30. No lighting pole taller than 20 feet shall be permitted for Phase 2 without an adjustment through the Type III Master Plan or a Variance.(P)
31. The applicant shall provide revised landscaping plans to show a seven-foot sidewalk with shade trees spaced a maximum of thirty-five feet apart in three-foot by five-foot tree wells at the sidewalk between the Hackett House and the adjacent parking lot. (P)
32. The applicant shall provide revised landscaping plans that add a tree at the landscape island between the trash enclosure and the adjacent parking space at the rear of the hotel. (P)
33. Street trees will be selected from the Oregon City Street Tree List or otherwise approved as appropriate for use along the street frontages. Street trees along Washington Street will be in tree wells, trees along 17th Street will be planted behind the curb tight sidewalk. (P)
34. If street trees are planted within an easement along 17th Street the applicant shall provide a protective covenant that allows the city to enforce the public street tree requirements in this area. (P)
35. The applicant shall submit adequate documentation to the Building Official to demonstrate compliance with the Flood Management Overlay District in OCMC 17.42.110, 17.42.160, and 17.42.190. (P)
36. The applicant shall submit a revised Traffic Impact Study when the Detailed Development Plan for Phase II of the development is proposed. (P)

37. Except as outlined below, any fence proposal for the property shall comply with the applicable provisions of OCMC 17.54.100 – Fences and OCMC 17.62.050.A.21 Building Materials and shall be reviewed through a Type I or Type II Site Plan Review process, as applicable. The applicant is permitted a combined fence/retailing wall height of 15 feet. The applicant is permitted to install an eight foot tall fence consistent with ODOT standards along the railroad ROW (P)
38. Adjustment #1 to building height for Phase 1 is approved.
39. Adjustment #5 to building height for Phase 2 is approved.
40. Adjustment #6 to Section 17.62.055.H.2 – Minimum Wall Articulation, is approved. This adjustment applies to Phase 1.
41. Adjustment #7 to Section 17.62.055.D.3 – Relationship of Buildings to Streets and Parking, is approved. This adjustment applies to Phase 1.

The applicant shall submit the information confirming the following prior to issuance of a Building Permit associated with the proposed development.

42. The applicant shall have completed any Lot Line Abandonments or Adjustments necessary to comply with applicable building code requirements pursuant to OCMC 16.20 – Property Line Adjustments and Abandonment Process and Standards. (P)

The applicant shall include the following information prior to issuance of an occupancy permit associated with the proposed development. The information shall be approved prior to issuance.

43. The applicant shall participate in the funding of improvements for the I-205/OR-99E ramp terminal projects (TSP Projects D75 and D76) in proportion to the development's traffic volumes as a percentage of total year 2035 intersection volumes from the TSP. Based on this methodology, the developer is responsible for 0.42% of the $3 million cost for Project D75 and for 0.49% of the project cost for Project D76, resulting in a contribution from the applicant of $12,600 + $14,700 prorated between Phase 1 and Phase 2 based on projected traffic impact. (DS)
44. The applicant shall participate in the funding of improvements for the Main Street/14th Street improvements (TSP Projects D7 and D8) in proportion to the development's traffic volume as a percentage of the predicted 2035 traffic volume at the intersection calculated in the TSP. Based on the applicant's predicted site traffic, the applicant's responsibility is 1.66% of the project's cost. The higher cost option in the TSP is listed at $670,000, resulting in a contribution from the applicant of $11,122. Prorated between Phase 1 and Phase 2 based on projected traffic impact (DS).
45. The Applicant shall install Artwork related to the end of the Oregon Trail with a minimum of eight square feet in surface area at the stone wall adjacent to the sidewalk at the landing for the building entrance facing Washington Street.(P)
46. The Applicant shall provide a public cross-access easement between the parcels to ensure pedestrian and vehicle access is maintained. The easement shall provide mutual access between all of the properties onsite as well as with the adjacent train station.(P)
47. The duration of approval of this General Development Plan is five years unless amended prior to expiration. (P)

48. Per OCMC 17.41, if tree mitigation option #1 is chosen, the applicant shall recorded a protective covenant for all trees to be preserved and planted on-site prior to issuance of a certificate of occupancy for phase 1 or 2.(P)

From:	Laura Terway
To:	Pete Walter
Subject:	FW: Hotel project
Date:	Thursday, August 17, 2017 1:49:09 PM

From: Denyse MCGRIFF [mailto:guttmcg@msn.com]
Sent: Wednesday, August 16, 2017 1:42 AM
To: Laura Terway
Subject: FW: Hotel project

FYI

Sent from Mail for Windows 10

From: Mark J. Matheson
Sent: Tuesday, August 15, 2017 4:58 PM
To: Jim Nicita; Gary Avery; Miranda Sierra; John Williams; Tom O'Brien; Gordon Wilson; Mike Simon; Al Snell; Debbie Kasnias; Ed Lindquist; Denyse McGriff
Subject: Hotel project

I spent a little time on verifying the "no room at the Inn" as the justification for building the hotel. Well that was a lie and was promoted by the Director for the downtown business alliance, and others.

Best Western and Holiday Express are only 80% occupied for 2 and sometimes 3 months out of the year. December and January are dead, so the taxes they tout being collected is not backed by any financial certification. On average, they are only 70 to 73 percent of the rooms are occupied, not 100, and the Director should be immediately for providing a false narrative.

Hotel Stats says hotel industry is on a downward trend. Hillton Express dropped 5 points this year (hotel language). Steve, the regional director for Hilton says that new hotels need to open before summer... and unless the project is a home run, he wouldn't recommend building a hotel... the last hotel downturn was in 2008 and the smart guys are telling Steve that they're due to start another dip in the industry. Which seems to be happening now.

This project is scheduled to break ground this fall, they have their construction drawings done, and they already submitted public improvements plans to the City. The pace Fowler is getting his approvals is suspicious and possibly unlawfull. I believe that a letter should be written on the behalf community and sent to the Planing Commission.

Mark

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From:	Laura Terway
To:	Pete Walter
Subject:	FW: Hotel project
Date:	Thursday, August 17, 2017 1:49:19 PM

From: Denyse MCGRIFF [mailto:guttmcg@msn.com]
Sent: Wednesday, August 16, 2017 8:10 AM
To: Laura Terway
Subject: FW: Hotel project

More ….

Sent from Mail for Windows 10

From: Mark J. Matheson
Sent: Wednesday, August 16, 2017 6:29 AM
To: Jim Nicita; Gary Avery; Miranda Sierra; John Williams; Tom O'Brien; Gordon Wilson; Mike Simon; Al Snell; Debbie Kasnias; Ed Lindquist; Denyse MCGRIFF
Subject: Re: Hotel project

I noticed that I forgot to add the word "fired". The Director of the downtown business alliance should be immediately fired for testifying at the planning commission that the local hotels are 100% full and its why they support the hotel being built. The feasibility study they used is suspicious.

On 2017-08-15 16:58, Mark J. Matheson wrote:

> I spent a little time on verifying the "no room at the Inn" as the justification for building the hotel. Well that was a lie and was promoted by the Director for the downtown business alliance, and others.
>
> Best Western and Holiday Express are only 80% occupied for 2 and sometimes 3 months out of the year. December and January are dead, so the taxes they tout being collected is not backed by any financial certification. On average, they are only 70 to 73 percent of the rooms are occupied, not 100, and the Director should be immediately for providing a false narrative.
>
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>
> This project is scheduled to break ground this fall, they have their construction drawings done, and they already submitted public improvements plans to the City. The pace Fowler is getting his approvals is suspicious and possibly unlawful. I believe that a letter should be written on the behalf community and sent to the Planing Commission.
>
> Mark

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From:	Laura Terway
To:	Pete Walter
Subject:	FW: Re: Oregon City Planning Commission August 28, 2017 Cancelled
Date:	Sunday, August 20, 2017 8:43:01 PM
Attachments:	image001.png

Pete,
Please add the attached to the record.

From: Denyse MCGRIFF [mailto:guttmcg@msn.com]
Sent: Saturday, August 19, 2017 9:54 AM
To: Laura Terway <lterway@orcity.org>
Subject: FW: Re: Oregon City Planning Commission August 28, 2017 Cancelled

Moore…

Sent from Mail for Windows 10

From: Mark J. Matheson
Sent: Saturday, August 19, 2017 7:41 AM
To: Denyse McGriff
Subject: Fwd: Re: Oregon City Planning Commission August 28, 2017 Cancelled

Good morning, I forgot to add you to the list..

I can't emphasize the need to have open discussions.

Regards,

Mark

-------- Original Message --------

Subject: Re: Oregon City Planning Commission August 28, 2017 Cancelled
Date:2017-08-18 11:45
From:"Mark J. Matheson" <mark.matheson@drteamsint.com>
To: Laura Terway <lterway@orcity.org>
Cc: Pete Walter <pwalter@orcity.org>, Miranda Sierra <sierra318@gmail.com>, Gary Avery <gavery@gavery.net>, Gordon Wilson <gordon@gkwphoto.com>, guttmcg@msn.com

Thank you for the reply

Isn't the Hotel open for public comments? That took 90% of the agenda at the last meeting, and a pivot point to ask the public for more comments.

Just saying its a good opportunity for more public input.

Mark

On 2017-08-18 11:37, Laura Terway wrote:

> Morning,
> The meeting is cancelled because there are no items scheduled for the agenda. The next few months of hearings will be quite busy though.
>
> Laura Terway, AICP, Community Development Director
> City of Oregon City
> 503.496.1553

From: Mark J. Matheson [mailto:mark.matheson@drteamsint.com]
Sent: Friday, August 18, 2017 11:28 AM
To: Pete Walter; Laura Terway
Cc: Miranda Sierra; Gary Avery; Gordon Wilson; guttmcg@msn.com
Subject: Re: Oregon City Planning Commission August 28, 2017 Cancelled

Pete,

What is the reason for the cancellation.

On 2017-08-18 11:13, Pete Walter wrote:

> Good afternoon,
>
> The August 28, 2017 meeting of the Oregon City Planning Commission is cancelled.
>
> All Oregon City Board and Commission agendas, packets, minutes and videos are available on line at https://oregon-city.legistar.com/Calendar.aspx
>
> Planning Commission regular meetings are held on the second and fourth Monday of each month unless cancelled.
>
> Please forward and post as required.
>
> ---
>
> 
>
> **Pete Walter, AICP, Planner**
> pwalter@orcity.org
> **Community Development Department**
> **Planning Division**
> 221 Molalla Avenue, Ste. 200
> Oregon City, Oregon 97045
> 503-496-1568 Direct
> 503-722-3789 Front Desk
> 503-722-3880 Fax
> **Website:** www.orcity.org

New Hours(Sept 2): 8:30 AM – 3:30 PM, M-F

Need Zoning and other Tax Lot Information? - Generate a Property Report
Online Mapping is available at OCWebMaps

Please consider the environment before printing

PUBLIC RECORDS LAW DISCLOSURE: This e-mail is subject to the State Retention Schedule and may be made available to the public.

From:	James Nicita
To:	Pete Walter
Subject:	Follow up to comments submitted at August 14th Planning Commission hearing on CP 17-02, DP 17-03, and NR 17- 04
Date:	Thursday, August 17, 2017 12:48:43 PM
Attachments:	Goal_1_2016045.pdf CRW1.pdf

Hi Pete,

I write with some follow-up to the written comments I submitted into the record at the Planning Commission hearing this past Monday, August 14th on the above-referenced file.

The comments concerned my request that "the acknowledged Oregon City Goal 5 inventory and resource list, as well as the acknowledgment order by the Land Conservation & Development Commission and/or the Department of Land Conservation and Development, into the record of this file, with sufficient time for review by all parties, particularly as it applies to Abernethy Creek, Clackamette Cove, into which the storm water of this development will be discharged, the Clackamas River, and the Willamette River at its confluence with both Abernethy Creek and the Clackamas River."

After reviewing LUBA's opinion in case no. 2016-045, pertinent excerpts of which are attached, I would like to refine my request of August 14th. First, LUBA "assumed without deciding" that Oregon City Comprehensive Plan (OCCP) Goal 1.4 applies to a request such as this. Therefore, I would like to raise OCCP Goal 1.4 as additional authority in support of my request.

Second, LUBA found in its opinion that my request in that case was insufficiently specific. In this case, I think my specific reference to the case file satisfies LUBA's concerns. Similarly, I believe my limited request for the Goal 5 inventory and resource list as it pertains to the above-referenced water bodies is sufficiently specific – it does not request Goal 5 information for the whole city.

However, as to timing, I would like to refine the request to specify that the request should be fulfilled no later than the issuance of the staff report for the continued hearing on this file, so that both the applicant and citizens commenting on the application can have adequate time to review the material and apply the information to applicable approval criteria in their public comments.

Finally, I would like to submit the attached July 23, 2015 letter from Clackamas River Water regarding temperature issues leading to fish kills at the mouth of the Clackamas River, a short distance away from Clackamette Cove, into which the applicant in this matter proposes to discharge waste storm water from the development at issue.

I respectfully request that this email and its attachment be placed into the record of this file.

Thanks, Pete.

James Nicita

Oregon City

Clackamas River Water

P.O. Box 2439
Clackamas, Oregon 97015-2439

(503) 722-9220
Fax (503) 656-7086

16770 SE 82nd Drive, Clackamas
customerservice@crwater.com

To: Board of Commissioners of Clackamas County

From: Clackamas River Water

Date: July 23, 2015

Re: Water Use on the Clackamas River

On July 21, 2015 Clackamas River Water received a memorandum, *Re: Water Use on the Clackamas* written by Ernest Hayes of Clackamas County Administration. The policy question proposed was "Is the Clackamas River impacted by water shortage?" The memo ultimately concluded that, "After receiving feedback from several of the managers of local water districts, including Clackamas River Water Providers, there does not seem to be a present risk of a water shortage on the lower Clackamas River. Further, should a shortage occur, human consumption would not be limited until truly dire circumstances were met. There is no fear of this transpiring in the foreseeable future. "Clackamas River Water disagrees with Mr. Hayes' conclusion.

The state of Oregon is facing its worst drought in decades. Governor Brown has declared drought emergencies in 23 of 36 counties. Although Clackamas County eluded a drought declaration to date, it is not immune to the environmental pressures exerted upon it by low snowpack and hot, dry days. The Clackamas River, a vital resource for Clackamas County's urban centers, serves as a source of high quality drinking water for over 200,000 people and is no exception.

It is true that despite record low snowpack on Mt. Hood in the Upper Clackamas River Basin, the precipitation rate remained stable. Precipitation fell as rain, rather than snow. This is due to above average temperatures in the region. The elevation of the Upper Clackamas Basin is located near the current mid-winter snowline, as a result even minor deviations toward greater than normal temperatures can limit snow accumulation. While the Clackamas River is influenced by groundwater from large aquifers in the Upper Clackamas River Basin, the River will likely experience greater loss of streamflow and continued strain is put on the aquifer system. Trends toward warmer winters with more rain than snowpack will result in low flows on the River occurring earlier and increased stream temperatures. 2015 may very well be a preview of years to come.

Abnormally warm temperatures and record low snowpack in the Clackamas River Basin should be of great concern to water providers as the dense network of streams in the Upper Basin are strongly influenced by melting snow during the spring and summer, which in turn helps to maintain river flow and temperature. As early as May the effects could be observed on the river. Streamflows were at their

ENTERED INTO THE RECORD
DATE RECEIVED: NOV. 23 2015
SUBMITTED BY: HAMLET OF BRK
SUBJECT: LE-15-0003
LUBA RECORD PAGE 744
EXHIBIT 57

lowest in over a decade (Figure 1), and temperature was elevated (Figure 2). By mid-June fish kills were observed at the confluence of the Clackamas and Willamette Rivers, due primarily to elevated water temperatures (Figure 2), prompting the Oregon Department of Fish and Wildlife to restrict fishing on the Clackamas River below the I-205 bridge.

Currently the streamflow of the Clackamas River is well below average, at levels not seen in more than a decade, and dropping. Water providers, as good stewards of the watershed, are subject to minimum allowable flows for fish persistence and passage. The State of Oregon requires each drinking water provider to develop a Water Management Conservation plan with a clearly defined curtailment plan that would maintain fish flows while allowing for sustainable water consumption. On the Clackamas River after September 15th that flow is 640 CFS. For Clackamas River Water and one other member of the Clackamas River Water Providers, as per our adopted Water Management Conservation Plans, Stage 3 Water Curtailment (mandated water conservation) would be implemented at streamflows less than 730 CFS after September 15th. While this is not the first time water providers have seen low streamflows in July, it is important to note that currently the streamflow of the Clackamas River is below 750 CFS with prolonged periods of hot dry weather predicted in combination with the development of an El Niño event (Figure 1). The likelihood of water providers having to implement curtailment practices come September is strong.

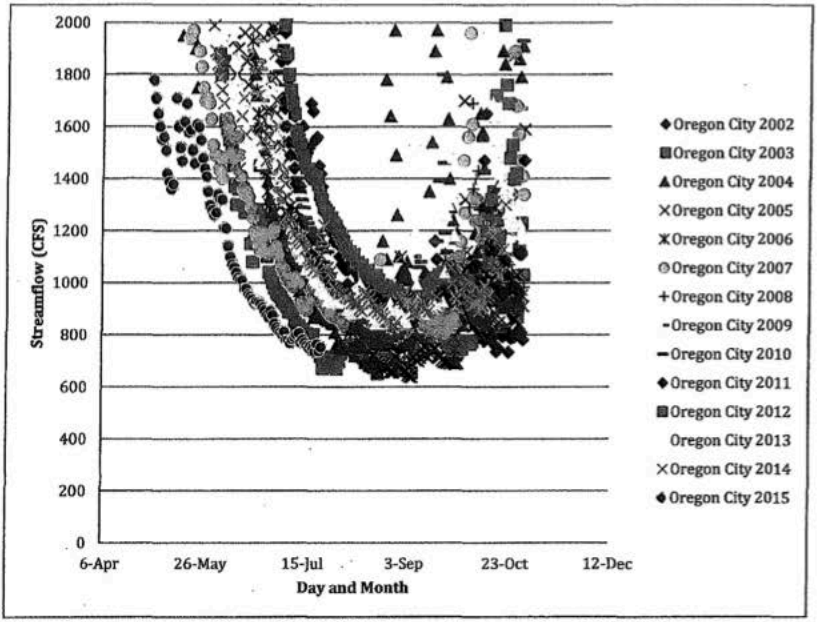


Figure 1. Streamflow (CFS) recorded at USGS Oregon City gauge from 2002-2015

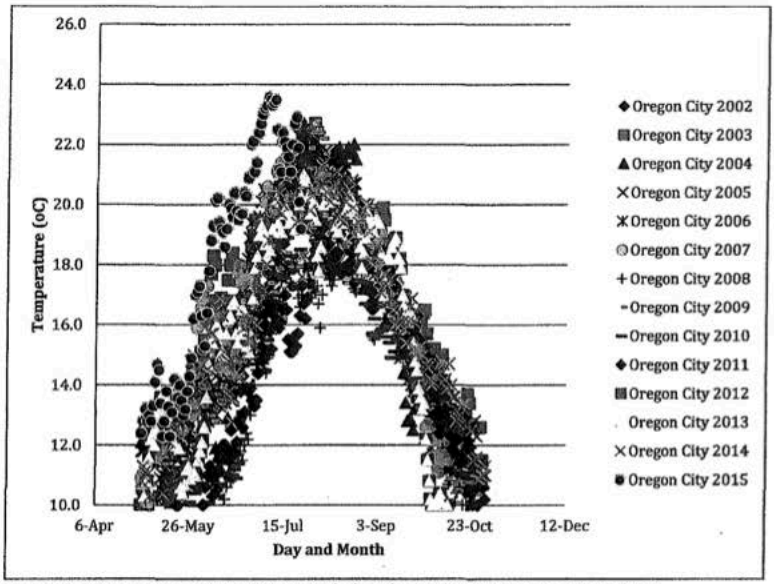


Figure 2. Water temperature (°C) recorded at the USGS Oregon City gauge from 2002-2015

Clackamas River Water issued a Stage 1 Water Advisory encouraging its customers to conduct voluntary water conservation measures in early June as dictated by our Water Management Conservation Plan upon observation of below average streamflows. Continued low flows, or a declaration of drought, will soon prompt CRW to issue a Stage 2 Water Advisory with more stringent conservation measures.

While there may not be an immediate water shortage on the Clackamas River, elevated temperatures and low streamflow suggest that mandated conservation measures for water providers may be on the horizon. It is our belief that as water providers on the Clackamas River we must begin to view the river less as an exclusive source of revenue and more as a valuable, finite resource that must be protected. To ignore the current river conditions and push off streamflow and temperature concerns would be irresponsible. While we do not discredit our collective utility's need to be financially stable, we believe that the long-term sustainability of the Clackamas River as a source of drinking water should trump the immediate needs of greener lawns and greater revenue. Responsible management of a water source does not mean simply navigating into maximum withdrawals allowed by the State of Oregon. It means preserving a drinking water source for a

larger portion of Clackamas County, preserving fish habitat and recreation, and ensuring our water source for the future.

Clackamas River Water is a special district that serves over 50,000 people in unincorporated Clackamas County, which includes Clackamas, and parts of Oregon City, Beavercreek, Milwaukie, and Portland.

We would like to offer our thanks to the Board of Commissioners for affording the water providers the opportunity to comment on this critical issue. As you are aware it is the County's role to notify the Governor when more extreme action is warranted.

Sincerely,



Lee E. Moore Sr.
General Manager
Clackamas River Water District

On behalf of the Board of Commissioners and Staff:

Ken Humberston; President
Hugh Kalani; Secretary
Naomi Angier; Treasurer
Larry Sowa; Commissioner
David McNeel; Commissioner

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

JAMES J. NICITA,
Petitioner,

and

ELIZABETH GRASER-LINDSEY,
CHRISTINE KOSINSKI,
and PAUL EDGAR,
Intervenors-Petitioners,

vs.

CITY OF OREGON CITY,
Respondent,

and

HISTORIC PROPERTIES, LLC,
Intervenor-Respondent.

LUBA No. 2016-045

FINAL OPINION
AND ORDER

Appeal from City of Oregon City.

James J. Nicita, Oregon City, filed a petition for review and argued on his own behalf.

Elizabeth Graser-Lindsey, Beavercreek, Christine Kosinski, Oregon City and Paul Edgar, Oregon City, filed a petition for review. Elizabeth Graser-Lindsey argued on her own behalf.

Carrie A. Richter, Portland, filed the response brief and argued on behalf


MASTER PLAN FOR THE END OF THE OREGON TRAIL
OREGON CITY, OREGON

MASTER PLAN FOR THE END OF THE

Oregon Trail

Oregon City, Oregon

Prepared for:
OREGON TRAIL FOUNDATION, INC.
P.O. Box 511
Oregon City, Oregon 97045

Prepared by:
SMH ARCHITECTURE, PC
320 SW Sixth Avenue, Suite 300
Portland, Oregon 97204

Amended May 1996

Funding for this study to amend the 1990 End of the National Historic Oregon Trail Master Plan
is provided by Regional Strategies through Mt. Hood Economic Alliance and Oregon Trail Coordinating Council

CLACKAMAS COUNTY
FAMILY HISTORY SOCIETY, INC

PARTICIPANTS

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STEPHEN DOW BECKHAM, Ph.D.
History, Ethnohistory Research
Lake Oswego, Oregon

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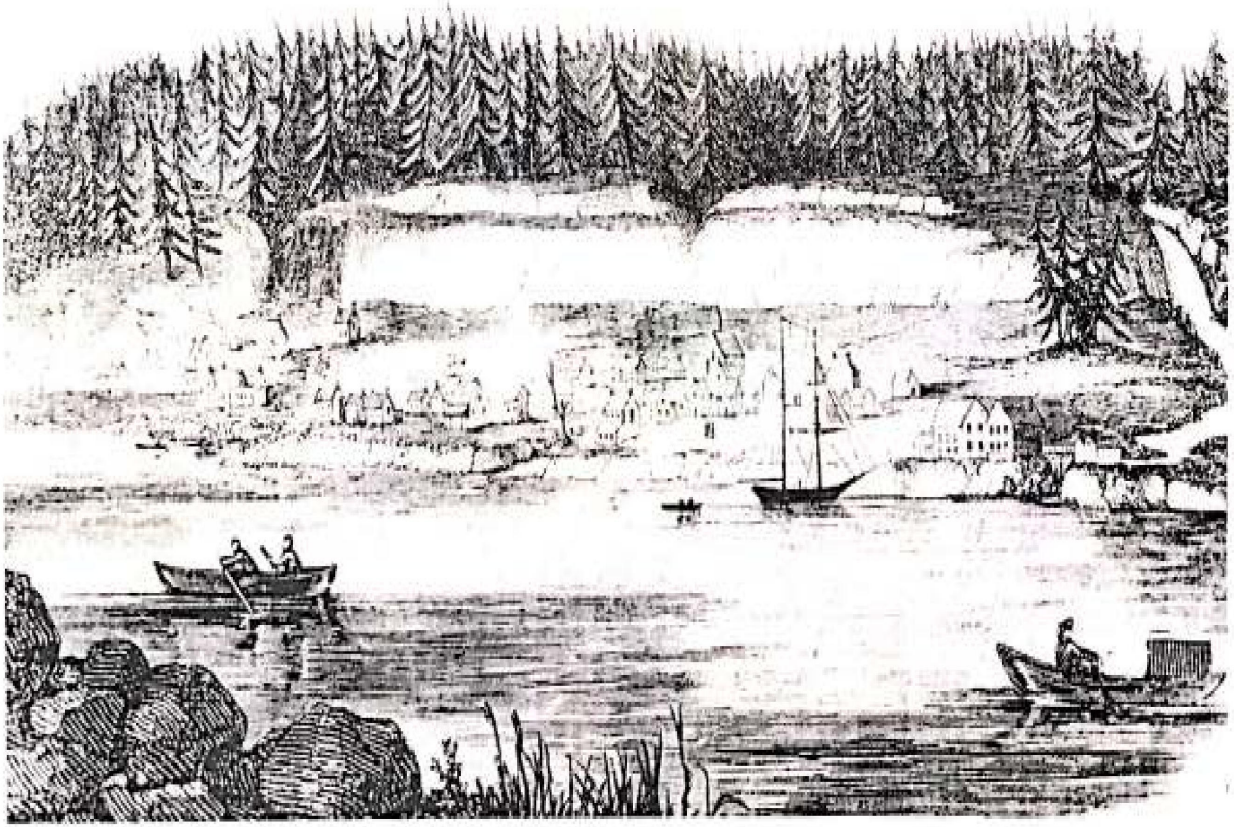
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I. FOREWORD



Oregon City from west bank of Willamette River.

FOREWORD

The National Historic Oregon Trail (and its most western segment, the Barlow Road) is a 2,000 mile monument to the human spirit. In the 60 odd years of its use, thousands of Americans headed west, first for fur, then as missionaries, and finally for land. Between 1841 and the turn of the century, over 300,000 Americans of all ages and walks of life sold most of their worldly possessions, piled what was left in a wagon and set off on an epic journey.

The odyssey would take five to six months across some of the harshest and most hostile territory in the world. One of ten would fall victim to disease or injury along the way. Many were buried in the Trail itself to protect their grave from scavenging animals.

The Trail, at least in part, followed existing Native American trails and was first traveled by Robert Stewart following the fur trade on behalf of John Jacob Astor. Travel was limited until 1834, when Jason Lee, and then Marcus Whitman, came west to bring Christianity to the American Indians. Reports from these missionaries greatly stimulated eastern America's interest in the rich land awaiting them in Oregon, especially the Willamette Valley.

The first organized party of emigrants set out in 1841 under the leadership of John Bidwell. They were the first in a trickle of emigrants that would swell to a flood in the years to come. The generally recognized start of significant movement west has been established as 1843.

The Oregon Trail directed the flow of westward expansion and was of paramount importance to the Euro-American settlement and development of the Pacific Northwest. In Oregon, its overland route (generally Interstate 84 and Hwy 26) has remained a principal course of east-west travel to the present day and provides a diverse range of terrain and historic interest, e.g., the rugged Blue Mountains crossover in northeastern Oregon; the dry plateau area between Pendleton and The Dalles, the perilous Cascade Mountains/Columbia Gorge section; and the geographic end of the Oregon Trail in Oregon City where Euro-American settlement of the Willamette Valley began.

The U.S. congress memorialized the vital role the Oregon Trail played in our nation's history in 1978, when the Trail was designated a National Historic Trail (National Trail System Act, P.L. 95-625, as amended). The intent of the public law was to designate the primary route of the Oregon Trail, extending full length between Independence, Missouri and Oregon City, Oregon. This route is based upon travel which occurred during the period 1841-1848, and included the 110-mile Barlow Road, developed in 1846 between The Dalles and Oregon City.

In August 1981 the National Park Service, an agency of the U.S. Department of Interior issued its three-volume document, *Comprehensive Management and Use Plan: Oregon National Historic Trail,* identified Oregon City in Clackamas County as the true

and correct End of the National Historic Oregon Trail.

The purpose of the Master Plan Revisions for the End of the Oregon Trail Center is to review and modify the theme and interpretive content, overall design concepts, capital construction costs, and schedule for implementation of the 1990 End of the Oregon Trail Center Master Plan. The revised master plan was prepared by SMH Architecture, PC and a multi-disciplinary consultant team in collaboration with the Oregon Trail Foundation, Inc., the County of Clackamas, and the City of Oregon City.

As a unique heritage visitor attraction, the End of the Oregon Trail Interpretive Center and Outdoor Living History Museum will further bring to life the vivid stories of the first people in the area - the Native Americans, of the Hudson's Bay Company, and of the hardy emigrant pioneers who struggled over the Oregon Trail to reach Oregon City, the end of the Trail, the place of promise and new beginnings.

Following publication of the End of the Oregon Trail Center Master Plan the City of Oregon City and Clackamas County approved and accepted the document in December 1990 as a policy guide and basis for further development.

Subsequently, design guidelines for the End of the Oregon Trail Historic District have been prepared and are awaiting adoption. In June 1995, Phase one of the End of the Oregon Trail was completed and dedicated featuring a multi-media educational experience, history exhibits, and museum store.



Oregon City in 1845 painted by H. Ware.

SUMMARY

Between 1841 and the turn of the century over 300,000 Americans of all ages loaded their belongings in wagons to begin the five to six month epic journey over the Oregon Trail.

In 1977, nearly 140 years later, Congress designated the Oregon Trail as a National Historic Site and National Historic Trail with its beginning in Independence, Missouri and its terminus at Oregon City, Oregon. In 1988, the Governor's Oregon Trail Advisory Council prepared a report which recommended the End of the Oregon Trail at Oregon City in Clackamas County as a national historic site and the anchor of a four-center system across Oregon.

A unique national heritage attraction, the End of the Oregon Trail Interpretive Center and Outdoor Living History Museum will bring to life the vivid stories of the first people in the area and the role played by Oregon City and its Falls. The planning mandate of *The End of the Oregon Trail Center Master Plan* was to revise and amend the program for establishing a significant presence in Oregon City in recognition of the world's largest overland migration that began 150 years ago.

Primary planning objectives were to avoid oversimplifying, romanticizing, or trivializing the story of the emigrants experience. Historical accuracy and responsibility was determined to be imperative. In responding, the Master Plan presents the End of the Oregon Trail's theme, interpretive content, site plan and components, schedules, and development costs.

An interdisciplinary Master Plan Team led by SMH Architecture, PC in cooperation with the Oregon Trail Foundation, Oregon City, and Clackamas County provided a two-phased work plan: Phase I – Program Review and public comment, and Phase II – Planning and Implementation. Public involvement and consensus was also seen as critical. Public participation sessions were held during each planning phase to gain public review, comments, and support.

Oregon City, with its downtown business district just south of the site, has over 20,000 residents and is 12 miles south of Portland which has a metropolitan population of over 1.5 million. Physically, the site is located near the confluence of the Willamette and Clackamas Rivers. Wooded bluffs provide the eastern and southern edges. The southern boundary is established by Abernethy Creek located at the foot of the southern bluff. Interstate 205 passes west of the site. A closed landfill occupies a majority of the site's eastern area and is available for reclamation. The site's primary significance lies with its historic association as the western terminus of the Oregon Trail, the main arrival area for emigrants and the homestead of Oregon's first provisional governor, George Abernethy.

Prior to settlement of Oregon City, the general area of the project site was bottomland or marsh and experienced periodic flooding. During the history of Oregon City and most recently in 1964 and 1996, the project area has been inundated with flood waters of

the Willamette and Clackamas Rivers and Abernethy Creek. The flood plain is a major design constraint for future project phases. Phase One was constructed one foot above the 100-year flood event, but in the 1996 flood still experienced 18 inches of flooding within the building.

In the 1990 master plan, economic analysis indicated that the existing residential and non-tourist market potential was strong for a well-executed heritage facility. In comparing local and national attractions, the steady state attendance for the completed End of the Oregon Trail Interpretive Center is projected at 350,000 to 400,000 visitors.

In the planning of interpretive centers, the highest imperatives are visitor needs, expectations and enjoyment. Towards these goals and in the interest of producing a self-sufficient complex, several functions or components as areas of visitor interest were recommended (as follows).

MASTER PLAN COMPONENTS

The project components listed below are necessary to create the sense of historic place, provide a positive visitor experience, and attempt to establish a self-sustaining heritage institution. The combination or mix of these elements would create a heritage center that is unique in the United States.

In order to achieve the Master Plan goals and to create a truly unique education-recreation experience, the following plan elements are recommended for the End of the National Historic Oregon Trail Center:

1. *EOT Interpretive Center*:
   A visitor facility, center, or museum which employs an array of educational "delivery" devices or media to interpret the history of early Oregon and the Oregon Trail era. This is a "gated" operation with an admission fee.

2. *EOT Center, Phase I*:
   Existing 10,000 s.f. interpretive center that presents the history of the Oregon Trail and its terminus in Oregon City. The story is presented through a combination of mixed-media, audio-visual productions, minor static exhibits, and a museum store. Phase I was conceived as a transitional use until more substantial facilities are designed and constructed in future phases.

3. *Living History*:
   An outdoor and indoor educational experience in which interpreters or role players dressed in period clothing and performed typical daily activities, simulate this period of Oregon history. This operation is "gated", working in conjunction with the Interpretive Center education program.

4. *Outdoor Amphitheatre*:
A highly functional outdoor arena which is reserved for a range of historical outdoor dramas, pageants, concerts, performances, lectures, and other programs. This is a seasonal operation with a "gated" program.

5. *EOT Administration/ Education Facility*:
The eventual popularity and success of the End of the Oregon Trail Center and its educational programs will allow school groups, teachers, and adults to participate in heritage-related, hands-on activities as part of the educational mission of the Center. Conversion of existing facilities within the area could potentially provide an administrative headquarters, education center, and maintenance center for the End of the Oregon Trail Center. Another option is co-location with the Regional Visitor Center.

6. *Historic and Open Spaces*:
Landscape Restoration of a historic landscape that is representative of the period and the natural environment that was known to local Native people. Restoration would be accomplished through re-introduction of native plant communities and elimination of non-native plant species where appropriate. This provision supports the preceding plan element and encourages preservation and development of public open areas and greenways along the water edges and surrounding bluffs, to ensure continuity of public passage and enjoyment. Specific provision is made for restored wetlands and bottomlands that are integrated within the overall setting, most directly with the outdoor living history elements. Ethno-botany interpretive programs could examine the diverse array of food and medicinal plants used by the local tribes. Re-introduced plants would include native species such as the wapato that was a basic food source.

7. *Group Cookout*:
Area(s) for group rentals set aside for catering parties; reserved for activities such as company picnics. Cookout areas would be unique settings and seem remote or secluded. They could be accessible by covered wagon shuttles. This operation is also a revenue source.

8. *Emigrant Park*:
A community open space with historical markers that designate the End of the Oregon Trail as a national historic site. The open space could also commemorate the journey of overland emigrants with areas designated for quiet contemplation, relaxation, public ceremonial events, and civic gatherings.

9. *Pedestrian Environment*:
Appropriate scale of pedestrian spaces and the use of materials and street furniture in support the overall design theme of historic period.

10. *Regional Visitor Center*:
Visitors would receive information on area attractions and services in Oregon City, Clackamas County, and the State of Oregon.

11. *Programming and Special Events*:
A range of educational programs, workshops, seminars, and hands-on activities about Oregon frontier life along the Oregon Trail and in Oregon and the Pacific Northwest. The Education Department of the Center would create and direct these programs. Special programs would be developed for schools and tour groups. The space needs for this master plan element are not related to one specific building, but are distributed throughout the Center's complex.

12. *Trail Encampment*:
An educational program set in a more rugged remote area. Visitors would experience aspects of frontier life on the trail or at one of the remote historic homesteads in the area. The camp would allow a diverse group of individuals (with an emphasis on youths) to enlist for a journey back in time.

Research on comparable attractions (see Appendix B) suggests that facilities which have a good mix of these components, the commitment of the community, and which operate in a business-like manner can perform very well financially and not have a great dependence, if any, on public subsidy. Using the low-end projections of 350,000 visitors per year scenario for revenue structure, it is likely that 80% of the revenue structure could be provided by visitor spending, 15% by non-governmental support, and the remaining 5% from endowments, services in-kind, investment revenues and other like sources.

The preliminary estimate of the capital cost of the End of the Oregon Trail Center is $11,769,982. The Center can and should be designed so that an operating surplus would be generated to allow for new exhibits and to create an investment fund. The Trail Encampment, and Group Cookout components are expected to provide additional funds to support the Interpretive Center/Outdoor Living History. Thus, the facility and its components, set up wisely, could operate financially on very solid footing.

The community economic impact of the next phases of the project would include significant one-time construction-related jobs, visitor expenditures on-site and off-site, facility operation jobs, and the consequent ripple effect for the first round of spending.

The Oregon Tourism Commission states that in 1995, direct visitor spending reached $4.1 billion as people enjoyed the state's cultural and natural history sites

and facilities. Employment within the tourism has risen 33% since 1990 to 65,000 people in 1995. The visitor industry payroll now totals $831,200,000. Oregon welcomed more than 10.2 million out-of-state visitors in 1995 with in-state visitors totally 16.3 million. The End of the Oregon Trail Phase One opened in mid-1995, to realize 60,000 visitors and $600,000 in earned income.

Capital facility funding is expected to come from governmental sources including federal grants, federal sponsorship, state grants, and local/regional governmental funding; and private sources including private foundations, private grants, and donated services.

In summary, a rare opportunity exists in Oregon City to create an historical interpretive center and outdoor living history museum of national significance. The End of the Oregon Trail Center has the potential to not only teach resident Oregonians and visitors alike, but with the mix of components recommended, has the potential to be a self-sufficient entity that would provide substantial one-time and recurring economic benefits to the Oregon City greater community and the State of Oregon.

III. INTRODUCTION



Indians fishing on springboards with dip nets at Willamette Falls in Oregon City, 1841.

PLANNING MANDATE

The cultural heritage of Oregon City and Oregon predates the arrival of Euro-Americans. Native American activity at the "great falls" of the Willamette River at Oregon City has been traced back more than 3,000 years. In recent history, the Native American culture that developed and thrived in this area and throughout the Pacific Northwest, was forever altered with the arrival, occupation, and settlement by Euro-Americans. Today, Native people are still active at the Falls in gathering of eels.

Oregon City has played a central role in the more recent historical development of Oregon and the Pacific Northwest beginning with the early fur trading days of the Hudson's Bay Company and Chief Factor Dr. John McLoughlin, to Oregon's territorial status and eventual statehood in 1859. Oregon City was founded by McLoughlin in 1829.

The reports of "Eden" in the Willamette Valley along with McLoughlin's efforts at settlement and commerce ultimately focused national attention on Oregon City as a destination and a place of free land and new beginnings.

Beginning in the early 1840's, waves of optimistic emigrants endured hardship for five months over 2,000 miles of the Oregon Trail to reach Oregon City in pursuit their dreams. Approximately 300,000 emigrants began the trek, the largest overland migration in history. Ten percent did not survive the journey. Those who did settled in Oregon City and throughout the West.

As the original capitol of the Oregon Territory, Oregon City became the early focus of trade and commerce. In 1845, Oregon City became the first incorporated city west of the Missouri River. Oregon City, at the head of the Willamette Valley became a place of rapid change and historical consequence.

The End of the Oregon Trail Center will tell the dramatic story of emigrant experiences on the Oregon Trail and of frontier life in the Oregon Territory beginning in the 1840's. The Center will also interpret the story of the first people, the Native Americans, in the area of the Willamette River and their relationship with trappers, missionaries, and arriving emigrants, as well as the subsequent treaty and reservation period.

A rare opportunity exists in Oregon City to create an historical interpretive center and outdoor living history museum of national significance in the public consciousness. Mention of the Oregon Trail evokes a diversity of images in the public mind of restlessness, perseverance, tragedy, and opportunity.

The National Trail with its terminus at historic Oregon City is a singularly unique event in the settlement of the American West. As Oregon Trail historian Stephen Dow Beckham has aptly written, "The slender trace of its route, which traversed the continent served as a conduit for thousands of pioneers and a testing place for their ideas, institutions, and commitments."

The current planning mandate required revision and amendment of the 1990 *End of the*

Oregon Trail Master Plan as a refinement of the original facility program for establishing a significant presence in Oregon City in recognition of the world's largest overland migration that began more than 150 years ago. To that end, the Master Plan Consultant Team in collaboration with the Oregon Trail Foundation, Clackamas County, and the City of Oregon City was directed to develop a master plan update for the End of the Oregon Trail Center that would provide the theme, program, design, and implementation program for a world-class interpretive center and outdoor living history museum.

In relating the power and drama of the Oregon Trail story, historical accuracy and responsibility was identified as critical, if not mandatory. An agreed upon objective was not to over-simplify, romanticize or trivialize the story of the experience of the emigrants. These pioneers and events surrounding them should be portrayed accurately, depicting heroes as well as scoundrels, achievements as well as failures, with a clear eye to accuracy. The interpretive mandate calls for historical integrity, for an engaging, provocative presentation of the drama of Oregon history at the end of the Oregon Trail.

The overall thematic approach recognizes a conceptual duality: the final *Arrival* and the *New Beginning* for emigrants in Oregon City and the Oregon Territory. The End of the Oregon Trail Center should celebrate the national fervor of westward expansion, the adventure along the Oregon Trail, the long-awaited arrival at Oregon City on the Willamette River, and the eventual dispersal for many into the Willamette Valley. The focus and emphasis would center on the 18 year period of 1841-1859, i.e. from the recognized start of the mass movement of emigrants and to eventual Oregon statehood. Consideration will be given to succeeding decades with the impact of the transcontinental railroad era for expanded storyline opportunities.

An important story that should also be accurately and honestly represented is that of the first people to inhabit this region, the Native Americans, whose presence predated the arrival of white explorers by several thousand years. Additional thematic opportunities such as the early fur trade activities of the Hudson's Bay Company are more fully detailed in the body of this document.

PLANNING PROCESS

In response to the planning revisions mandate issued by Oregon Trail Foundation the inter-disciplinary Master Plan Consultant Team embarked upon a two-phased work plan: Phase I - Program Review; Phase II - Planning and Implementation.

PHASE I - PROGRAM REVIEW

Phase I planning work proceeded with a one-day Concept Review Workshop during which the 1990 project's goals, objectives, theme, story organization and preliminary program content were reviewed and analyzed, in view of events that have transpired in the past five years.

Workshop participants represented a diversity of disciplines, including historians, business leaders, local government representatives, among other interested people, thereby ensuring breadth and balance in viewpoints. The resultant workshop proceedings provided the basis for subsequent programming, planning, and design endeavors in Phase II.

Concurrent with concept review work were public opinion review, facility program analysis, site suitability analyses, and discussions of land ownership and consolidation within the End of the Oregon Trail district. Public involvement and consensus in the planning process was perceived as critical in developing a range of perspectives and a comprehensive understanding of the End of the Oregon Trail Center and its potential.

Public input was elicited from a variety of groups and utilized a range of techniques that included several focus groups, exit interviews, surveys, and public meetings. The master plan draft was circulated within the greater Oregon City community at numerous strategic locations to further encourage citizen involvement through review and comment. Public notices in local media were provided to alert citizens of times and locations for master plan draft review. The findings were incorporated in the body of this report as appropriate.

Public participation sessions were held for public review and comment on the Master Plan as it progressed and before it was completed. The planning process and work was also publicized frequently in the local and regional press.

PHASE II - PLANNING AND IMPLEMENTATION

The second phase work consisted of synthesizing conceptual solutions for physical facilities and operations from Phase I review and public comment. the End of the Oregon Trail steering committee input and physical design planning efforts were carried on concurrently to produce conceptual solutions for site and facilities design, with probable exhibit and construction cost, and an implementation program and schedule. A new planning and design boundary was established

that more clearly delineated the project study area than in the 1990 plan.

Conceptual design studies addressed transportation systems, access and parking, pedestrian circulation along with street amenities, landscape systems, visitor services, and accessibility for disabled visitors. Preliminary design guidelines were reviewed for the overall historic resource district of the End of the Oregon Trail Center. Specialized needs for performances of historic pageants, lectures, and concerts in an outdoor amphitheatre were also discussed.

Group activities for cookouts or trail encampments were also addressed in on-site and off-site locations. The Implementation Chapter of the report sets forth project phases and project budget.

MISSION STATEMENT

To preserve culture and educate the public about the people at the End of the Oregon Trail – their history, heritage and spirit.

GOALS & OBJECTIVES

In recognition of the Oregon Trail as a designated national historic resource and significant heritage tourism draw, the following major planning goals and objectives were identified as paramount for an historical education center at the End of the Oregon Trail.

GOALS:

- To establish national significance and presence.
- To realize historical responsibility, accuracy and authenticity.
- To create an engaging environment that is conducive to learning.
- To create and operate a self-sustaining cultural heritage facility.

OBJECTIVES:

- Optimize financial relationship between the public and private sectors for development and management.
- Coordinate programs with other interpretive centers along the entire Trail and within Oregon.
- Enhance the image and promote the revitalization of historic Oregon City.
- Consider a 10-15 year, implementation program to achieve a comprehensive development and critical mass.
- Mandate historical responsibility and accuracy in the overall historic center, its exhibits, and its programs.
- Create an interpretive center that engages the mind and the senses.
- Capitalize on outdoor living history as a compelling education medium.
- Create an appropriate physical design aesthetic that responds to the site and Oregon's architectural heritage.
- Develop site relationships with the Willamette River, Clackamas River, and Abernethy Creek and develop connections that unify the whole site.
- Dramatize the visitors' sense of arrival to a unique place of national importance.
- Promote and market the End of the Oregon Trail Center as a national historic resource and a heritage tourism destination.
- Establish national historic site designation.



Oregon City at Willamette Falls, 1867.

THE OREGON TRAIL IN OREGON

The National Park Service has designated the Oregon Trail as one of four national historic trails in the United States. In 1981, the Park Service identified two staffed visitor interpretive centers for the Oregon Trail - one in Independence, Missouri, the beginning of the Oregon Trail; the second in Oregon City, the terminus of the Trail and the place of new beginnings in Oregon history.

In 1988 the Governor's Oregon Trail Advisory Council prepared a report entitled, "Our Oregon Trail – A Report to the Governor." Within the report, the Council recommended the Oregon City terminus, a National Historic Site, as one of four interpretive centers along the Oregon Trail in Oregon. Each would tell a story that is unique to its location on and significance to the Oregon Trail. The Oregon Trail story would be coordinated among all four. The four centers would be sited along the Oregon Trail at Baker City, Pendleton, The Dalles, and Oregon City – the official end of the Oregon Trail. In June 1995, Phase One of the Oregon Trail opened its doors to a 10,000 sf facility that presents the End of the Oregon Trail story via multi-media presentations, interpretive exhibits, and living history.

Ultimately, the Oregon City facility will provide expanded facilities and exhibits that provide a comprehensive overview of the entire Oregon Trail for visitors, but will most importantly concentrate on people and events unique to Oregon City, the Oregon Trail's terminus.

The End of the Oregon Trail Center celebrates and interprets the overall adventure of the Oregon Trail, the alternative routes of the Columbia river and the last 110 miles of the Barlow Road, the emigrants' long-awaited arrival at Oregon City on the Willamette River, and their eventual dispersal into the Willamette Valley and points beyond. The interpretive approach in the Master Plan thus recognizes the conceptual duality of the final arrival and new beginning for emigrants in Oregon City and the Oregon Territory.

METROPOLITAN AND OREGON CITY CONTEXT

Oregon City, central to Oregon and Pacific Northwest history, is today a growing community of over 19,000 people. With its origin at the Falls of the Willamette River, Oregon City is approximately 12 miles up-river from Portland, the cultural and economic center of Oregon. Portland is the second most populated metropolitan region in the Pacific Northwest with over 1.5 million metro residents.

Oregon City along with neighboring cities of Gladstone and West Linn comprise the "Tri-Cities area" in southeast metropolitan Portland with a combined population of over 50,000 people. Oregon City is the county seat for Clackamas County, one of the most populous and rapidly growing counties in Oregon.

In the west coast context, Portland and Oregon City are located on Interstate 5 and Interstate 205 respectively, the major north-south freeway system reaching from southern California to Vancouver, B.C. Eastern sections of the Pacific Northwest region are connected to the metro area by Interstate 84. Portland International Airport serves the volume of visitors from Pacific Rim countries and the United States.

The End of the Oregon Trail site in Oregon City is highly accessible by private automobile, bus, public rail transit, bicycle, and to a limited extent, water transit. Interstate 205, which abuts the project area, is one of the most heavily traveled segments of the Interstate freeway system in Oregon with over 100,000 vehicles daily passing downtown Oregon City. State highway 99E, historically a major north-south transportation link, passes through downtown Oregon City. From the south, OR 213 connects with I-205 and defines the eastern edge to the site of the End of the Oregon Trail.

Flowing north, the Willamette River connects Oregon City and Portland. Instrumental in the economic development of Oregon, the Willamette River flows past numerous historic sites upriver and downriver from Oregon City. Water transit between Downtown Portland and Oregon City by steam-powered sternwheelers is a nostalgic means of transportation that is untapped and worth promoting.

Historically, the Willamette River and the Falls had been an attraction for Native Americans and Euro-Americans. The river with its abundance of salmon played a major role in Native American life and folklore. The potential power of the Falls for manufacturing was not lost to early settlers. Dr. John McLoughlin, Chief Factor of the British Hudson's Bay Company and others following, harnessed the Fall's water power to drive mill machinery. The Willamette River continued to play an important role in the developing commerce of early Oregon City and the Willamette Valley. River transportation by steamboat marked an important chapter in the economic development of Oregon.

In 1842, the area known today as Oregon City was platted and founded by Dr.

McLoughlin. Oregon City was first called Willamette Falls and renamed Oregon City by Dr. McLoughlin. With the creation of a new provisional government in 1843, Oregon City became the first seat of government and the first incorporated city west of the Missouri in 1845. Oregon City was also the continuous seat of government for Clackamas County since 1843. McLoughlin became an American citizen and was elected Mayor of Oregon City in 1851.

Oregon City is inherently rich in historical sites such as the McLoughlin House (National Historic Site), Oregon City Locks (National Historic Site), historic districts, and countless National Register properties. Oregon City is also associated with the Barlow Road, the final leg of the Oregon Trail and one of the best-preserved segments. The federal section of the Barlow Road, 40 miles east of Oregon City, is recognized as a unique cultural resource because it is well-preserved, and has designation on the National Register of Historic Places. It is administered by the Mt. Hood National Forest, U.S. Forest Service.

Oregon City is characterized geologically by three distinct basalt terraces or benches. The basalt terraces along the Willamette shaped the eventual development patterns of the emerging city as it grew to the north and onto the upper terraces. The lower terrace is the site of the original Oregon City plat by McLoughlin and the present downtown business district. This area abuts George Abernethy's donation land claim that contains the probable emigrant arrival site and the last hundred yards of the Oregon Trail.

As the early city prospered, the central business district grew to the limits of its natural physical boundaries. Today, the downtown business district remains constricted by the basalt terrace and the river. Downtown Oregon City is largely intact with a number of historic structures still remaining.

The north-end business district lies between the historic downtown core and the End of the Oregon Trail site. North-end Oregon City remains under-developed and has been identified by city officials as an area in need of restoration and economic revitalization. At this time, the City is embarking upon a regional center master plan that will address a range of planning issues affecting the north-end as well as the greater downtown Oregon City context.

Due to its industrial suburban nature and former use as a regional landfill, the End of the Oregon Trail project site is undistinguished. However, the site remains a relatively open and valuable expanse of former river bottom-land, cradled by wooded bluffs. Mt. Hood provides a distant backdrop. The site is also evocative of the earlier frontier landscape.

The site's primary significance lies in its historic association as the western terminus of the Oregon Trail, the main arrival area for emigrants and the homestead of Oregon's first provisional Governor, George Abernethy.

Today the site's extensive usage and largely reclaimed landfill space enables the capture of this historic association. The area

also contains End of the Oregon Trail Phase One, Clackamas County office and public works facilities, and a number of private business enterprises and residences. A few residences are of national register quality. The site is also in proximity of historic Oregon City's north-end business district, which has potential heritage tourism related businesses and visitor services.

SITE AREA: END OF THE OREGON TRAIL

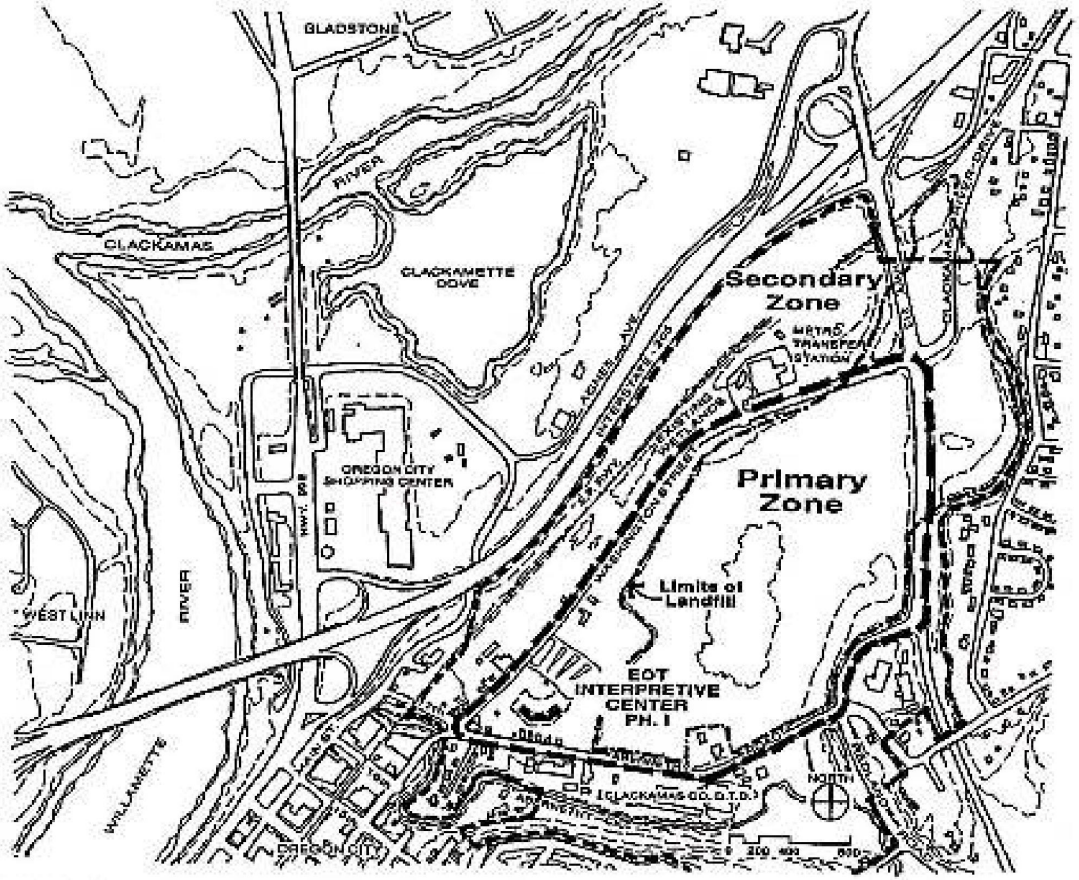
Physically, the greater site area is demarcated by the confluence of the Willamette and Clackamas Rivers and more immediately by the surrounding densely wooded bluffs at the eastern and southern edges. The southern boundary is established by Abernethy Creek located at the foot of the southern bluff slope. From its elevated location I-205 offers views of the End of the Oregon Trail Center site and Phase One facilities. However, the freeway also presents an undesirable acoustic side-effect from vehicular travel. The freeway also is one of the most heavily traveled interstate sections in western Oregon and provides an excellent opportunity for convenient access by both resident and tourist populations.

Clackamette Cove, a 30-acre inlet of quiet water off the Clackamas River and west of I-205, is also a significant project amenity. Referred to in 1990 Master Plan as Parker's Lagoon, the cove is a result of excavation/dredging work that provided an aggregate base for the adjacent Oregon City Shopping Center above the flood plain. A large portion of the cove site lies below the 100-year flood elevation. The flood of February 1996 inundated the section of Oregon City as well. Private interests are exploring development options for mixed-use facilities around the cove. If developed, the mixed-use complex should provide valuable visitor services for the End of the Oregon Trail Center.

Significant public open space and greenways are found along the edges of the Willamette and Clackamas Rivers, at Clackamette Park, and at the wooded bluffs, adjacent to Abernethy Creek.

The development of the greater site area for the End of the Oregon Trail is complicated by a patchwork of public and private ownership and scattered industrial and commercial uses. Those uses that remain in operation long term should be encouraged to upgrade their facilities and integrate into the heritage theme and program for the End of the Oregon Trail Center. Major existing uses likely to remain within the greater project area are the Oregon City Shopping Center, Val-U Inn Motel, Tri-Cities Sewage Treatment Plant, and the Metro Transfer Station.

Prior to settlement of Oregon City, the general area of the project site was bottomland or marsh and experienced periodic flooding. During the history of Oregon City and most recently in 1964 and 1996, the project area has been inundated with flood waters of the Willamette and Clackamas Rivers and Abernethy Creek. The flood plain is a major design constraint for future project phases. Phase One was constructed one foot above the 100-year flood event, but in the 1996 flood still experienced 18 inches of flooding within the building.



END OF THE OREGON TRAIL CENTER - GENERAL SITE PLAN

V. MASTER PLAN



Oregon City as seen from west bank of Willamette River, 1867.

THE OREGON TRAIL: INTERPRETIVE POTENTIAL

The transit of the Oregon Trail was an epic moment in human history. No one had ever seen anything quite like it before. Tens of thousands sold out, packed up, and headed to the "sundown diggings" of the West. Between the 1840's and the 1880's, the Oregon Trail pulsed as a great artery of travel across North America.

Those who traversed its 1,924 miles sensed they were engaged in something special. Hundreds who had never before put pen or pencil to paper kept daily journals of their travels and experiences. Several hundreds more sensed the experience was a watershed in their lives and subsequently wrote or dictated their memories of life on the trail.

ON THE EVE OF MANIFEST DESTINY

The United States was restless in the 1840's. In the preceding 60 years the young nation had handily expanded across the Appalachians and Alleghenies, reached the Mississippi, and moved right on toward the Great Plains. Americans had settled in Mexican Texas, shoved far up the Missouri in the Rocky Mountain fur trade, and explored the sources of the Great Lakes.

Persons of genius had "invented" the means of permitting further expansion. Fulton's steamboats, multiplied by the dozens, plied the western waters and enabled farmers to get their crops to market. The Erie Canal tied the Atlantic Coast to the Great Lakes interior. A burgeoning system of railroads promised to link the farthest frontier to eastern cities. Samuel F. B. Morse's telegraph confirmed that instantaneous communication was at hand.

The Panic of 1837 and subsequent economic dislocation fixed in the minds of thousands a determination to go somewhere else and start over. The lure of the Oregon Country caught the interest of many. They turned to the journals of Lewis and Clark, the report of William Slacum (who visited Oregon in 1837), the travel narratives of Samuel Parker (1836) and John Kirk Townsend (1839), and Washington Irving's *Astoria* (1836) and *The Adventures of Captain Bonneville* (1837).

Congress published in 1840 Robert Greenhow's *Memoir...on the Northwest Coast of North America* and in 1845 the exploration accounts of John C. Fremont and the U.S. Exploring Expedition. The latter reports contained scientific evidence of the fertility of the soil, mild climate, and bounty of the Pacific Northwest. Fremont's journal included detailed, strip maps showing the route of what was to become the Oregon Trail.

In short order the United States transacted its destiny. In 1845 it annexed Texas. In 1846 President James K. Polk forced resolution of the "Oregon Question." Great Britain withdrew to the 49th Parallel, leaving the Pacific Northwest open to American sovereignty and settlement. The United States then made war on Mexico and in the Treaty of Guadelupe-Hidalgo (1848) seized one-third of that nation's territory.

National designs and actions mirrored individual restlessness. America's pent-up energies to expand from sea to sea gained fulfillment. The stage was set for the great emigration.

STARTING OUT

The starting place was at the pioneer's doorstep. The "jumping-off" towns, however, gained fame as the places of beginning for the great journey. Starting in 1841, but more significantly in 1843, overland emigrants collected at Independence, St. Joseph, Kanesville, and other frontier communities.

They assembled in May, chafing for the end of spring rains and the chance to get moving. They formed wagon trains, elected officers, imposed military discipline, hired guides, and set out. Within days they split up, changed officers, hunkered up with like-minded individuals, and confronted the realities of a difficult, tedious journey of four to six months across the continent.

The Oregon Trail traversed some of North America's most diverse geography: Great Plains, Rocky Mountains, Snake Plateau, Blue Mountains, Columbia Plateau, and the Cascade Range. The route extended 1,924 miles across prairies, rivers, deserts, rocky ascents, sagebrush plains, forested mountains, and rolling tablelands.

The voices of the pioneers speak of the land, its beauties, and its dangers. Some viewed the "picturesque and sublime" aspects of nature through the eyes of Romanticism; others took a more common approach and fixed names of places and things from home on rocks, rivers, and passes.

Many carried a heavy load of "intellectual" baggage: they brought their prejudices about Indians, blacks, and ethnic minorities with them to Oregon. They engaged in heroic actions but were an imperfect people, sometimes selfish, quarrel-some, and bigoted.

So why did they risk their lives, families, and fortunes to make the journey to Oregon? The answer lies in the complex matters of "push" and "pull" factors. The promise of free land legislation in Congress, difficult economic conditions, and seeming population pressure persuaded many to get moving. The glowing accounts of Oregon, preaching of missionaries returned from duty in the region, letters from friends, and the prospects of adventure fed the "Oregon Fever."

Then came word of the discovery of gold in California and successive rushes to new places in the Pacific Northwest. Complex factors and simple decisions contributed to the movement of thousands over the Oregon Trail into the Oregon Territory, a place not yet a part of the United State until 1859.

THE BARLOW ROAD: THE LAST LEG

When emigrants reached the crest of the Blue Mountains they often glimpsed, far to the west, the final challenge of their long journey. The snow-capped peaks of the Cascades loomed on the far horizon. Bone-weary, their cattle jaded and wagons shaken almost to pieces, the pioneers pressed on across the Columbia Plateau.

As they neared The Dalles, they faced a momentous decision. Should they risk the dangerous water transit of the Columbia Gorge? Or should they follow the wilderness trace opened in 1845 by Samuel K. Barlow and Joel Palmer across the southern slopes of Mount Hood? Many had no choice—they lacked the financial resources to hire Indians or others to assist them in descending the river. Thousands headed toward Tygh Valley and began the ascent of the Cascades.

The Barlow Road proved a major test. After paying their toll, emigrants entered the forest for an arduous ascent to Barlow Pass. Their route led via the watershed of White River to Summit Meadows. They found mud, rocks, dark stands of timber, and chill nights. Sometimes the rains had begun and in the higher elevations they were beset with snow. The livestock bellowed for fodder and found none. The emigrants cut willow and other "brouse," threw away possessions and even their wagons, and coped with steep descents, swift rivers, and despair.

Some did not survive and died just short of their goal. Thousands more, however, endured and came down the western slopes of the Cascades to the end of the trail. They liked what they saw. Oregon was a place of promise.

ARRIVAL IN OREGON CITY

Founded as a milling site by Dr. John McLoughlin of the Hudson's Bay Company, Oregon City was both the end of the Oregon Trail and central to Oregon's history. It was, for a time, the metropolis of the Pacific Northwest. Oregon City was the site where emigrants secured needed supplies, searched for winter shelter, and fanned out across western Oregon to secure lands. The growing city became a point of commerce, industry, government, culture, and testing of old ways in a new land.

Oregon City served as the seat of the Oregon Country Provisional Government (1843-48), the seat of the Oregon Territorial Government (1848-52), the first seat of American Government in the Old Pacific Northwest, the site of the first Oregon Territory Legislative Assembly (1847), and the informal first capitol of the State of Oregon. Oregon City also was the publication site of the first newspaper on the West Coast (1846), initial location of the U.S. Army's Mounted Riflemen (1849), and location of churches, schools, lodges, and other cultural developments. Its mills produced flour, lumber, and jobs.

Oregon City possessed a unique location. It was the crossroads of pioneer Oregon. Those who entered the Willamette Valley passed through the town. Farmers who wanted to sell their crops and livestock came down the river or over the roads which converged on the community. Shippers pressed their vessels up the Willamette to provide a flow of manufactured goods from the East and the Orient to the retail shops. Oregon City craftsmen made tables, chairs, cupboards, tinware, and countless other essential articles and implements for everyday life. Seamstresses designed and sewed clothing, hats,

and bonnets. Women labored over hot stoves to produce meals in the community's boarding houses and hotels. The small community served as a hub of new settlement and institutional development.

THE FIRST OREGONIANS

The Oregon Trail pioneers found a land already tested and used by humans. For more than 12,000 years American Indians had resided in the Pacific Northwest. In quiet, gentle ways, they had used the land. Living with a subsistence economy, they hunted, fished, and gathered nature's free samples. Occasionally they left traces of their presence - an inscribed boulder, a midden of shells, bone, and fire-cracked rock, a stone cairn where a lonely adolescent had gone on a "spirit quest." They lived in harmony with nature and sought to understand her rhythms and ways.

The Willamette Falls served as a major meeting place for the Indians west of the Cascades. The fishery served as the primary attraction. The Clackamas and Clowewalla, bands of Chinookan-speakers, held the river below the Falls, while the Tualatin and Ahantchuyuk, bands of Takelman-Kalapuyan-speakers, resided above.

These Indians, residing in cedar and bark lodges, gathered along the river to catch salmon, sturgeon, and eels. They bartered hides, shells, foodstuffs, furs, and slaves. Their voices, recorded on wax cylinders early in the twentieth century, tell the old tales of the beginning of things and sing songs from times which changed, forever, with the advent of Euro-American settlement. The arrival of the Euro-American immigrants, following preceding European exploration and fur trading periods, resulted in appropriation of Indian ancestral lands, treaty-signing, relocation to reservations, and in some cases termination of Federal recognition status.

FANNING OUT

Almost as soon as they arrived, many pioneers resumed their journey. For some, Oregon City was the end of the trail. For tens of thousands more, it was the stopping point only until they found work, located a land claim, or found kinfolk or old neighbors.

As early as 1843 the emigrants had pressed up the Willamette to the southern margins of French Prairie. By 1845 they were taking claims in the mid-valley on the Santiam and Mary's rivers. By 1847 they had reached the head of the valley and filed for lands on the coast and middle forks of the Willamette and the Long Tom Rivers. In 1849 some spilled over the divide into the Umpqua Valley and in 1850 settlement commenced at the mouth of the Umpqua River.

The fanning out was a natural process. The Oregon Donation Land Act drove the process and dispersed the population. Congress promised in 1850 a half section (320) acres to each settler, including women. Married couples thus obtained a square mile if they had arrived in Oregon by the end of the year.

An amendment in 1853 extended the law, under less generous terms, to 1855. The Donation Land Act both served as a magnet to draw settlers in a period prior to the Homestead Act (1862) and a means of scattering settlement. The size of the claim was far more than any individual or couple could possibly work. The land law drove the dispersal. So did opportunity.

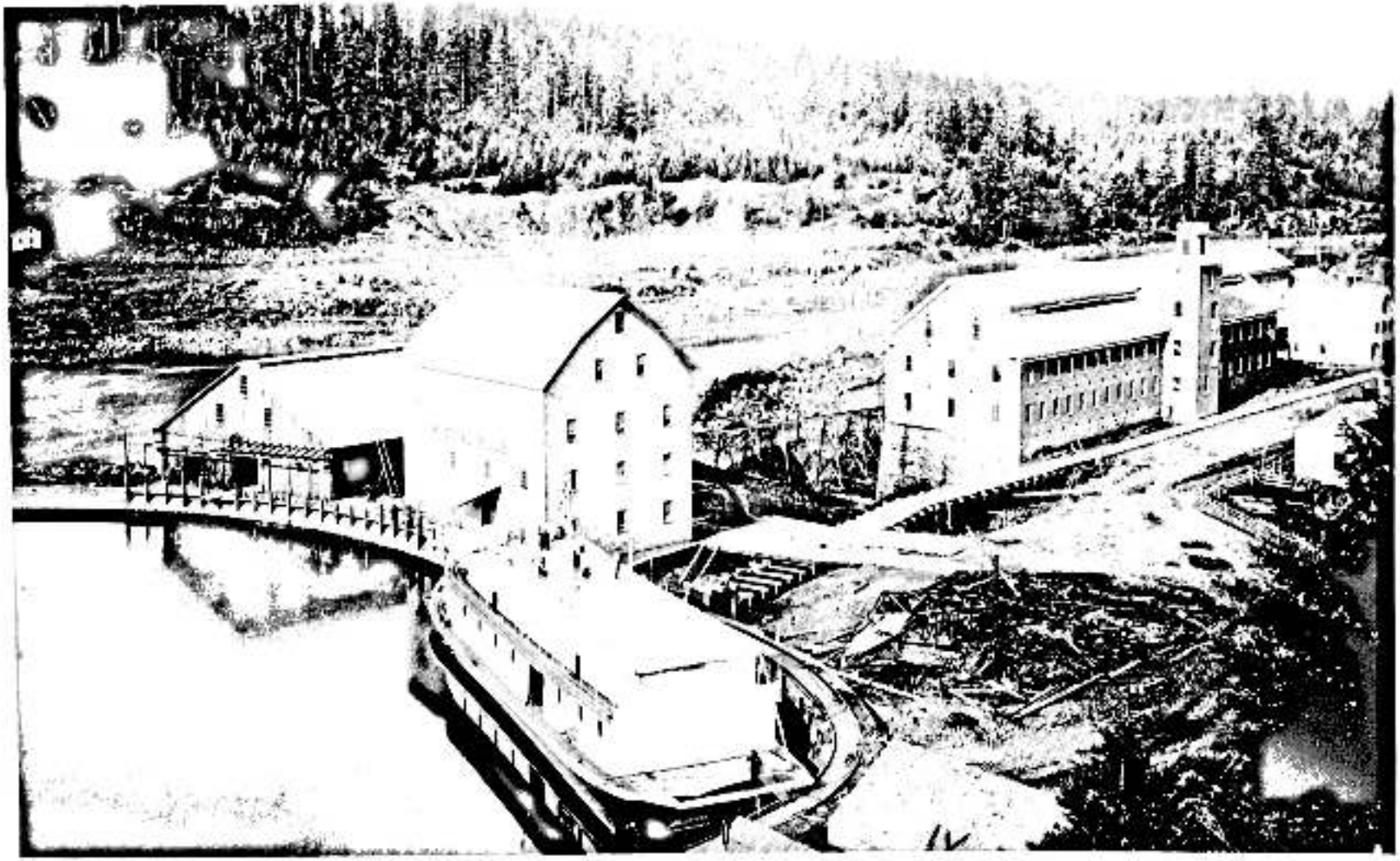
Overland pioneers grasped the potentials of Oregon. Some turned to logging and lumbering. They established water-powered mills, then steam sawmills, on the rivers. Those who knew the skills of shipbuilding established yards on the estuaries where they laid the hulls of a new generation of schooners and barkentines.

Some turned to mining, first in California, then in the new gold fields of the Pacific Northwest in the 1850's and the 1860's. Doctors, lawyers, and "drummers" gathered in the new towns, offering services and charging fees for their professional advice. Teachers taught school during the short summer term between planting and harvest.

OREGON: LAND OF PROMISE

The pioneers seemed driven. Lord Tennyson summed up that kind of motivation with his words "To strive, to seek, and not to yield." That determination moved a generation. Oregon gave freely and kept its promise. The Oregon Trail was a great "rite of passage," a measure of endurance and accomplishment. The end of the trail was a time of beginning. For many it was resuming that which was familiar. For others it was starting on a new endeavor. Few left, and those who did often came back. No place else looked quite so good. Oregon, somehow, had gotten into their blood.

CLACKAMAS COUNTY
FAMILY HISTORY SOCIETY, INC



Oregon City Flour and Woolen Mills, below the falls, 1867.

INTERPRETIVE APPROACH AND ORGANIZATION

The Master Plan for the End of the Oregon Trail is intended to address issues such as interpretive content, facility siting and design, and to further provide an appropriate design and operational context.

The heart of the End of the Oregon Trail is the powerful and compelling storyline - the lure of the Oregon country, how the pioneers traversed 2,000 miles of the western American continent in the mid-1800's, what it was like to arrive in Oregon City at the end of the Oregon Trail, how and where the pioneers settled and farmed in the Willamette country, and their relationship with the Native Americans of the region.

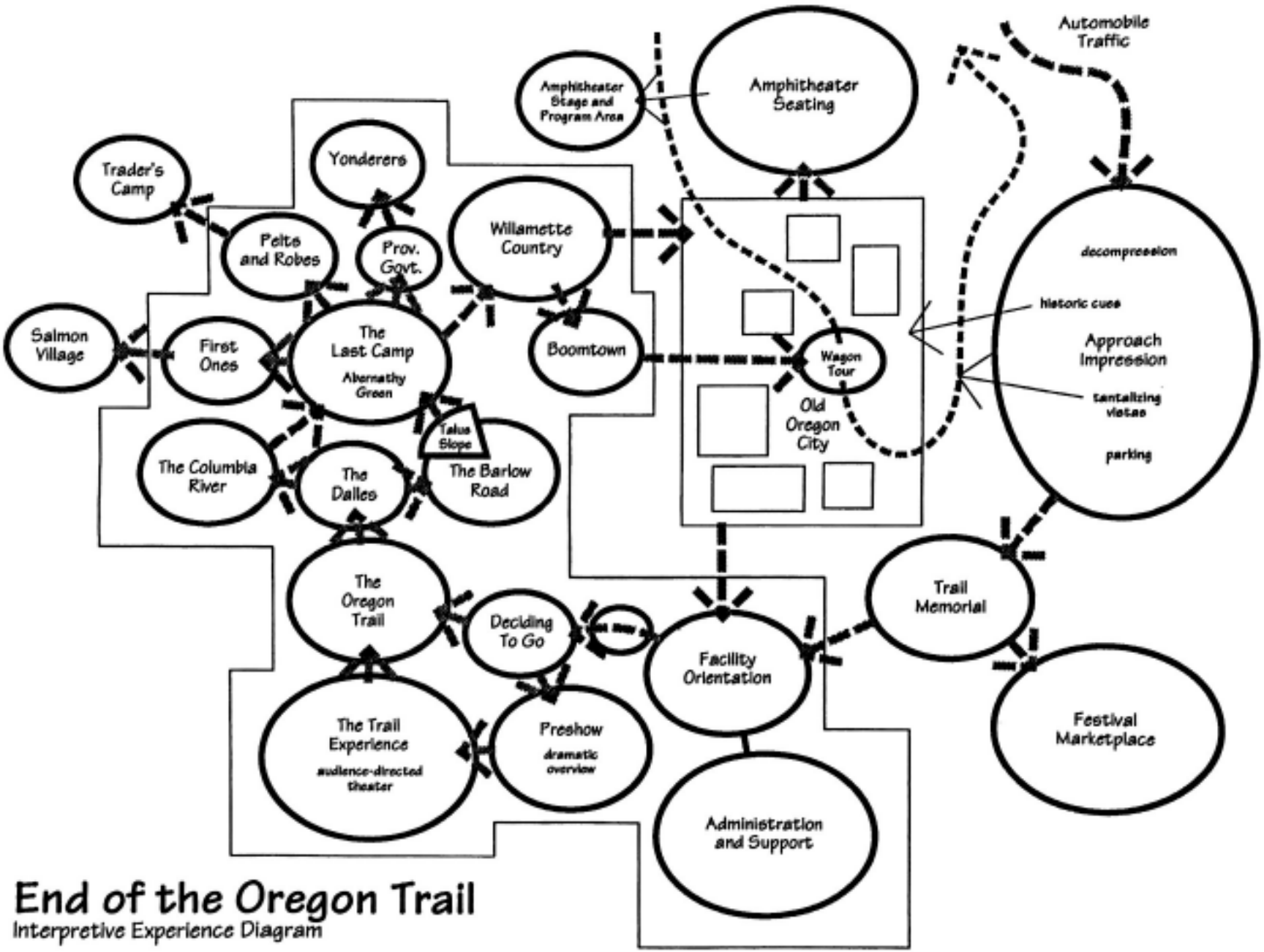
One of the highest imperatives in interpretive planning is to consider visitor needs, expectations, and enjoyment. The following narrative, an amalgam of experiences which visitors might encounter is based on that imperative, the established goals and objectives, and the wealth of ideas which have emerged through the master plan process.

Subsequent design phases and budget considerations will determine more concrete realization of the interpretive details. For now, this conceptual walk-through serves as an effort to express the historic significance of the Oregon Trail, early Oregon City, and the Willamette Valley through an engaging interpretive experience.

VISITOR APPROACH IMPRESSION

The End of the Oregon Trail interpretive experience begins off-site, on the major highways. Visitor anticipation will increase as glimpses of white-topped wagons and livestock trundling across the meadow are seen from adjacent highways. Visual experiences like the sight of campfire smoke from the outdoor living history area or the movement of wagon wheels will also add to the impression. The alluring landscape of the existing site already holds an immense attraction. This landscape will be enhanced by careful screening of intrusive contemporary buildings, slowly erasing cues of our contemporary world and replacing them with those of an earlier time.

After parking, visitors will find a feast of themed options within comfortable walking distance. They might explore the centrally located Emigrant Park, a commemorative community space dedicated to memory of the sturdy travelers who left their homes for new beginnings in the valley 150 years ago. Within the Park, commemorative plaques or markers engraved with emigrants' names will stir the imagination as visitors look for, and sometimes find, their own family name. From there, they can visit the Performance Amphitheatre, or the Interpretive Center with its indoor and outdoor program elements. All the facilities will evoke a delightful and realistic impression of mid-19th century vernacular architecture on an intimate human scale.



End of the Oregon Trail

Interpretive Experience Diagram

INDOOR ELEMENTS

Entering the Interpretive Center, a structure at once reminiscent of early Northwest vernacular wood architecture such as mills, barns, or homesteads, visitors orient themselves to the facility and the interpretive theme in the lobby. Thematic elements here might include sculptures, live interpreters, busking musicians, models, and trail and wagon scenes, as well as glimpses of Early Oregon City. Moving on to a smaller gathering area, visitors begin to immerse themselves in the story of the Oregon Trail with interpretation about the national context of mid-1800's and *Starting Out*.

Starting Out will give visitors two main keys to the exhibit: the Oregon Trail as a cultural conduit; and the importance of decision-making about and on the Oregon Trail, especially at trail's end. Like a "Venturi" phenomenon, thousands of people converged at "jumping off" towns, flowed along the trail compressing their lives, culture and dreams into a thin line of covered wagons, and poured it all out again into the Willamette Valley and points beyond.

As they considered individually the big step of emigration, they consulted with family members, neighbors, and others. When they arrived at a Missouri frontier town, they became a part of a larger company or wagon train where decision-making grew in complexity. Then, all along the trail, the emigrants faced tough choices which put in jeopardy their tight schedules, few possessions, and even their lives.

At the end of the trail the large groups broke up again, scattering into families and individuals who had to decide the larger question: What do we do now? Concepts such as tracing the flow of decision-making and allowing visitors to discover what happened when emigrants became settlers, will guide the interpretive set-up in *Starting Out*. Leaving this area, visitors might move to the central exhibits or opt to take in other educational offerings through a range of multi-media presentations.

Visitors might encounter an intriguing three-dimensional theme element running through the center of the exhibit area. A topographic scale model of the Oregon Trail, broken into physiographic sections, illustrates in three dimensions the length and hardships of the journey. Miniature wagons or light animation trace the emigrants' route from Missouri to Oregon City. By activating video touch screens visitors tune into wagon trains in that section and learn about life along the trail, such as creative wagon repair, loss of livestock, Indian encounters, and sudden death.

Quotes from emigrant journals provide an ample supply of harsh, humorous, and historic facts. Overhead banners might indicate miles passed and days out. The Oregon Trail overview provided by this topographic element will complement the theatre experience, and lead naturally to an exploration of another major decision point near the end of the Trail: *The Dalles Decision*.

Here visitors, much like their emigrant counterparts, choose to take either the *Barlow Road* or the *Columbia River* adventure. One idea for this area involves dynamic kinesthetics. In the *Columbia River* area, they see real water combined with a painted backdrop to represent an inlet along the bank. As the water slaps and sloshes, it might toss about a crumbling raft with a worn wagon on top. A riverboat scene could be depicted using real water, or perhaps a portage railroad diorama dominates the area.

As an alternative, budget and space permitting, a "dark ride" could be built to carry visitors along on rafts or in canoes. They would float past islands of light which illuminate Indians looking down from the bluffs of the Columbia Gorge or terrified emigrant travelers descending the rapids of the jagged rock outcrops.

If visitors choose the *Barlow Road*, they enter the Cascades Range, the world of treacherous hills, early snows, narrow tracks, and the heartstopping talus slope of Laurel Hill. Dimly lit and shadowy with dense forest, figures at the top of a talus slope appear to lower a wagon down a steep and rocky incline. With tree branches tied to the rear axle as a brake, the wagon, nearly empty and stripped down to the essentials, slowly descends the hill. As in the river exhibit, a "dark ride" could be established behind the slope. A combination of full-scale dioramas, dynamic interpretation rich in content would create an unforgettable experience.

The next, and largest section of the exhibit, is devoted to the prehistory and history of *Willamette Country*. Beginning with Abernethy Green, *The Last Camp* represents the End of the Oregon Trail in Oregon City. This entire exhibit area should exude a sense of arrival – and of new beginnings. A broad space flooded with green to symbolize the lush river bottomland, The *Last Camp* might also exhibit parked wagons, grazing livestock, and camp scenes.

Other interpretive elements might express the weariness, confusion and stubborn determination of the emigrants at the end of the trail. The idea of choosing and making hard decisions could be reinforced here, with focus more on family and individuals.

Through computer graphics, visitors would be invited to choose between a series of options and learn about the consequences of their choices. "Should we stay here in the Valley and start all over? Or should we move on to California? Go north above the Columbia? Follow the gold rumors back East?" "We've only got $3. What should we buy in town?" Having survived a 2,000 mile ordeal, the emigrants had to keep on moving - to found a homesite, build a home, find a job, or move on again. Computer graphic representations of early plat books might allow visitors to select a parcel of land and actually see what the area is like.

The physical exhibit flow from The Last Camp could emulate the historic dispersal from Oregon City. Topic areas called *Back on the Road* and *Stake Your Claim* form inviting cul-de-sacs in the Center for further exploration. Visitors can go further back in time and enter the world of The *First Ones*, the

American Indian tribes who lived near the sacred falls of the Willamette River. *Pelts and Robes* would look at the early days of fur trade and missionaries. Then in *Willamette Country*, exhibits would focus on the growth and settlement, including provisional government of the region.

The last exhibit area could become one of the primary elements of the entire End of the Oregon Trail Center: *Early Oregon*. Here visitors are transported to a 19th century Oregon City or a fictitious Willamette Valley town where streets of stores, churches, boarding houses, and other structures are represented. Part of the magic of *Early Oregon* would come from the way it physically dissolves into the streets of reconstructed exterior buildings behind it, the outdoor living history area, perhaps called *Oregon Town*, or other descriptive title.

OUTDOOR ELEMENTS

Articulated exterior walls in the Center would create indoor "pockets" for *Early Oregon* exhibits. These pockets would gradually extend the visitor experience into Old Town, as would carefully positioned window openings. This concept would apply to the other outdoor living history sites. Blending inside with outside creates a magical three-dimensional effect of depth as well as an impression of realism. The barrier between inside and outside would appear to dissolve. Visitors could enter a shop front, move out the back door, and find themselves "in another part of town" in an early Native American encampment, or on the Barlow Road.

By providing sheltered routes as a protection against inclement weather, these exterior areas can be integrated into the entire experience at any time. All the outdoor living history subject areas would come alive with historically dressed role players or interpreters, period accouterments, and activities to add to the historic flavor.

By weaving other interior and exterior elements together into an interlocking strand of exhibitry, the flow of sensory input and learning experience can be maintained. For instance *Salmon Village*, a Native American village as an exterior outdoor living history component with several cedar plank long houses, could complement the *First Ones'* indoor full-scale lodge and create an even larger, more embracing interpretation. *Pelts and Robes* would also work well as an indoor/outdoor experience with outdoor living history. An exterior setting with brigade trappers' lean-tos and tents would enliven and deepen the experience of the interior exhibits. The outdoor living history subject areas are more fully detailed in the section on Outdoor Living History.

The performance amphitheatre, interpretive center, indoor and outdoor elements, and surrounding historical landscape could all work together to create a seamless, integrated experience. The rear wall of the stage could be scaled and articulated to blend into the Center's articulated form and *Oregon Town* structures. A backdrop treated to depict an Oregon City scene could be lowered between

performances. As a programming area, the natural stage would not only provide a special sense of historic place, but also might serve as a "village green" or "town center" with daily programs and demonstrations.

A simple water element, engineered to flow through *Salmon Village* and along the trappers' camp, might wind its way around or along the stage. The open grass meadow rolling down toward the amphitheatre could also play a part in the performances by expanding the stage dimensions. After nightfall at auspicious moments, dramatic lighting might reveal wagons rolling down the slope, splashing through the creek, as well as highlight significant buildings in *Oregon Town*, symbolizing a goal attained.

DESIGN FRAMEWORK

The Oregon Trail experience with its terminus in Oregon City has been recognized as a unique event in U.S. History. The mandate of the Master Plan is to establish at the end of the Oregon Trail in Oregon City a national heritage center that would accurately interpret for the public this epic event. The Master Plan Project Area has historical significance as the arrival area for overland emigrants and as the terminus of the overland route of the Oregon Trail. Today, even with Phase One of the Center complete, the area is characterized by its discordant usage and lack of remaining, in-place, historical elements or features.

In response to the nature of the site and the mandate for historical interpretation, the Master Plan solution would attempt to immerse visitors into a very unique physical environment. The intent is to re-create a strong sense of historical place that is consistent with the importance of the End of the Oregon Trail. The sense of historical place would be achieved by developing a separate historic precinct into which visitors enter and become immersed in the world of the history of mid-1800's.

The sense of historic place would be realized through: judicious use of landscape species indigenous to the time and place; accurate re-creation or representation of building structures of the vernacular architecture of the original early Oregon City townsite; dynamic interpretive exhibits; and development of accurate outdoor living history programs. It would be reinforced by complementary standards of land use, protection, and design for the greater Master Plan site area.

OVERALL SITE DIRECTIVE

The Master Plan project area is demarcated by I-205, a major freeway, creating the west boundary of the site. In evaluation of the site attributes of the project area it was determined that the eastern district which is largely landfill should be allocated for open space and light-weight living history structures and the western portion be designated for major interpretive center architectural elements.

The Barlow Road, the most western segment of the Oregon Trail, terminated in the area known today as Abernethy Green, part of the original homesite of George Abernethy, the first provisional Governor of the Oregon Territory. Currently, the site is occupied by Phase One of the Center. Oregon City and Clackamas County development over time has radically altered the general site area. However, the area remains largely open space and could be restored in a manner reminiscent of an early Oregon landscape. The project site's major attribute resides in its historic locational integrity as the End of the National Historic Oregon Trail.

Site development for the End of the Oregon Trail Center should be concentrated at the southern corner of the historic resources district. In 1990, the Kelly Field was chosen for facility development primarily because of

its historical significance. Existing public ownership, close proximity to north-end Oregon City, and significant acreage outside the landfill zone were other factors.

Future design phases must respond to the site within the 100-year flood plain. As of this writing, the flood plain is established at 45.0 feet. Given the events of the February 1996 flooding, it is crucial that the protection of future facilities from flooding become paramount. It is not unlikely that the flood plain will be adjusted significantly upward.

A major planning and design criterion has been to create "a sense of historic place," a historic enclave buffered from surrounding contemporary uses. Arriving tourists and residents should become aware of a very unique environment, significantly different from the one they have just left. This would be accomplished through visitor immersion into a significant "rural" landscape development, strategic siting of buildings, appropriately themed structures, and streetscape alterations and other site improvements.

INTERPRETIVE CENTER DESIGN CONSIDERATIONS

Facility design considerations for further development of outdoor and indoor project elements should be:

- Create an authentic sense of place. Create anticipation by allowing hints of what lies ahead. Allow glimpses or filtered views during the approach to give visitors a chance to slowing absorb the experience.

- Screen intrusive elements. Using existing trees and the Center's architectural mass and surface articulation, discordant features such as the industrial, residential and office buildings, and highway noise can be mitigated.

- Respond to the area's historicity by integrating project elements into a consistent and appropriate style. Explore ways of developing a strong, stylistic relationship between the Center, Amphitheatre, and Outdoor Living History sites. Forming such a physical and visual relationship will enfold visitors in a continuous experience.

- Consider all-weather pedestrian routes integrated into the historic fabric between interior and exterior elements.

- Make interpretive elements accessible to those handicapped by age, impairment, or development.

- Consider one-stop parking. Allowing easy access to all the site opportunities would obviously increase visitation to other area resources and help revitalize the area. School group and

tour bus drop-off points could have separate area for entry and processing.

- The open meadow and creek areas present recreational opportunities for tours, authentic wagon rides, cook-outs, and encampment scenes. Although visitors in the meadow should be screened from off-site elements, those approaching on the highway should be able to glimpse exciting fragments of many of the activities.

- Oxen- or mule-drawn wagons might provide an easy ride from parking areas, between remote sites, as well as a historic prelude for approaching visitors.

A primary objective of the End of the Oregon Trail Center is to create a positive educational-recreational experience for visitors, both tourists and residents, also inducing people to return. To ensure a positive visitor experience, it is imperative that one's visit be sequential, controlled and designed from the I-205 "gateway" exit to the Center's front door, and to the Center's interpretive exhibits and outdoor living history areas. Visitors should have an opportunity to decompress, i.e. to make the transition from the accelerated pace of freeway travel to a slower, more leisurely paced approach into the setting of the Center.

The most significant gateway or entrance experience would occur at the north end of Washington Street, as visitors leave OR 213. As visitors enter the historic district, they become immersed in the "historic landscape" through a variety of controlled glimpses into the site of covered wagons and oxen in the open meadow and of reconstructed outdoor living history areas or perhaps a territorial farm with its pioneer orchard, grain fields, and pastures.

To enhance the arrival experience, Washington Street would be realigned and redesigned to create a change to smaller scale and slower movement. The image and feel would be more rural and pastoral, as visitors move from contemporary freeway along a divided "rural" roadway within a woodland environment. Landscape species for the main historic enclave would be representative trees, shrubs, and grasses that would have originally been present in the mid 1800's. Landscape massing would be used to frame desirable views, screen unwanted views, and create an appropriate scale and texture.

Vehicular circulation and parking would be sited and designed for convenience and safety, thereby minimizing conflicts between movement of vehicles and pedestrians. A tree-lined surface parking lot would be sited in close proximity to the building entrance with surge or overflow parking on a grass "meadow" to the north. Parking would be provided for standard and compact automobiles, RV's, school buses and tour coaches. The physical components or functions of the all-season End of the Oregon Trail Center are situated within an enclave of indigenous vegetation simulating an

indigenous landscape. Pedestrian linkages are envisioned that connect the Center with historic downtown Oregon City, the Clackamette Cove precinct, and the rivers. Pedestrian movement would be encouraged among all the elements by means of appropriately landscaped walkways and path systems.

Opportunities for additional heritage facilities and programs at branch locations and along the Barlow Road corridor, at Clackamette Cove, and along the Clackamas and Willamette Rivers should be considered.

In the broad view, enhancement of public open space and greenway areas along river edges also needs to occur. Incompatible commercial operations should be relocated, additional public green space and parks should be introduced, and pedestrian pathway system should be expanded.

DESIGN IMPLICATIONS OF ATTENDANCE

Attendance was estimated in 1990 to potentially build to the level of 350,000-400,000 annual visitors level. It is reasonable to assume those visitation projections are achievable. The physical planning implications of this level of attendance are influenced by seasonality of attendance, design-day attendance levels and length of stay at the facility.

The peak monthly attendance at the End of the Oregon Trail was estimated to be approximately 20 percent of annual attendance and occur in July. Utilizing the 400,000 annual attendance value, the expected peak monthly attendance was estimated to be 80,000 visitors. The peak weekly attendance during this month was estimated to be approximately 18,000 visitors. It is judged that the peak daily attendance during a typical week in July would occur on a weekend day and was estimated to be approximately 4,000 visitors.

Not all of the design-day visitor population would be at the center at one time. The proportion of the day's attendance which would be there at one time depends on the arrival pattern throughout the day and the average length of stay at the Center. It is judged that the length of stay would be approximately two to three hours and that the peak in-grounds crowd would occur around 2 p.m. and represent approximately 40 percent of the day's attendance. Thus, some 1,600 visitors would be expected to be at the facility at one time. It is important to note this is the key design parameter and can be controlled by controlling the length of stay and the arrival pattern.

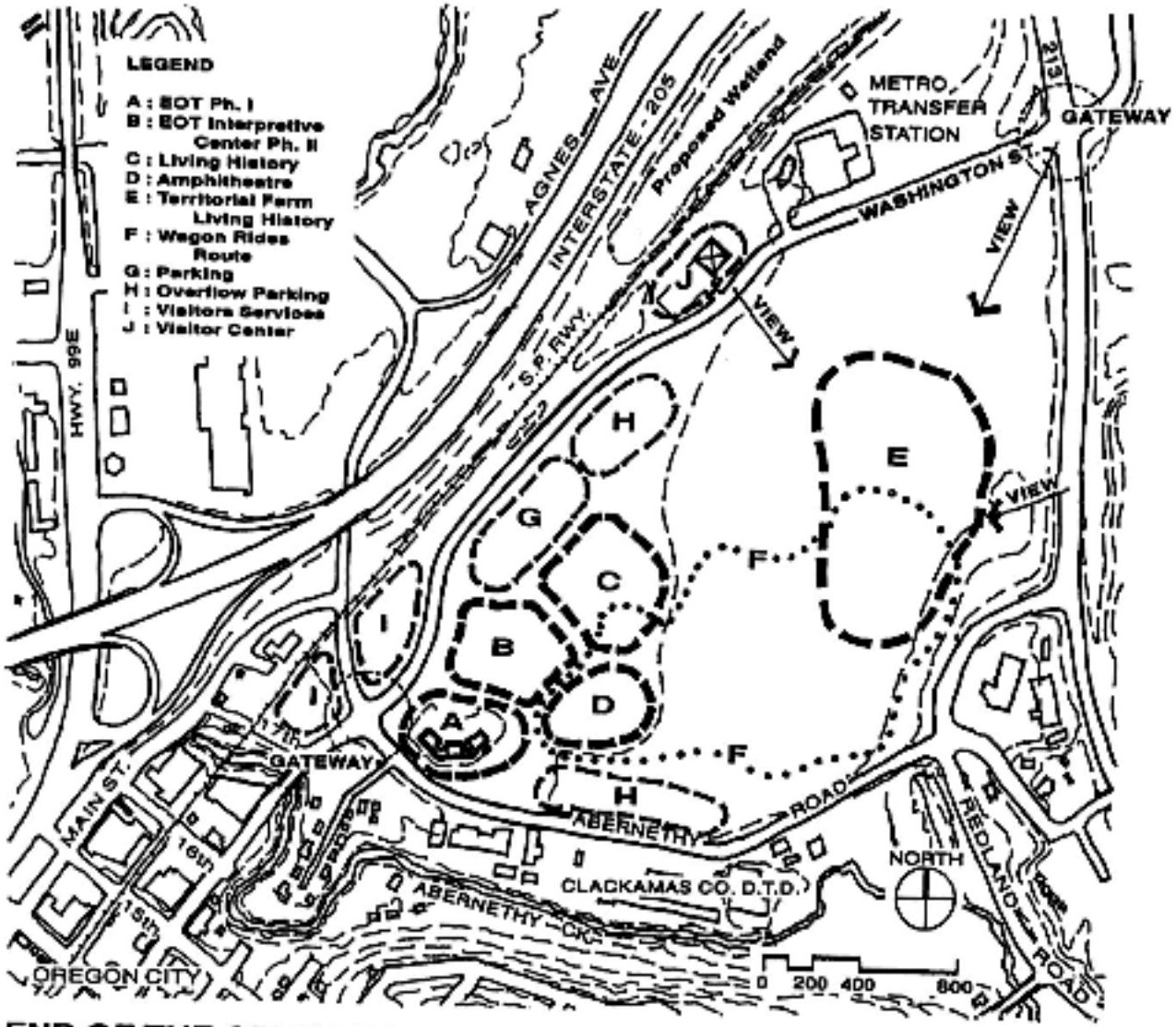
The minimum area required for the Center is a function of the indoor/outdoor presentation. Fortunately, peak crowds are expected to occur when the weather is favorable, thus permitting considerable outdoor activity, especially as concerns the outdoor living history aspect of the Center. Assuming a two-thirds/one-third split between indoor and outdoor occupancy, then on the order of 1,000 people or 30-40,000 s.f. of indoor space would be required and 600 people or 55,000 s.f. of outdoor space would be required. Based upon

comparable facilities these represent minimal space requirements for the nature and quality of the experience. Its presentation will control the actual space requirements. For example, the presentation of pastures or fields, wagon train trails and areas for special performances are large consumers of land. Thus, while the project might be designed to fit into 3-4 acres (excluding parking), the actual land area for all project elements required might be upwards of 15-20 acres. Parking will be required to accommodate on the order of 450 cars or roughly 4-4.5 acres of land.

The other project components such as Group Cookout areas (in reasonably close proximity to the Trail site) and Trail Encampment (at a remote location) can require upwards of 7 acres of land, excluding parking. The parking requirement will be a function of the scheduling of these events and activities.

One of the highest imperatives in interpretive planning is to consider visitor needs, expectations, and enjoyment. The following narrative and design considerations are based on that imperative as well as established goals and objectives, and the wealth of ideas which have emerged throughout the planning process. The educational facilities and programs of the End of the Oregon Trail Center, coupled with the vast array of historical offerings in Oregon City can produce the necessary "critical mass" that would enhance historic Oregon City's image, re-establish its national heritage and significance, and contribute to local economic revitalization.

The End of the Oregon Trail Center and Oregon City can provide visitors with a rich, rewarding educational and recreational experience that would encourage them to stay for extended periods and to return at another time.



END OF THE OREGON TRAIL CENTER - PROPOSED SITE PLAN

DESIGN COMPONENTS:

The Master Plan components listed below would create the necessary sense of historic place, provide for a positive visitor experience, and attempt to establish a self-sustaining institution. The combination or mix of these components would create a heritage center that is unique in the United States. In order to achieve the Master Plan goals and to create a truly unique education-recreation experience, the following components are recommended for the End of the Oregon Trail Center:

MASTER PLAN COMPONENTS

1. *EOT Interpretive Center*:
   A visitor facility, center, or museum which employs an array of educational "delivery" devices or media to interpret the history of early Oregon and the Oregon Trail era. This is a "gated" operation with an admission fee. This facility is sized at approximately 36,000 s.f., excluding Phase I below.

2. *EOT Center, Phase I*:
   Existing 10,000 s.f. interpretive center that presents the history of the Oregon Trail and its terminus in Oregon City. The story is presented through a combination of mixed-media, audio-visual productions, minor static exhibits, and a museum store. Phase I was conceived as a transitional use until more substantial facilities are designed and constructed in future phases.

3. *Living History*:
   An outdoor and indoor educational experience in which interpreters or role players dressed in period clothing and performed typical daily activities, simulate this period of Oregon history. This operation is "gated", working in conjunction with the Interpretive Center education program.

4. *Outdoor Amphitheatre*:
   A highly functional outdoor arena which is reserved for a range of historical outdoor dramas, pageants, concerts, performances, lectures, and other programs. This is a seasonal operation with a "gated" program.

5. *EOT Administration/ Education Facility*:
   The eventual popularity and success of the End of the Oregon Trail Center and its educational programs will allow school groups, teachers, and adults to participate in heritage-related, hands-on activities as part of the educational mission of the Center. Conversion of existing facilities within the area could potentially provide an administrative headquarters, education center, and maintenance center for the End of the

Oregon Trail Center. Administrative facilities might co-locate with the Regional Visitor Center.

6. *Historic Landscape and Open Spaces*:
Restoration of a historic landscape that is representative of the period and the natural environment. Restoration would be accomplished through introduction of native plant communities and elimination of non-native plant species where appropriate. This provision supports the preceding plan element and encourages preservation and development of public open areas and greenways along the water edges and surrounding bluffs, to ensure continuity of public passage and enjoyment. Specific provision is made for restored wetlands and bottomlands that are integrated within the overall setting, most directly with the outdoor living history elements. The area should be analyzed and engineered to address threat from future flooding.

7. *Group Cookout*:
Area(s) for group rentals set aside for catering parties; reserved for activities such as company picnics. Cookout areas would be unique settings and seem remote or secluded. They could be accessible by covered wagon shuttles. This operation is also a revenue source.

8. *Emigrant Park*:
The open space could commemorate the journey of overland emigrants with areas designated for quiet contemplation, relaxation, public ceremonial events, and civic gatherings. The open space will contain historical markers that designate the End of the Oregon Trail as a national historic site.

9. *Pedestrian Environment*:
Appropriate scale of pedestrian spaces and the use of materials and street furniture in support the overall design theme of historic period.

10. *Regional Visitor Center*:
Visitors would receive information on area attractions and services in Oregon City, Clackamas County, and the State of Oregon.

11. *Programming and Special Events*:
A range of educational programs, workshops, seminars, and hands-on activities about Oregon frontier life along the Oregon Trail and in Oregon and the Pacific Northwest. The Education Department of the Center would create and direct these programs. Special programs would be developed for schools and tour groups. The space needs for this master plan element are not related to one specific building, but are distributed throughout the Center's complex.

12. *Trail Encampment*:
An educational program set in a more rugged remote area. Visitors would experience aspects of frontier life on the trail or at one of the remote historic homesteads in the area. The camp would allow a diverse group of individuals (with an emphasis on youths) to enlist for a journey back in time.



Dr. John McLoughlin, (1784-1857) Founder of Oregon City.

INTERPRETIVE CENTER

As the "flagship" and central component of the End of the Oregon Trail complex, the Interpretive Center will have the overall responsibility to interpret events surrounding the emigrants' experience along the Oregon Trail, over the Barlow Road, their arrival in Oregon City, and their dispersal into other areas of the Oregon Territory. The Interpretive Center will also have the responsibility to collect, preserve, interpret, and exhibit historic artifacts necessary for the overall program.

The Interpretive Center would receive and welcome visitors, orient them to the historical facilities and programs on-site, and in addition, direct them to the network of historical resources within the immediate community, the region, and the State. Information would be available for visitors to organize their stay whether for the day or for the week.

The core of the Interpretive Center will be the "shows and exhibit areas" that will rely upon an array of media to interpret the subject areas, deliver the story's message, and ultimately educate the visitor. The success of educational experience will be influenced by creating compelling exhibits that invite, provoke, or motivate visitors to learn more.

Dynamic interpretive exhibits would employ a variety of two-dimensional and three-dimensional media. A range of interactive exhibits would invite the visitor to participate in learning about the lifeways of the indigenous Native Americans, the Oregon Trail experience, or life in early Oregon City. Multi-sensory exhibits would enhance the learning experience and make that experience an enjoyable and memorable one. Interpretive exhibit areas and outdoor living history areas will be mutually supportive and reinforce each area's "delivery."

The Interpretive Center would be created within the design idiom of Pacific Northwest regional architecture with extensive use of natural materials, i.e. wood and stone. The building structure itself would be educational as an expression of Oregon's architectural heritage in wood. The building structure would capitalize on the Northwest's rich tradition of heavy timber construction expressing traditional materials, structural systems, and manufacturing joinery techniques. The broad expanse of wood-shingled, steeply pitched roofs and exposed timber construction would recall the vernacular architecture of early Oregon City buildings and Willamette Valley barns, homesteads, and mill structures.

Other design considerations restricted to the Interpretive Center include the following:

- The use of a 19th century early Oregon City vernacular architecture fits the historic setting; also, larger interior spaces offers a larger visitor capacity.
- Although in some places window and door details might allude to historic architecture; in others sheer glass panes would make exterior views and transition to *Old Oregon Town* more convincing.

- Exhibitry should combine dramatic full-scale scenes with rich, historic content.
- High-tech media should be used carefully and should reinforce the visitor experience of history, not weaken it.
- Exhibitry should be interactive, multi-sensory, and appeal to visitors of all ages and abilities. Individuals as well as groups should be accommodated. Visitor requirements for a safe, comfortable, accessible experience should be addressed.
- Small programming and gathering areas should be provided throughout the Center.
- Pacing – the orchestration of the experience of interactive and contemplative exhibits – is a primary consideration. A mix of open, "high road" routes and smaller cul-de-sacs with more detailed interpretation should be maintained.

The Interpretive Center facilities are sited at the existing Phase One site on an elevated ground plane of structural fill above the 100-yr. flood level. Visitors arrive at a highly visible and protected building entrance. Visitors would reach or depart the entrance via a gently sloping foot path.

From the entrance/orientation area, internal circulation for visitors is primarily circular and sequential. General visitors would enter and leave the Interpretive Center at the same arrival point. A separate entrance/orientation would be provided for handling school and tour groups.

Visitors move through orientation, previewing and theatre spaces to extensive indoor exhibits and outdoor living history areas back to the point of beginning. At this location, the museum store will provide opportunities for purchasing gifts and souvenir items from a vast selection of quality merchandise before departure.

INTERPRETIVE CENTER SPACE ALLOCATION

The following major use categories summarize the area and space requirements for the Interpretive Center. A more detailed presentation of functions and associated space requirements is presented in the appendix.

1.	Public Spaces	9,940 S.F.
2.	Exhibit Galleries	15,000 S.F.
3.	Administrative Services	1,964 S.F.
4.	Technical Services	7,452 S.F.
5.	Support Spaces	1,612 S.F.
	Total Gross Area	35,968 S.F.

LIVING HISTORY PROGRAM

In conjunction with the Interpretive Center and in support of its overall theme and exhibitry, excellent living history opportunities exist for the End of the Oregon Trail Center. Living history is an outstanding medium for educating because of the immediacy of the experience and the opportunity for extended dialogue with interpreters. Living history has the potential to bring people in touch with the texture of life in the past, i.e. how the past actually looked, smelled, sounded, felt, and tasted.

In general, living history programs simulate life in another time. In living history interpretation, live performers or interpreters, dressed in historically accurate clothing and employing reproductions of historical implements, play out the daily and seasonal activities of life in a certain historical period.

Living history as it is presented at historical museums can be either first person (i.e. "I shear my sheep in this manner") or third person (i.e. "The pioneers would shear their sheep in this manner") interpretation.

However, living history programs are a serious undertaking for an institution and can be expensive to sustain and improve. Most credible and viable outdoor living history museum programs are developed over a long period and are continually monitored, evaluated, and modified as serious educational endeavors. Outdoor living history programs invariable require financial support or subsidies from other funding sources.

Most obvious advantages of living history program for the End of the Oregon Trail:

- generally very appealing to the visitor
- technique not duplicated nearby
- great way to learn/teach history
- artifacts can be reproductions
- interpreters provide security

Perceived disadvantages:

- demands constant staff training and evaluation
- expensive payroll
- high site maintenance costs
- weather sensitive (if out of doors)
- limiting in scope of interpreted time in history
- takes support staff, e.g. food, costumes, laundry, scheduler, researcher
- takes constant research: must be accurate and authentic
- little control of the final product
- local residents will come once, maybe twice, then tire of it
- some visitors don't "catch on" and are uncomfortable with it

Cautions in developing living history include:

- presentation must emphasize end of the Oregon trail.
- must choose a specific year or period to interpret

- interpreters are not closely scripted so they must be adept at improvisation as well as historic accuracy.
- accuracy is of the essence because this is real history
- living history is a major undertaking, not to be entered into lightly
- needs up-front capital and adequate preparation/construction time
- prepare a realistic pro-forma to avoid income/expenditure surprises
- needs critical mass to create ambiance and allow visitor immersion
- need to identify two or three, maximum, messages you want the visitor to leave with: they will only absorb so much and concentrate so long without becoming confused.

The actual education and research program for the living history areas would be directed by the Center's administration and shaped by the center's education /research department. The program's content must be historically accurate utilizing re-created or authentic artifacts and structures and authentic techniques.

Undoubtedly, part of a living history education program would entail the need for diligent curation of historical artifacts and facilities, but would also require extensive initial and sustained research and scholarship into the history of the Oregon Trail and early Oregon. An effective living history education program would require monitoring and renewal or re-adjustment for accuracy of interpretation for the visiting public. The living history program would provide excellent opportunities for co-operative programs with other heritage and educational institutions.

The commitment to a living history program also creates "behind-the-scenes" demands. Staff and facilities are needed for production, maintenance, and storage of authentic or recreated buildings, furnishings, clothing, tools, etc. For the End of the Oregon Trail Center, potential primary subject areas for historical simulation and interpretation would be: Salmon Village (Native American village), Fur Trappers Brigade Encampment, The Barlow Road, Oregon Town (early Oregon City), Pioneer Territorial Farm(s). These would be extensions of primary indoor interpretive elements, but would also function independently as well.

Other activity subjects such as sawmills and related timber harvesting activities or steamboat construction and operations on the Willamette River would undoubtedly be introduced as the Center develops and matures.

SALMON VILLAGE (NATIVE AMERICAN VILLAGE)

Both visual and textual materials document the long-vanished traditional villages of the Clackamas, Clowewalla, Tualatin, and Ahanchuyuk peoples who resided in the vicinity of Willamette Falls in the mid-nineteenth century. Samuel Parker provides a useful account on November 30,

1835, of a village on the west bank of the Willamette River below the Falls.

These diary entries and other narrative, archaeological data, and contemporary visuals would make feasible the design and reconstruction of a traditional village. Simulation of an American Indian village would be set along a gravel bar or terrace of a large re-created stream. Interiors of cedar dwelling might simulate a typical living condition along with accurate re-creations of furnishing, tools, clothing, etc. Through dialogue with Indian "informants" visitors could learn of life in pre-contact times with Euro-Americans. Visitors could learn about the physical and spiritual existence of these first people, their relationships, and in response to their environment in making shelter, tools, and clothing, and gathering food. The values and beliefs would be expressed through story-telling, explanations of myths, social structure, and family, among countless other subjects.

Potential structures could include:

- Plank-slab dwelling(s) - 4 or 5 structures.
- Canoe-way with several beached canoes and some under various stages of construction.
- Fish-drying racks and berry-drying areas.
- Re-created stream and riparian vegetation with re-circulated water system stocked with live fish.
- Ethnobotanical landscape of plants used for food, medicine, and shelter.

FUR TRAPPERS' BRIGADE ENCAMPMENT

Commencing in 1812 with the explorations and labors of Alexander Henry, the fur trappers and traders entered the Willamette Valley. Over the next 30 years the Pacific Fur Company (U.S.), the North West Company (Canada), and the Hudson's Bay company (Great Britain) sent employees to the area. These companies utilized the "brigade system" whereby expeditions of men with Indian wives, children, horses, trade goods, and supplies, would venture out for months or even a year or two to work in the wilderness.

It is feasible to consider simulating and interpreting a fur trappers' brigade encampment near the Indian village. Such a development would not duplicate structures or major elements of the storyline and exhibitry at Fort Vancouver. Rather, interpreters would provide a new perspective on the field operations of the fur trade and its important interface with the Indians of the Oregon country, 1810-50.

Potential structures could include:

- Three-sided (Adirondack) lean-to of small logs, tree bark and branches.
- Canvas tents.
- Temporary corral for horses and mules.

- Re-created beaver dam and pond, re-circulated water system, stocked with fish and perhaps beaver and river otters.

BARLOW ROAD

Barlow Road was the last overland segment of the Oregon Trail opened in the fall of 1846. Developed as an alternate route to the perilous water passage down the Columbia River, the Barlow Road became the choice of thousands of emigrants in the subsequent years. The Barlow road route had been carved out of the dense forests of the Cascades range by Samuel Barlow, his family, and others in the fall of 1845 and the spring and summer of 1846. For the next seventy-three years this route served travelers in Oregon. The Barlow Road, Oregon's first toll road, operated longer than any other route under private ownership.

In the fall of 1846 one of Barlow's sons-in-law began collecting fares at Barlow's Gate on Gate Creek at the foot of the eastern slope of the Cascades. An estimated 145 wagons and nearly 1,000 emigrants used the route that year. Barlow stated that 1,559 head of horses, mules, and cattle and 13 sheep had also used the route. The fare was $5 per wagon and 10 cents a head for livestock.

Re-creation of the overland route to Abernethy's homestead would be an added outdoor living history dimension. Following along simulated wagon wheel ruts, "families" of interpreters with their oxen and wagons, and livestock might re-enact the arrival and trail-life encampment scene of weary emigrants. Role players or interpreters would bring to life their experiences of the 5-6 month journey.

OREGON TOWN (EARLY OREGON CITY)

Overland emigrants found a bustling, muddy village hemmed in by basalt cliffs at the base of Willamette Falls in the 1840's and 1850's. Oregon Town might emulate the format Conner Prairie's "Prairie Town" as a fictional Oregon town that would accurately represent early life in the Oregon Territory.

Opportunity for historical simulation of local activities, structures, and goods include:

- Furniture makers (chairs, tables, bureaus).
- Pottery works (documented at Peoria and Buena Vista farther up the river in the 1850's).
- Printing shop (opened in 1846 by William G. Tvault to publish the *Oregon Spectator).*
- Sawmill (established by McLoughlin).
- Gristmill (established by George Abernethy).
- Mercantile store (established by Archibald McKinley).
- Tinsmithing.
- Blacksmithing.
- Weaving.
- Dressmaking/millinery shop.

- Cooper (barrels to basket-making).
- Land Claims office.
- Pharmacist, doctor, barber, etc.
- Homelife for women, children.

Research can confirm these and other enterprises, their original proprietor, and the range of wares, products, or services. The list will grow. The cast of early pioneer residents such as George Abernethy, Hiram Straight, Joe Meek, and Archibald McKinley should be researched for interpretive roles in Old Town.

PIONEER TERRITORIAL FARM

Commencing in 1829 retiring employees of the Hudson's Bay Company ascended the Willamette to establish subsistence farming on French Prairie. This settlement became the nucleus of agricultural development in the Pacific Northwest. By the mid-1840's a number of farmers had settled in the watershed of the Clackamas and Tualatin Rivers.

The prospects for developing a "territorial" farm, as it would have looked through the proclamation of territorial status in March, 1849, are strong. Early pioneers such as Hiram Straight and George Abernethy established farmsteads on their donation land claims. Straight and Abernethy held claims in the Project Area, just north of McLoughlin's claim for Oregon City.

Potential structures might include:

- Land Claim cabin (constructed of hewn logs).
- Clapboard house (constructed of milled lumber).
- Weaving house with hand loom and spinning wheels.
- Barn (constructed of logs).
- Stock buildings (for oxen, milk cows, hogs, sheep, goats, poultry, and other livestock).
- Smokehouse (for processing meat).
- Granary (double-walled grain storage facility).
- Blacksmith shed.
- Cooler (double-walled, semi-subterranean storage building).
- Corral and split-rail fences.

Special mid-1800 farm features might include:

- Pioneer orchard with grafted fruit stock from 1840's.
- Vegetable garden of the period.
- Grain fields.
- Pastures with representative livestock.

EMIGRANT PARK

Emigrant Park is conceived as an ungated public square or community greenspace that would acknowledge and commemorate the ordeal of those emigrants who attempted the epic journey, those who arrived in Oregon City, and those who perished during the trip. It would include and maintain the last few hundred yards of the original Oregon Trail corridor.

As a central element in the overall system of public space for the project area, Emigrant Park is programmed as a multi-use open space of undetermined size. It would serve not only as part of the approach/departure experience for visitors, but it also would serve as a quiet place for contemplation, relaxation, or programmed public events. The space would be landscaped in an informal manner incorporating native plant species of trees and shrubs that emigrants might have encountered on the western side of the Cascades range, and along Abernethy Creek.

Participation in the planning and funding of this park by descendants of pioneer families should be encouraged. Opportunities for interpretive sculpture and registry of emigrants might also be included.

REGIONAL VISITOR CENTER

Visitors to Oregon City and the region would receive information on area attractions and services. The visitor center would be conveniently accessible to both residents and tourists. Co-location with the End of the Oregon Trail Center contributes to the notion of a heritage complex and information "hub" for visitors. Since the proposed 10,000 s.f. center would most likely be built before Phase Two, it could provide space for the End of the Oregon Trail administrative staff as an interim condition in close proximity to the project site. Additional primary tenants for the Visitor Center are Chamber of Commerce and Clackamas County Tourism Development Council.

PROGRAMMING AND SPECIAL EVENTS

Although the activities addressed below would be accommodated in other components of the master plan, the information is included in support and explanation of the overall functioning and operation of the Center.

The End of the Oregon Trail Center and its future Education Department would have responsibility for creating and directing the educational agenda and its content. The Center might offer a wide range of educational programs, workshops, hands-on educational/recreational activities throughout the year. These programs and events might also be tied to the seasonal cycles of emigrant life.

The Education Department would very likely target education program activities to school curricula with in-depth tours, activities, and teacher workshops. Adults would be able to enroll in special programs and workshops. Special needs of tour groups would also be considered and programmed accordingly. The Education Department would be responsible for the content and implementation of the Trail Encampment program as well as the outdoor living history elements.

Programs should be tailored to needs of school groups. Students could participate in field study at the Center with program themes and content perhaps centered around "Family", "Work", and "Community Life" of the emigrants and Native Americans.

Program duration and content would be structured according to school grade levels. Special teacher workshops could also be available.

Special events throughout the year should be scheduled to sustain interest and attendance at the Center. These special events and activities would allow visitors to experience the daily life, work and community celebrations of emigrants. A special events calendar for the Center might be tied to seasonal cycles. Events and activities could vary in duration and could include craft demonstrations and hands-on activities.

Events or celebrations could include Dr. John McLoughlin's and Governor George Abernethy's birthdays, Independence Day festivities, and Women's History Day. A Pioneer Fun & Games Weekend might focus on historical games and play, story-telling, music and dance. Pioneer Foods Day might offer dishes and meals of the period, showing food preparatibn and preservation techniques. Ox and Wagon days could give visitors intimate experiences of the harsh realities of travel on the Oregon Trail through discussion and live demonstrations. A Pioneer Gardens program could talk about gardening techniques, flowers and shrubs of the mid-1800's. Emigrant Homes seminars and restoration workshops might discuss historic decoration styles, period paint colors, wallpaper designs, floor coverings, and interior furnishings.

The First People program could expand visitor awareness of the contributions of Native American culture. Programs might be offered about food preparation and preservation, canoe construction, clothing and decoration, along with religion, folklore, dance, songs, and story-telling.

Frontier Farmlife might offer seasonal demonstrations of plowing, planting and harvesting crops, and preserving foods. Learning techniques in barn construction could also prove to be fun and educational. Farmlife activities might include opportunities for cow-milking, cream separation, butter-churning as well as apple harvesting and cider-making.

General workshops and demonstrations might be offered in trades and crafts such as wool dyeing, weaving, blacksmithing, coopering, tinsmithing, or pottery-making.

Historically-oriented performances would be programmed either in the Amphitheatre or at selected sites in the outdoor living history areas. Performances could include outdoor historical dramas and musicals, period music, song, and dance by groups or individuals, historic recitations and orations, lectures by noted historians and educators, and staff talks by interpreters and education employees.

EOT ADMINISTRATION AND EDUCATION CENTERS

As an educational resource for the local community and residents of Oregon, the End of the Oregon Trail Center's administration and education operation would be positioned to provide an invaluable educational service in Oregon Trail history. With its eventual

success and popularity, the End of the Oregon Trail Center will undoubtedly continue to develop and improve its education programs and content as part of the Center's educational mission.

As the institution matures and develops enhanced programs and staffing, the Center's functional needs will require additional space to provide high quality Oregon Trail history-based education programs. Additional staff in the administration and education-research areas will become necessary within the long-term organizational structure for the overall Center. An adequately staffed and equipped educational department will continue to develop and direct education programs for public enjoyment and enlightenment.

The education-research operation would continue to monitor and improve Oregon Trail specialized research and education, provide out-reach education programs to area schools, and to provide "on-site" workshop spaces for school groups, teachers, and adults to participate in hands-on, heritage-related activities. These on-site programs conducted by the education department staff would be linked with educational-interpretive content at the main End of the Oregon Trail Center. Education programs and activities could be conceived and implemented in association with other heritage institutions in the county and region.

The education department in delivering programs and special events would use a range of classrooms, workshops or labs, appropriately furnished and equipped to teach specialized subject areas of frontier life.

For example, school groups from Oregon or Washington would arrive by bus fully prepared by teachers for an entire day's journey into the past. After a morning of orientation and hands-on activities in historic crafts and trades, students could, in the afternoon, experience outdoor living history areas and visit with costumed interpreters for further reinforcement of the morning's activities; or students might have the option to tour the Interpretive Center to gather factual data on the Oregon Trail and emigrants as a special follow-up assignment before returning to the Education Department and departing on their bus.

With the site of the End of the Oregon Trail in Oregon City, the education department might logically become a special research and repository facility for information and artifacts unique to the Oregon Trail. As an Oregon Trail research center, and extensive concentration of computer data as well as memorabilia would attract scholars, writers, and interested lay people to probe specific subject areas, events, or individuals associated with the overland migration, dispersal and settlement of the Pacific Northwest.

The education center would also contain spaces for maintaining and improving outdoor living history programs with specialized spaces for Oregon Trail research, living history interpreter instruction and debriefing, as well as costumes and replicated artifacts construction, maintenance and storage.

PERFORMANCE AMPHITHEATRE

The outdoor amphitheatre would accommodate a range of historically-based programs and performances throughout the day and into the evening during the summer season. Potential activities would include historical drama, historical music and dance of the period, as well as lectures and educational programs linked directly to the Interpretive Center.

A notable event at the Center will be the Oregon Trail Pageant and its popular musical drama productions. The popular Pageant has been relocated to the Phase One, End of the Oregon Trail Center mini-amphitheatre.

The outdoor performance amphitheatre would operate in conjunction with the other Center education programs and facilities. The amphitheatre would be gated, operating within the boundaries of the Center. An admission charge for daytime amphitheatre programs could possibly be either a one-time, separate fee or included as part of an overall admission ticket package. Evening events could be ticketed separately after the main Center has closed.

The amphitheatre as an uncovered, outdoor facility should be designed to seat 1,500-2,000 visitors. However, the market and capacity should be analyzed further through a separate research study. It would be sited in close proximity to the Interpretive Center/Outdoor Living History areas to accommodate ease of visitor movement to and from programs during daytime hours. Evening performances would be gated separately.

The audience seating area would sited on a sloping, landscaped earth embankment that is screened visually and acoustically from Abernethy Road and I-205 Freeway. For optimum sight-lines, spectator seating would be arranged roughly in a semi-circular geometry with structured concrete slab terrace stepping down the slope. Maximum distance from performer to spectator should be 135 feet for seeing the actor's facial expressions. Orientation of visitor seating should be due north. Consideration should be given to covered performance and seating areas during warm, but rainy days. The audience area should be furnished with seats with backs for visitor comfort.

From the seating area, vistas for spectators are framed to the east for select views of wagon trains approaching on the Barlow Road and the wagon encampment that could be incorporated into historical programs or performances. Vistas to the north and west would frame the re-created early Oregon City structures.

The stage house might be designed to resemble the vernacular architecture of early Oregon and to be visually and physically integral with the outdoor living history area of early Oregon City. The stage platform would be designed into the landform to allow oxen and covered wagon access from the re-created Barlow Road and the emigrant encampment areas for certain performances.

The stage configuration could be a thrust platform that would be removable for flexibility in productions of a variety of programs. Side stage and backstage spaces

would be programmed and sized to accommodate performers, live animals, scenery props, and other special requirements. Visitor services such as rest rooms and concessions would be conveniently located for patrons. Given the complexity of a specialized program with highly technical requirements, it is recommended that outdoor drama and lighting consultants be included for future facility design.

GROUP COOKOUT AREA

As an inconspicuous or low-profile component of the Center's program, the Group Cookout function would be part of the overall operation and an important source of additional revenue. A market exists for paid group functions or outings that are staged in unique or highly unusual settings such as the End of the Oregon Trail Center.

The Group Cookout operation would book group activities that might be accommodated within the interpretive center, outdoor living history areas or at secluded areas within the grounds of the greater End of the Oregon Trail Center area. The cook-out areas could be accessible by oxen and covered wagons or other historically-themed modes of travel.

Remote rural sites perhaps along the Barlow Road or at one of the historic homesteads are also alternative site possibilities. Opportunities of off-site location for group bookings should be investigated for acquisition and operation or as lease arrangements.

Group bookings also would have the added benefit of exposure and promotion of the Center and its programs to Group Cookout participants who would become future or repeat interpretive center visitors. The timing and extent of development for this function would be dependent upon future operational priorities of the Center.

TRAIL ENCAMPMENT

The Trail Encampment is an extended outdoor education-recreation program for visitors and is another source of revenue for the End of the Oregon Trail Center. As an added dimension to the historical education mission of the Center, the Trail Encampment program would be marketed to all age groups with primary focus on the school-age groups. The program would offer structured outdoor educational experiences lasting a few days to perhaps a week. Participants would be exposed to program content directed at recreation with an emphasis on historical education of possibly the mid- to late-1800's. Emphasis would be placed on experiencing pioneer life and times through representative activities of the period.

Participants might retrace the Barlow Road over the course of several days, or become involved in songs, dances, and games of this period, or learn techniques for making baskets and other goods. An expanded program might provide daily experiences at the Territorial Farm of shearing sheep, carding and spinning wool, or crafting wood for barrels, buckets, or other implements.

Opportunities also abound in learning Native American folkways and folklore, how the first people's daily lives were entwined with the natural forces of this particular region. Who were the first people in the valley? What were their daily activities? What games did they play? What were their beliefs? What did they wear? Participants might learn about netting and drying techniques for salmon, or about gathering and preserving other foods.

The Trail Encampment concept would be integral to other education programs and activities that would be developed and coordinated by the Center's education department. The Trail Encampment program should occur at remote historically-based sites (e.g. Foster's place at Eagle Creek or Rock Corral at Marmot on the Sandy River) that provide unique settings for this enjoyable, educational experience. This program could be implemented in partnership with those institutions.

HISTORIC LANDSCAPE, OPEN SPACE, AND GREENWAYS

Public park space and greenbelts are invaluable community amenities and are important elements in the design of the End of the Oregon Trail Center and for the project area's overall development. Preservation, protection, and enhancement of public greenways along all water edges and other site locations is a major objective. Public greenspace plays a silent but important role, and provides for a wide range of community activities and experiences.

In keeping with the objectives of the Willamette River Greenway Program, the maximization of greenways along water edges will provide valuable continuity of public use and enjoyment.

Parks and greenbelt improvements should be implemented and enhanced along the Willamette and Clackamas Rivers, Clackamette Cove and Abernethy Creek. The wetlands area west of the Metro Transfer Station should be restored and expanded.

Historic landscape, community open space, and greenbelts are also important design components in the Master Plan. Extensive landscaped areas at the perimeter of the End of the Oregon Trail Center provide necessary enclosure. This historic landscaped buffer would set the Center apart from incompatible off-site uses, and provide the necessary enclosure and isolation to re-create an historic place or enclave. Newly created woodlands and wetlands of indigenous vegetation within the Center's grounds and at its perimeter help heighten the sense of historical immersion by screening objectionable sights, framing and enhancing vistas, and enveloping visitors.

The backdrop of the wooded hillsides of the bluffs that cradle the End of the Oregon Trail Center site are very important and should be protected by a scenic or conservation easement and other controls. The woodlands are important visually and offer a setting for future hiking trails.

A system of greenways, restored historic landscapes, and water bodies would also attract a spectrum of interesting wildlife, thereby providing an added dimension to the visitor experience. This component should be integrated with the Oregon City Regional Center Master Plan process.

VI. IMPLEMENTATION



Oregon City downriver from Willamette Falls, 1857.

DEVELOPMENT SEQUENCE

The Master Plan for the End of the Oregon Trail provides for an overall directive in restoring/managing the greater site, defining content of the interpretive program (show and visitor experience), and establishing the feasibility and long term benefit to the community.

It is intended as the beginning of a program that should evolve as needs and priorities change. With consensus on what ought to happen, the focus of the Master Plan can shift to timing, funding, and how to best organize and marshal resources to put the project together.

TIMING

Subsequent project phases are entirely dependent on having necessary funds available for a design consultant team to proceed. In the best case funding scenario the project could be designed and built in approximately four years. It is possible to separately fund and phase the major project tasks identified below which would obviously extend the overall timeline. Phase I would operate concurrently with future construction. Obviously, coordination will be required to mitigate negative or undesirable effects of construction activity upon on-going activities of the Phase I facility.

A broad outline of the timeline, based on development of other, comparable facilities, is as follows:

- Architectural, programming history content research: 6 Months
- Design, construction documents (architecture, engineering, exhibits): 14 Months
- Construction, exhibit fabrication/show production, preliminary staffing: 24 Months

DEVELOPMENT BUDGET

The fundamental areas of expense over the next three to five years will be:

- Project Development and Management.
- Assembly, Preparation of the Site.
- Capital Facility Development.

The centerpiece of the facility development program will be the Interpretive Center. Given the nature and space requirements of the interpretive package, along with initial phasing priorities, an overall project budget is outlined below:

INTERPRETIVE CENTER
SUMMARY PROJECT BUDGET
(Note: Costs are exclusive of land costs)

1. Interpretive Center (See Appendix B)	$11,769,982
2. Amphitheatre (1,500 seats)	$2,500,000
3. Living History Farm (allowance)	$200,000
4. Living History Town (replicated 10 bldgs. @ 3,000 s.f. average)	$500,000
5. Living History Sites (allowance)	$300,000
- Native American Village	
- Fur Trappers Brigade Encampment	
6. General Site Development (allowance)	$250,000
Total	$15,519,982

FUNDING RESOURCES AND CONSIDERATIONS

The sources for project funding generally are not new. From time to time certain programs (mostly federal) are withdrawn and others created. The sources of capital improvement funding may be divided into governmental and private.

Governmental Sources:

- Federal Grants – grants from one or more programs of federal agencies; these grants can be related to the facility or its contents.
- Federal Sponsorship – the development of an exhibit (e.g., the National Park Service).
- State Grants – moneys from a state program (e.g., the state lottery program).
- Local Governmental Funding – through general obligation bonds, revenue bonds, special tax districts, in-kind services, and the like (e.g., use of the newly formed State of Oregon Housing, Educational and Cultural Facilities Authority).

Private Sources:

- Private Donation – from individuals, clubs, private non-profit organizations (e.g., an environmental organization), and for-profit companies.
- Private Grants – from private organizations such as corporations and private non-profit foundations, often in the form of "challenge" grants.
- Services – in lieu of cash, individuals and organizations may provide services and/or materials for the development of the attraction.

Operational assistance may be provided by many of the same sources as stated above. Corporate sponsorships have been effective means of involving the local business community and enabling a business to be identified as providing the support to maintain a given exhibit or educational program, for example. Further assistance should be possible as there are a myriad of means of developing support - these include, operating/research grants from foundations, corporate sponsorship of individual elements of the attraction, volunteer services, annual membership fees to a Friends group, in-kind services from governmental bodies and private organizations, and the like. Another excellent operating subsidy source might be to get a combination of a publishing or communications company to play a major role in the advertising and promotional responsibilities of the End of the Oregon Trail Center.

In most historical attractions, science centers, aquariums, museums and other non-profit attractions, there is a "mindset" that such attractions cannot, and even, should not generate operating surpluses. Thus, these facilities are generally operated in that

manner and there is neither an ability to retire any debt nor finance new capital improvement projects. The typical scenario is for a facility to be totally funded initially by "found" money (donations, grants, in-kind spending, sponsorships, etc.), for its operating expenses to be partially subsidized, and for any capital improvements to be funded through new found moneys. Often operating endowments are formed to uphold the operations of such projects.

Voter-approved bond levies for capital construction are another possible packaging of funds. It may be advantageous to pursue a regional bond measure through Metro, similar to the recently successful measures. It is possible that up to 75% of the total project cost might be raised by the region, matched by a 25% Federal share. This strategy might expedite the schedule of development, since funding might be acquired fairly quickly.

A combined funding approach that keeps several options open may make the most sense, at least for the time being, but this would require a broad coordination effort, if not an early pledge of local resources (e.g., hotel/motel moneys) to demonstrate the seriousness of the community toward the project. The obvious primary sources are Federal, State, Regional (Metro), and local corporate and individual giving.

KEYS TO SUCCESS

The history of the Oregon Trail is part of the epic of the development of the American West. Traversing the continent, its route served as a conduit for thousands of pioneers and a testing place for their institutions, ideas, and commitments. An End of the Oregon Trail Center at Oregon City has unique appeal and represents an opportunity of great potential value.

To distinguish the End of the Oregon Trail as a center which fully engages the visitor, receives the commitment of the community, and is ultimately successful, a number of conditions should be present and/or on-going:

- **Maintaining a Strong Theme and Authenticity:** The theme and its purity should be maintained as far as is practicable; thematic continuity throughout the End of the Oregon Trail Center should be offered, even though sub-themes may be employed. Emphasis should continue to be placed on providing visitor with authentic experiences to the extent possible.

- **Delivering a Memorable Experience to the Visitor:** Every exhibit should be visitor focused and challenged by asking "Is this going to yield a memorable experience?" Or, "How can we best deliver the message of this exhibit to the visitor?"

- **Maintaining a Marketing Plan:** A well-conceived, budgeted, and executed marketing plan should be sustained; this includes public relations, press relations, brochure creation and distribution, media buys (especially well-placed billboards), promotions (with local commercial outlets a chain of fast food stores, market chain, etc.), group sales (schools, companies, agencies, etc.), directional signage, and other marketing devices.

- **Achieving National Historic Landmark Status:** The End of the Oregon Trail is deserving of recognition as a national site in view of its uniqueness and significance in the settlement of the American West. A process should be established for investigating the potential for national status in view of its historic significance, but also for added stature and revenues that come with that stature and designation. At a minimum, consideration should be given to incorporation of the word "national" within the facility name in an appropriate manner.

- **Developing Financial Strategies:** Attractions such as the End of the Oregon Trail Center have difficulty in repaying significant debt from surplus operation revenue. Ideally, the funds for the initial capital improvements

should be "found" money, without a payback requirement. In so doing, any operating surplus can be utilized to provide new capital improvements from time to time.

- **Making a Unique Statement:** The Center should offer some feature or means of delivering a meaningful experience that stands above the competition.

- **Strengthening Identity:** Contributing to the uniqueness and distinctiveness of the End of the Trail by identifying a unique street address.

- **Developing a Signature Exhibit:** The Center, ideally, should have a signature exhibit (greatly assisting the marketing effort).

- **Focusing on a Large Number of "Moderate" Size and Impact Exhibits:** Aside from the "signature" exhibit (which need not necessarily be large), the Center should focus on moderate size exhibits rather than one or two mammoth exhibits and a multitude of small ones.

- **Offering Interface:** By developing "hands on" exhibits and outdoor living history programs, the visitor can interact with knowledgeable staff, thereby receiving interesting episodes and aspects of the Oregon Trail and settlement life that would be virtually impossible to communicate otherwise.

- **Providing Space for Evening Events:** The design should view the facility as a reception venue, including sit-down dining for multiple groups in an evening for revenue enhancement.

- **Providing Space(s) Which are Highly Programmatic:** Areas should be reserved for rotating exhibits, possibly including exhibits that might be created at the Center and then sent on "tour" to other museums for a fee; programmatic exhibits can provide new entertainment content to be marketed to the public. Again, these exhibits and programs would feature lifeways of immigrant and Native people.

- **Implementing Design Guidelines:** Institute design guidelines, standards, and technical review procedures for all development proposals (private as well as public); to provide quality control and monitoring of performance, especially within the "primary historic resource district" and greater project area. Since the quality of the physical environment will greatly impact the visitors experience and, in turn, the success of the Center, it is imperative that credible, consistent design guidelines be implemented. Adoption by Oregon City and Clackamas County is essential.

VII. APPENDIX

APPENDIX A. PROPOSED FACILITY PROGRAM

1. INTERPRETIVE CENTER SPACE ALLOCATION

a. SUMMARY

1)	PUBLIC SPACES	9,940	SF.
2)	EXHIBIT GALLERIES	15,000	SF.
3)	ADMINISTRATIVE SERVICES	1,964	SF.
4)	TECHNICAL SERVICES	7,452	SF.
5)	SUPPORT SPACES	1,612	SF.
	TOTAL GROSS AREA	35,968	SF.

b. PRELIMINARY SPACE ALLOCATION

1) PUBLIC SPACES

• Lobby: Reception, Orientation, Ticketing	800	SF.
• Coats, Lockers, Telephones	200	SF.
• Museum Store, Office, Stockroom	1,500	SF.
• Public Restrooms	500	SF.
• Assembly Area	200	SF.
• Multi-Use Auditorium (120 seats)	2,800	SF.
• Classroom/Discovery Room	1,000	SF.
• First-Aid Room	100	SF.
Sub Total Net Area	7,100	SF.
Circulation/Services @ 40%	2,840	SF.
Gross Area	9,940	SF.

2) EXHIBIT GALLERIES

• Permanent Exhibits	10,000	SF.
• Traveling/Photographic Exhibits	2,500	SF.
Sub Total Net Area	12,500	SF.
Circulation/Services @ 20%	2,500	SF.
Gross Area	15,000	SF.

3) ADMINISTRATIVE SERVICES

• Reception/Secretarial	200	SF.
• Director	175	SF.
• Public Relations Director	100	SF.
• Development Director	100	SF.
• Accounting/Bookkeeping	100	SF.
• Vault	50	SF.
• Cash Room	80	SF.
• Conference/Board Room	250	SF.
• Meeting Rooms (2 @ 100 sf)	200	SF.
• Workroom, Supply Storage	200	SF.
Sub Total Net Area	1,455	SF.
Circulation/Services @ 35%	509	SF.
Gross Area	1,964	SF.

4)	TECHNICAL SERVICES		
	• Curator of Collections	120	SF.
	• Curatorial Workspace	200	SF.
	• Collections Storage	1,000	SF.
	• Registrar/Archivist	100	SF.
	• Research Library/Archival Storage	500	SF.
	• Artifact Freezer Room	50	SF.
	• Exhibit Maintenance	100	SF.
	• Exhibit Preparation, Shop	1,000	SF.
	• Education Director	100	SF.
	• Education Offices	300	SF.
	• Costume Shop and Strorage (Living History)	500	SF.
	• Laundry (Living History)	100	SF.
	• Food Storage (Living History)	100	SF.
	• Womens Dressing/Lockers (Living History)	400	SF.
	• Mens Dressing/Lockers (Living History)	300	SF.
	• Photo and AV Technician	100	SF.
	• AV Equipment Room	150	SF.
	• Volunteers Coordinator	100	SF.
	• Volunteers Workroom	300	SF.
	• Meeting Rooms	200	SF.
	Sub Total Net Area	5,520	SF.
	Circulation/Services @ 35%	1,932	SF.
	Gross Area	7,452	SF.
5)	SUPPORT SERVICES		
	• Staff Breakroom	200	SF.
	• Staff Restrooms	120	SF.
	• Janitorial	120	SF.
	• Crate Storage/Holding	500	SF.
	• Shipping, Receiving Vestibule	300	SF.
	Sub Total Net Area	1,240	SF.
	Circulation/Services @ 30%	372	SF.
	Gross Area	1,612	SF.
	TOTAL INTERPRETIVE CENTER GROSS AREA	**35,968**	**SF.**

2. REGIONAL VISITOR CENTER SPACE ALLOCATION (CONCEPTUAL)

1) PUBLIC SERVICE AREA	3,000	SF.
2) VISITOR CENTER STAFF	450	SF.
3) EOT CENTER STAFF	900	SF.
4) CHAMBER OF COMMERCE	600	SF.
5) MEETING ROOM (50 People)	1,000	SF.
6) FOOD PREPARATION	200	SF.
7) SUPPORT AREAS	1,300	SF.
SUBTOTAL NET AREA	7,450	SF.
CIRCULATION @ 35%	2,608	SF.
TOTAL GROSS AREA	10,058	SF.

APPENDIX B. PROJECT BUDGET BREAKDOWN

END OF THE OREGON TRAIL INTERPRETIVE CENTER

A.	Interpretive Center	35,968 sf @ $145 sf =	$5,215,360		
B.	Indoor Exhibit	10,000 sf @ $275 sf =	$2,750,000		
C.	Fixed Equipment (3% of Line A)		$156,461		
D.	Movable Equipment, Furnishings (4% of Line A)		$208,614		
E.	Site Improvements, Parking (8% of Line A)		$417,229		
F.	Sub-Total Costs *			$8,747,664	
G.	Design & Construction Contingency (15% of Line F)			$1,312,150	
H.	Total Construction Budget				$10,059,814
I.	Design Consultants (16% of Line H)		$1,609,570		
J.	Client Administrative Costs (1% of Line H)			$100,598	
K.	TOTAL PROJECT BUDGET **				$11,769,982

* Includes General Contractor Overhead & Profit
** January 1996 Dollars

APPENDIX C. COMPARABLE ATTRACTIONS

Comparable attractions, both regional and national, were reviewed in order to illustrate current activity levels and to demonstrate the potential for an End of the Oregon Trail heritage attraction.

Regional facilities were selected primarily because of their focus on historical themes and, in some cases, because Outdoor Living History is part of the attraction's historical interpretation approach. The six regional historic attractions are:

- Fort Vancouver, Vancouver, WA
- Champoeg State Park, St. Paul, OR
- Aurora Colony Museum, Aurora, OR
- High Desert Museum, Bend, OR
- Oregon Historical Society, Portland, OR
- Museum at Warm Springs, OR

Additional perspective on regional demand patterns is provided by examining attractions which do not have a direct link to historical interpretation. The eight include:

- Multnomah Falls, Cascade Locks, OR
- World Forestry Center, Portland, OR
- Oregon Museum of Science and Industry (OMSI), Portland, OR
- Washington Park Zoo, Portland, OR
- Bonneville Dam, Cascade Locks, OR
- Oregon Shakespeare Festival, Ashland, OR
- Mt. St. Helens Visitor Center, Castle Rock, WA
- Oregon Maritime Museum, Astoria, OR

Historical sites or monuments, outdoor living history museums and other facilities that are considered to be of interest to the End of the Oregon Trail Center include:

- Barkerville Historic Provincial Park, Prince George, B.C.
- Bent's Old Fort National Historic Site, LaJunta, CO
- Cahokia Mounds, Collinsville, IL
- Conner Prairie, Noblesville, IN
- Fort Clatsop, Astoria, OR
- Fort Markley and Indian Village, Seneca, KS
- Homestead National Monument of America, Beatrice, NE
- Jefferson National Expansion Memorial, St. Louis, MO
- Jorvik Viking Center, York, England
- Mission Mill Museum, Salem, OR
- Old Aurora Colony Museum, Aurora, OR
- Old Sturbridge Village, Sturbridge, MA
- Plimouth Plantation, Plymouth, MA
- Sutter's Fort State Historic Park, Sacramento, CA
- Wyoming Pioneer Memorial Museum, Douglas WY

SECTION D: PHOTO CREDITS

Cover Photo:	Oregon State Capitol Rotunda Mural Painted by Frank Schwarz
Page 2	Clackamas Historical Society, Oregon City, Oregon
Page 6	Oregon Historical Society, Portland, Oregon ORHI 59756
Page 14	Oregon Historical Society, Portland, Oregon ORHI 46193
Page 22	Oregon Historical Society, Portland, Oregon ORHI 21591
Page 30	Oregon Historical Society, Portland, Oregon ORHI 21598
Page 36	Oregon Historical Society, Portland, Oregon ORHI 21602
Page 52	Oregon Historical Society, Portland, Oregon ORHI 248
Page 68	Oregon Historical Society, Portland, Oregon ORHI 21079

From:	James Nicita
To:	Pete Walter
Subject:	Planning Commission hearing on CP 17-02, DP 17-03, and NR 17- 04
Date:	Friday, September 01, 2017 8:28:33 AM
Attachments:	1996_EOTIC_SitePlan.pdf Sketch2.pdf MapsOfTheBarlowRoad.pdf PaloAltoStockFarmHorseBarn.pdf

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Hi Pete,

Please enter the below email and its attachments into the record of the above-referenced file.

Thanks,

Jim

---------- Forwarded message ----------
From: **James Nicita** <james.nicita@gmail.com>
Date: Thu, Aug 31, 2017 at 8:47 AM
Subject: Abernethy Place Hotel
To: Lloyd.Hill@hillarchitects.com
Cc: "Robinson, Michael C. (Perkins Coie)" <mrobinson@perkinscoie.com>

Mr. Hill:

Thank you for getting in touch. I appreciate the kindness. I am cc'ing this email to Mr. Robinson.

It is gratifying to know that a hotel is being planned for Oregon City on the particular site in question. Your client Evergreen Hospitality is to be commended for wanting to join the Oregon City community and make such a significant investment.

If done consistently with the applicable comprehensive plan and code provisions, the hotel could be a significant boost and impetus for the long-term and remarkable vision embodied by the Master Plan for End of the Oregon Trail Interpretive Center. The attached site plan excerpted from the 1996 Amendment, which I have entered into the Planning Commission record, shows the subject property as designated "Visitors Services," an appropriate location for a hotel.

Here are some ideas I hope you and your client might consider. I am including a very crude drawing as illustration. I don't have graphic skills, but I wanted to convey the basic concept. Perhaps you have already considered something similar in your various scenarios; since I am

not privy to those, apologies in advance if I am treading over old ground.

Regarding my comments from the first Planning Commission hearing, in order to meet OCMC 17.62.055.D.3, the building could be horizontal along Washington Street. This would allow the primary entrance to face Washington Street.

The Hackett House could serve as the focus of the primary entrance. It could be moved around the corner to front on Washington Street, elevated above flood level to protect it and give it prominence, and have it face the EOTIC to allow all the visitors to view it in its full grandeur. As you probably are aware, Oregon City moves houses like it's a sport. Some of the most significant houses in the city – the McLoughlin House, the Ermatinger House, the Barclay House, the Judge Cross House, to name a few – have been moved from their original sites.

Moving the Hackett House to face Washington Street and the EOTIC would allow it to become an element of the hotel's port-cochere, with a circular driveway surrounding the house, adding to its prominence . The rain roof of the port-cochere could connect the Hackett House to the hotel. Perhaps a walkway could run over it from the Hackett House to the hotel.

The attached excerpt from "Maps of the Barlow Road" illustrates the historic significance of the Hackett House. Facing Abernethy Green, it would become, from an urban design standpoint, the visual endpoint monument of the longest urban design axis in history, the Barlow Road.

The form of the hotel might respond to the design constraints imposed by the irregular angle of 17th St. and by the sanitary sewer easement. As I mentioned at the first Planning Commission hearing, the body of the hotel would be put in the rear as much as possible to take advantage of the part of the site that is above the floodplain. This would allow an architectural treatment where the hotel would form a frame providing focus on the central design element of the Hackett House. There would be a gradual climb of one story (or a brick and iron wall) on Washington Street, then two-story wings, and then a three-storey tower in the middle directly behind the Hackett House. The effect would ideally be the same as the new public library expansion framing but not overwhelming the historic Carnegie Library.

From this base concept variations might be possible. For example, perhaps the two wings could swing forward slightly, giving the three segments of the hotel a "wagon circle" effect" evoking the wagons across the street in the EOTIC. This would also add to the framing of the Hackett House.

Another possibility: the two wings could have extensions reaching further back towards the railroad tracks, which would likely be necessary to reach the target 100 rooms. One option might be to have the north and south wings in the form of blocks surrounding an inner courtyard, with only a wall on the side of the railroad tracks to block noise. Or, the railroad could have rooms looking into the courtyard on only one side of a corridor, with the corridor and a sound wall buffering train noise.

ODOT seems to suggest a 15-foot open space from the railroad ROW, which seems to provide for some room to maneuver. As far as noise, it doesn't seem that rooms closer to the tracks will really differ that much as far as noise exposure than those nearer to Washington Street, since the latter is just not that far from the tracks. In all seriousness, as one who lives directly above the same rail line and who has slept with ear plugs for 30 years, one simple solution to the train noise problem might be to provide ribbon-wrapped packages of pairs of earplugs to guests in the same manner as soap or shampoo is provided.

Regarding the sanitary sewer easement, I don't know the degree to which a floor of rooms could be constructed over the easement after one storey; I doubt it, because Tri Cities or WES maintenance trucks would likely have features that would require greater height. But above two stories I would hope they might allow a rain cover from the roof of the north wing to the central tower, or even a turret echoing the Hackett House turret off of the third storey of the central tower.

Another advantage of a horizontal design is the possibility for linkages. Horizontally, the north wing would likely reach closest to the furthest southern tip of the Amtrak platform. Passengers should be able to walk right off the platform over a footbridge into the hotel. The significant opportunity would be for the hotel to be the architectural linkage between the train station on the north and Abernethy Creek on the south; the south end of the hotel should really provide guests with a direct access to Abernethy Creek and the trail corridors planned just across the bridge, as demonstrated in the excerpt I am attaching from Oregon City's Trails Master Plan. I am not sure I understand Odor's pre-app comments requiring dedicated Amtrak parking in exchange for access to the platform; one would think that the purpose of rail transit is precisely to reduce dependence on the automobile. Nevertheless, hopefully there is still room for discussion with ODOT on the question of access directly from the hotel to the platform.

I wonder if one floor of podium parking beneath the hotel could both a) add to flood storage capacity, and b) provided added elevation above the base flood level for an extra level of safety.

Regarding OCMC 17.62.050.A(3)(a), "Eastlake" style as referenced in the National Register nomination for the Hackett House holds some real opportunity for a hotel design theme that would well-complement the Hackett House. Within Eastlake style there seems to be a

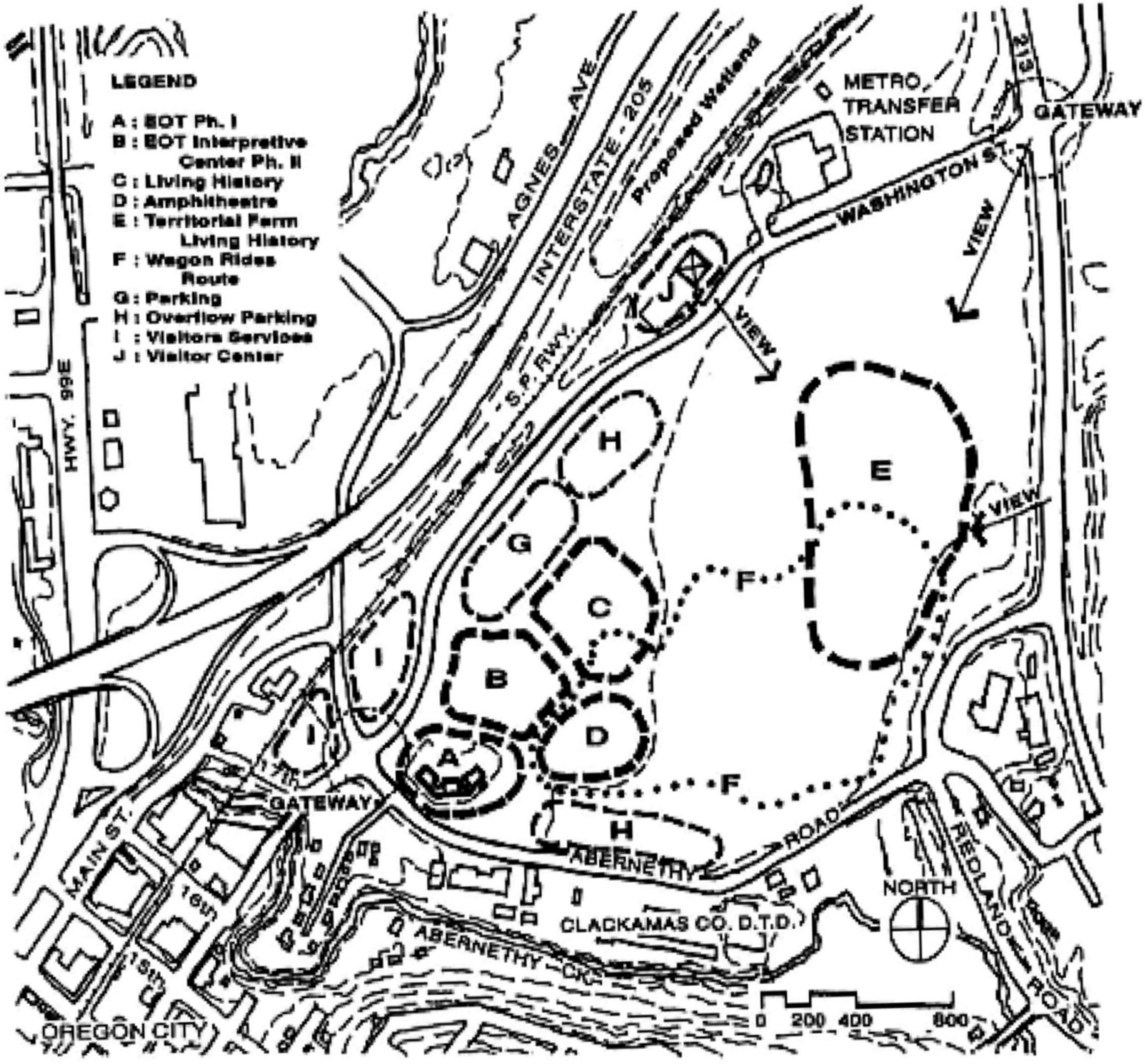
spectrum from the simplicity of the Palo Alto Stock Farm Horse Barn on the Stanford Campus to the perhaps excessively-ornate Carson House in Eureka, CA.(See attached.)

For the proposed hotel, tending far towards the simplicity side of the spectrum is probably appropriate, so as to not dominate or overwhelm the Hackett House, and so as to be affordable. Even with simplicity, some authentic craftsmanship could be achieved. As to a wood exterior, Bob's Red Mill along OR 224 might be an example of the "vibe" or "feel" that a simple wood Eastlake exterior could provide the hotel project, and be very consistent and complementary with the Hackett House, the EOTIC, and the EOTIC master plan.

Thank you very much for considering these ideas. Please pass along my thanks and regards to Mr. Patel.

James Nicita

Oregon City



END OF THE OREGON TRAIL CENTER - PROPOSED SITE PLAN

Victorian House Styles

During the 19th century there were many distinct styles of actual Victorian homes, ranging from seaside cottages to Italianate villas, Queen Anne cottages to romantic stone castles, brownstones, octagon houses, and mansard-roofed mansions. Victorian house styles were the product of an era rather than a specific idea about house design, resulting in a variety of both interior and exterior layouts and uses of material.





THE CARSON MANSION IN EUREKA, CA FEATURES SEVERAL ARCHITETURAL STYLES INCLUDING QUEEN ANNE, EASTLAKE, ITALIANATE, AND STICK ATTRIBUTES. [PHOTO CREDIT: PHOTOGRAPHS IN THE CAROL M. HIGHSMITH ARCHIVE, LIBRARY OF CONGRESS, PRINTS AND PHOTOGRAPHS DIVISION] (ARCHITECTURAL DRAWING)



SAMUEL KIRKBROUGH BARLOW
1845

MAPS OF THE

BARLOW ROAD

MT. HOOD TO OREGON CITY CLACKAMAS COUNTY OREGON

Westernmost Link
of the
Oregon National Historic Trail

NOVEMBER 1988

Clackamas County Planning &
Economic Development Division
902 Abernethy Road
Oregon City, Oregon 97045
503/655-8521

SPECIAL THANKS AND ACKNOWLEDGEMENTS

BARLOW ROAD WORKSHOP COMMITTEE
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Claire Belsher
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Sue Marvin
Jerry Grisham
Lamont Rumgay
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Michael Jones
Nadine Millin

CLACKAMAS COUNTY
BOARD OF COUNTY COMMISSIONERS
Ed Lindquist, Dale Harlan, Darlene Hooley

PROJECT TEAM
Ken Dauble, Jim Spillman, Hue Van, Dave Weisel

END OF THE OREGON TRAIL TASK FORCE
Dr. John Hakanson, Convener

GOVERNOR'S ADVISORY COUNCIL ON THE OREGON TRAIL
Steve Corey, Chairman

STATE OF OREGON HISTORIC PRESERVATION OFFICE
David Powers, III, Deputy Director

NATIONAL PARK SERVICE
U.S. DEPARTMENT OF INTERIOR
(Partial Funding Assistance)

FOREWARD

The Oregon Trail (and its westernmost segment, the Barlow Road) is a 2,000 mile monument to the human spirit. In the 60 odd years of its use, thousands of Americans headed west, first for fur, then as missionaries, and finally for land. Between 1841 and the turn of the century, over 300,000 Americans of all ages and walks of life sold most of their worldly possessions, piled what was left in a wagon and set off on an epic journey. The odyssey would take five months across some of the harshest and most hostile territory in the world. One in ten would fall victim to disease or injury along the way. Many were buried in the Trail itself to protect their graves from scavenging animals.

The Trail was first traveled by Robert Stewart following the fur trade on behalf of John Jacob Astor. Travel was limited until 1834, when Jason Lee, and then Marcus Whitman, came west to bring Christianity to the Indians. Reports from these missionaries greatly stimulated Eastern America's interest in the rich land awaiting them in Oregon, especially the Willamette Valley. The first organized party of emigrants set out in 1841 under the leadership of John Bidwell. They were the first in a trickle of emigrants that would swell to a flood in the years to come.

The Oregon Trail was of paramount importance to the settlement and development of the Pacific Northwest. The Trail directed the flow of westward expansion. In Oregon, its route (generally Interstate 84) has remained a principal course of east-west travel to the present day and provides a diverse range of terrain and historic interest, e.g., the rugged Blue Mountain crossover in northeastern Oregon; the dry plateau area between Pendleton and The Dalles, the perilous Cascade Mountains / Columbia Gorge section; and the geographic end of the Trail in Oregon City where settlement of the Willamette Valley began.

The U.S. Congress memorialized the vital part the Oregon Trail played in our Nation's history in 1978, when the trail was designated a National Historic Trail (National Trail System Act, P.L. 95-625, as amended). The intent of the public law was to designate the primary route of the Oregon Trail, extending full length between Independence, Missouri, and Oregon City, Oregon. This route is based upon travel which occurred during the period 1841-1848, and includes the 110-mile Barlow Road, developed in 1846 between The Dalles and Oregon City.

The purpose of this report is to accurately identify the sites and original alignment of Clackamas County's section of the Barlow Road. Following a brief narrative on the location and historical significance of the Barlow Road are maps illustrating the last 50 miles of this westernmost link of the Oregon Trail; from Oregon City eastward to Mt. Hood.

SAM BARLOW'S DREAM

Back in 1845, on the final stretch of an arduous trek across the Continent on the Oregon Trail, an impetuous dreamer lay awake in The Dalles mission one night, considering his prospects. So close to the end of his journey, Sam Barlow awaited a boat, now down-river on the Columbia with no scheduled return. With little money, less food, and no patience, Barlow and his party determined to bypass the river and forge a route by land to Oregon City. This they did, following an Indian trail around the southern slope of Mt. Hood — narrow, rough, hilly, treacherous, and for posterity's sake, unprecedented. After clearing trails, navigating hills of boulders, surviving the cold with precious little food, and with a touch of ingenuity, crossing a river by pole-vaulting over it, the party reached their journey's end. Barlow is reputed to have said, "God never made a mountain but what He provided a place for man to go over or around it."

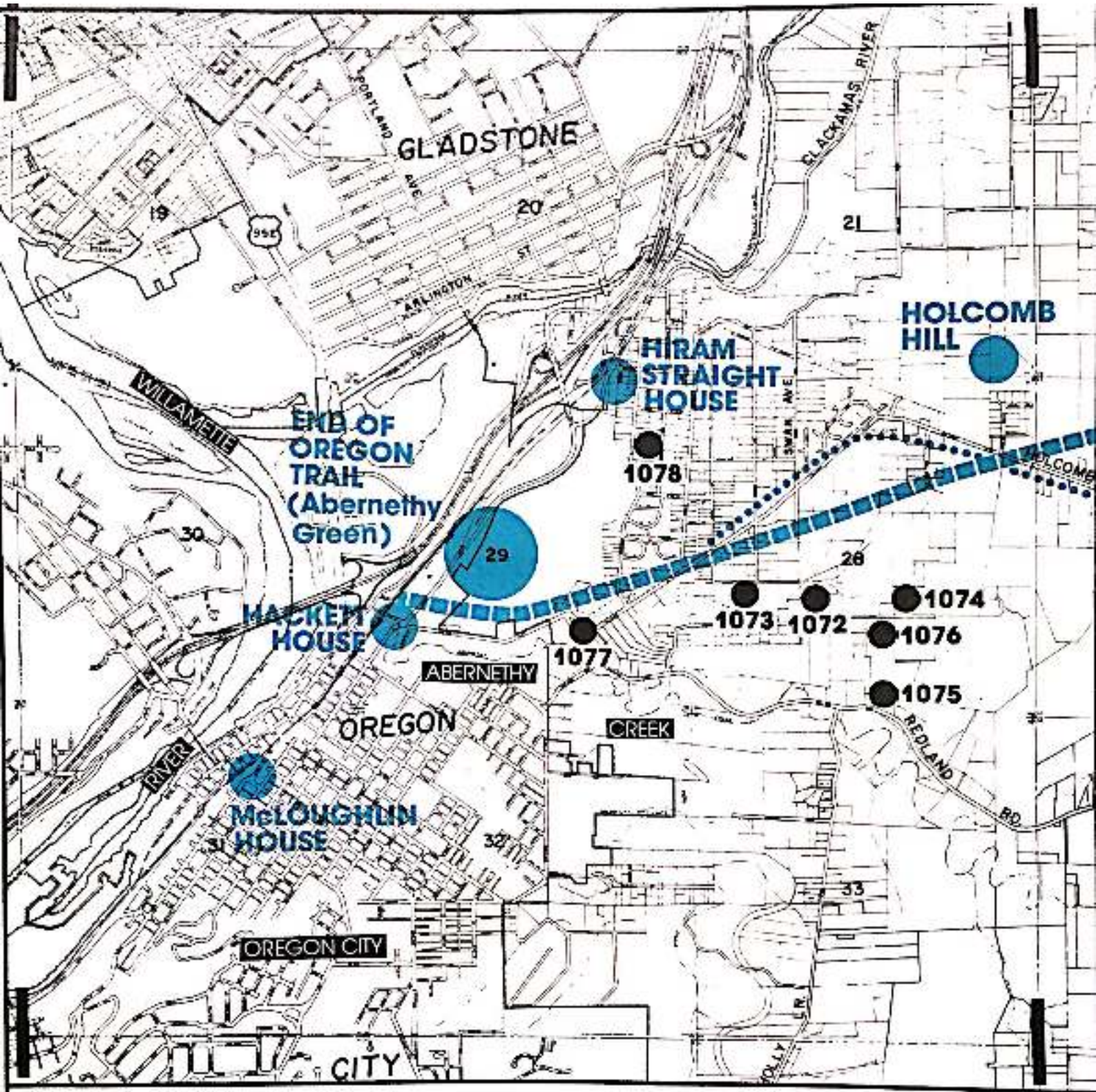
As the party settled in their new home for the winter of 1845, the imminent approach of future neighbors, now on their way to Oregon, fueled Sam Barlow's dream anew. The next year he set to work improving the rough, barely passable Mt. Hood trail into a road over which emigrants could take their wagons. He would provide them, at a toll of $5 per wagon, an overland alternative to the unreliable, hazardous, and expensive boat passage down the Columbia River. Given the enormity of the task, Barlow kept the road improvements to a minimum, without adherence to standards of comfort or safety. In spite of this, 152 wagons used the road in that same year, 1846. Steep, slippery and muddy paths strewn with boulders were navigable enough for Sam Barlow to call it a road, though many of his customers thought otherwise. Although emigrants used it in droves, Barlow lost money on the scheme through the continual refusal of travelers to pay for the privilege of belaying their wagons down the steeper grades with stout rope. Toll keeper Philip Foster recounts one man who "ran like a turkey" when asked to pay, and emigrant Philander Chase Davis remembers "Sam Barlow was the most unpopular man in Oregon as far as the emigrants of 1846 were concerned."

Though Barlow may have come to regret his efforts, history restores his road to honor and importance. The road was chartered by the provisional government in 1846, and turned over to the territory by Barlow in 1848, to be made into a free road. It soon fell into disrepair and became almost impassable, to be rechartered by Foster and Young and made a thriving enterprise by later owners. Thousands of settlers traveled the road for over 70 years. The railroad along the Columbia River was finished in 1882, and other alternative routes opening up the frontier, inevitably rendered the Barlow Road obsolete, but not forgotten. . . .

Most emigrants to Oregon, after 1845 and for the next 30 years or so, chose the Barlow Road over the treacherous river route of the Columbia Gorge. The tough going and actual geography of Sam Barlow's original route, has been recently described by Gregory Franzwa:

> ". . . From The Dalles they had to negotiate the Tygh Grade, which was bad enough. But there was something worse, the towering cone of Mt. Hood was before them and rarely out of their vision. They knew the road went through, but it was hard to imagine how it could circumnavigate that immense snow-capped peak.
>
> They were well into the south of the cone, however, before they hit the toll gate and turned to the west. They now could see the solution, but it still didn't seem easy. Sure enough, it wasn't. Barlow Pass was a grind but those who read the trail guides knew the worst was yet to come. That was Laurel Hill. Here was a declivity the like of which they had never seen before . . . down at the bottom of the first leg lay the wreckage of wagons which had slipped their restraints and had come crashing to the ledge in splinters. There were the remains of a few animals mixed in. But again, most made it safely with locked wheels, trailing a motley array of travelers trying to pull back on the ropes, digging in their heels, and sliding out of control down the chute.
>
> They came to the Zig Zag River — no one wondered how it got its name — after passing the western tollgate, and then the Sandy. There was one last nasty stretch, known as the Devil's Backbone, but the excitement at nearing the destination was such that no one particularly noticed it.
>
> They crossed the Clackamas River and were a half-day away. If it was late in the season they would have been met a few days earlier by the relief parties sent out from the settlements to help the newcomers. Most didn't need it. They needed tranquilizers. They rolled into little Oregon City in utter jubilation. The beasts which had survived the trek, and many did, were almost members of the family. Reunions with friends, neighbors and relatives who had come out in prior years were commonplace every fall, but always occasions of intense joy. Hospitality was extended to total strangers. The established citizens were almost as pleased to see the newcomers as the newcomers were to see them. Additional populations meant additional safety and added leverage too, in their demands on Congress for statehood and military assistance . . ."

From its earliest vision and inception, its usage by westbound Oregon Trail emigrants of the mid-1800s, the Barlow Road is a remarkable vestige of the frontier. It is an asset for Clackamas County and the State of Oregon, and an endowment of history that we can either begin to learn about and take care of, or waste.



BARLOW ROAD

ORIGINAL PRIMARY ROUTE

ALTERNATE ROUTE

HISTORIC INTEREST

1078

END OF OREGON TRAIL

N

FEET 0 500 1000

SCALE

INDEX SHEET # 1

noehill.com/santaclara/nat1985003325.asp 80% Search
Most Visited My Collection http://mail.google... Facebook

National Register of Historic Places in Santa Clara County



8 February 2011
(Click Photo to Zoom)

National Register #85003325
Palo Alto Stock Farm Horse Barn
AKA Stanford Red Barn
AKA Stanford Stables
Fremont Road
Stanford University
Built c.1878-1880

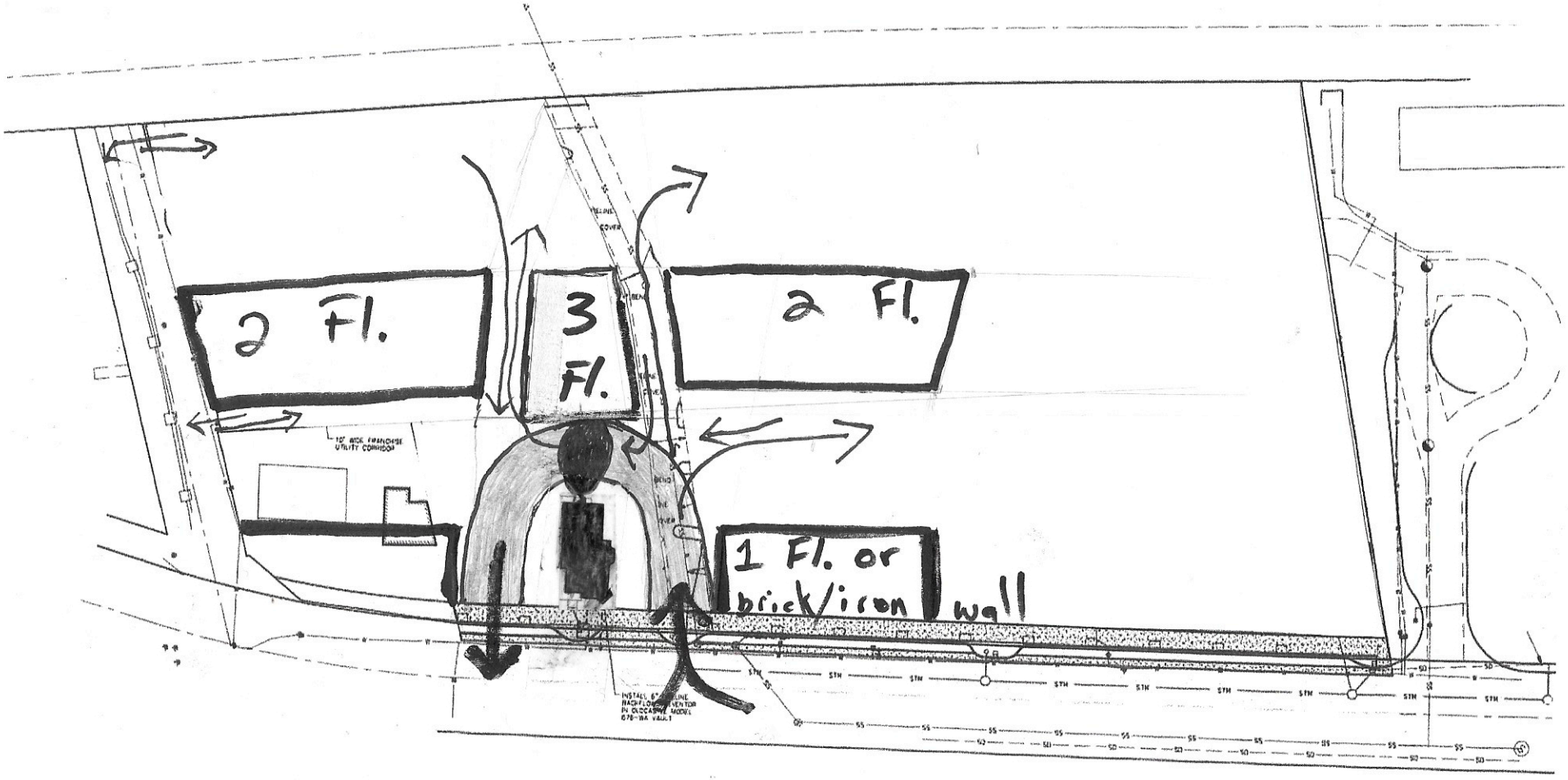
Stanford University's Red Barn is the most significant building remaining from the once world-famous Palo Alto Stock Farm, founded by Leland Stanford and operated from approximately 1878 until 1903.

The Red Barn was the Stock Farm's training stable. It is an excellent example of Stick-Eastlake styling of the period applied to a utilitarian structure.

The Red Barn is agriculturally and scientifically significant because it was at the functional center of the Stock Farm, a large scale biological laboratory in which Leland Stanford studied the anatomy and locomotion of horses and experimented with his progressive and controversial theories about breeding and training. Together with a carriage house and a similar, but slightly smaller colt barn nearby, the training stable was at the hub of the Stock Farm's activity.

Only the Red Barn training stable still stands.

Excerpted from the NRHP nomination form.


2 Fl.
3 Fl.
2 Fl.
1 Fl. or brick/iron wall


L36
WASHI
END
OF THE
TRAIL
ABERNETHY
L8
L9
L11

From:	James Nicita
To:	Pete Walter
Cc:	Jaime Reed; Kattie Riggs; Laura Terway
Subject:	Public Records Act Request -- Planning Commission hearing on CP 17-02, DP 17-03, and NR 17- 04
Date:	Thursday, August 31, 2017 3:15:31 PM
Attachments:	image001.png OC PRA Request 2017-08-31 at 2.42.08 PM.pdf OC PRA Request 2017-08-31 at 2.42.29 PM.pdf

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Pete,

Thank you for your email below. I would like to schedule an appointment for 8 am tomorrow, September 1, 2017, to review the Goal 5 material you reference below.

I have made an online PRA request per your request below. Attached please find the screen shots.

The End of the Trail Master Plan of 1990 is different from the End of the Oregon Trail District Guidelines, 1991. They are different documents published in different years

I don't believe I "indicated" that the fact that I "produced" the 1990 End of the Oregon Trail Master Plan was in any way "responsive" to my request for The End of the Oregon Trail District Guidelines, 1991.

My request for the End of the Oregon Trail District Guidelines, 1991 stands. I have repeated the request in my online request filed moments ago. Needless to say, I will certainly accept a paper copy of these guidelines. The PRA request just filed make no distinction between paper and digital.

Thanks, Pete. Please confirm via response my appointment time of 8 am tomorrow for the Goal 5 documents. Also, please add this email exchange between you and me, including the attachments, into the record of this proceeding.

James Nicita
Oregon City

On Fri, Aug 25, 2017 at 2:03 PM, Pete Walter <pwalter@orcity.org> wrote:

> Jim:
>
> This email responds to your requests of August 14 and 17 to include certain documents into the record for the Abernethy Place Hotel and Mixed Use Development Project – Planning Files CP-17-0002, DP-17-0003, and NR-17-0004.
>
> A request to include documents in the record is insufficient to place the documents before the decision-maker, a prerequisite for their inclusion in the record under OAR 661-010-0025(1)(b). Rhinert v. Umatilla County, 53 Or LUBA 601 (2006). In other words, you will need to submit the necessary documents for inclusion in the record, either by submitting

copies of the documents directly to staff for distribution to the decision-makers or directly to the Planning Commission during these proceedings.

Just to be clear, in addition to the letter and emails submitted, the following attachments are included in the record:

- A complete copy of the 2004 Comprehensive Plan
- Oregon City Downtown Community Plan, 1999
- Excerpts from Nicita v. City of Oregon City LUBA decision attached to August 14, 2017 letter plus the title page from the same case attached to August 17 email
- July 23, 2015 memo to the Clackamas County Board of County Commissioners from Clackamas River Water

The items that you have requested for inclusion that have not be added to the record include:

- A digital copy of The End of the Oregon Trail District Guidelines, 1991, as referenced in the Downtown Community Plan
- The Oregon City Goal 5 inventory and resource list as it applies to Abernethy Creek, Clackamette Cove, Clackamas River and the Willamette River as well as the acknowledgement order for the same.

We are treating your requests contained in the emails and letters as requests for public records under ORS 192.437 and provide the following response:

- At the hearing, you produced the 1990 Master Plan for the End of the Oregon National Historic Trail and indicated that it was responsive to your request for The End of the Oregon Trail District Guidelines, 1991. As a result, it is our understanding that your request has been resolved.
- The City has compiled a number of documents that comprise the City's Goal 5 inventory and resource list as it applies to Abernethy Creek, Clackamette Cove, Clackamas River and the Willamette River and the related acknowledgment orders that it has been able to locate with reasonable effort. You are invited to inspect and copy these records at the Planning Department any time after August 28, 2017 during regular business hours as required by ORS

192.430 and .440.

Should you need anything further or should you wish the City to provide copies of these documents, we would ask that you respond by filing a formal public records request, a copy of which can be downloaded at the following link: https://www.orcity.org/cityrecorder/public-records-request-policy-and-form . Pursuant to City policy, the City provides ½ hour of staff time for research and record collection for free. This ½ hour has been expended responding to this request. Should you need anything further, the City will provide you with an estimate of staff time associated with producing additional documents before responding to your request.

Sincerely,

Pete Walter



Pete Walter, AICP, Planner

pwalter@orcity.org

Community Development Department

Planning Division
221 Molalla Avenue, Ste. 200
Oregon City, Oregon 97045
503-496-1568 Direct
503-722-3789 Front Desk
503-722-3880 Fax

Website: www.orcity.org

New Hours(Sept 2): 8:30 AM – 3:30 PM, M-F

Need Zoning and other Tax Lot Information? - Generate a Property Report

Online Mapping is available at OCWebMaps

Please consider the environment before printing

PUBLIC RECORDS LAW DISCLOSURE: This e-mail is subject to the State Retention Schedule and may be made available to the public.

Oregon City, OR
info@orcity.org
625 Center Street, Oregon City, OR, 97045, US

Public Records Request

City of Oregon City
625 Center St.
Oregon City, OR 97045
503-657-0891
https://orcity.seamlessdocs.com/f/PublicRecords

Name: James Nicita *
Phone: e.g. (123) 456-7890
Address: 302 Bluff Street
E-mail: james.nicita@gmail.com *
City/State/Zip: Oregon City, Oregon 97045

Provide detailed description of documents requested:

The End of the Oregon Trail District Guidelines, 1991. *

The City's compiled documents that comprise the City's Goal 5 inventory and resource list as it applies to Abernethy Creek, Clackamette Cove, Clackamas River and the Willamette River and the related acknowledgment orders that it has been able to locate with reasonable effort.

REQUESTOR TO READ AND SIGN UPON SUBMITTING REQUEST
I understand that every person has a right to inspect any public record of a public body in this state, except as

Document Signers
1 Requestor
2 Jaime Reed
3 Kattie Riggs

Create Your Signature x

Please fill in your name and email and then either draw or type your signature below.

Full Legal Name: James John Nicita
Your Initials: JJN
Email: james.nicita@gmail.com

Signature Type: Type / Draw / Upload Custom

James John Nicita

Apply Signature

I agree to electronically sign and to create a legally binding contract between the other party and myself, or the entity I am authorized to represent.

Signature will be applied to the page. You will have a chance to review after signing.

SeamlessD

Oregon City, OR
info@orcity.org
625 Center Street, Oregon City, OR, 97045, US

Public Records Request

City of Oregon City
625 Center St.
Oregon City, OR 97045
503-657-0891
https://orcity.seamlessdocs.com/f/PublicRecords

Name: James Nicita *
Phone: e.g. (123) 456-7890
Address: 302 Bluff Street
E-mail: james.nicita@gmail.com *
City/State/Zip: Oregon City, Oregon 97045

Provide detailed description of documents requested:

The End of the Oregon Trail District Guidelines, 1991. *

The City's compiled documents that comprise the City's Goal 5 inventory and resource list as it applies to Abernethy Creek, Clackamette Cove, Clackamas River and the Willamette River and the related acknowledgment orders that it has been able to locate with reasonable effort.

REQUESTOR TO READ AND SIGN UPON SUBMITTING REQUEST

I understand that every person has a right to inspect any public record of a public body in this state, except as otherwise provided by ORS 192.496 to 192.505. I understand that the documents or records requested may not be immediately available for my review and that I may need to make an appointment to review the documents or records. I acknowledge that there may be a cost for the research time to retrieve the requested records and costs for duplication of requested documents. If research time is required, I understand I will be notified of the estimated cost prior to retrieving the documents or records. I also understand that prepayment for research time and copies may be required. I acknowledge that any documents or records made available to review must not be disassembled and must be left intact, and that I cannot make copies myself.

James John Nicita — 08/31/2017

Signature of Requestor — Date

Business Name *(if applicable)*:

Signature Here — Signature Here

Document Signers

1 Requestor
2 Jaime Reed
3 Kattie Riggs

Finalize & Submit

You will be able to save a copy after your submission.