Central Point
City Hall
541-664-3321

City Council

Mayor
Hank Williams

Ward I
Bruce Dingler

Ward II
Michael Quilty

Ward III
Brandon Thueson

Ward IV
Allen Broderick

At Large
Rick Samuelson
Taneea Browning

Administration
Chris Clayton, City Manager
Deanna Casey, City Recorder

Community Development
Tom Humphrey, Director

Finance
Bev Adams, Director

Human Resources
Barb Robson, Director

Parks and Public Works
Matt Samitore, Director
Jennifer Boardman, Manager

Police
Kris Allison Chief

CITY OF CENTRAL POINT
City Council Meeting Agenda
August 13, 2015

Next Res. 1431
Next Ord. 2014

I. REGULAR MEETING CALLED TO ORDER – 7:00 P.M.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. PUBLIC APPEARANCES – *Comments will be limited to 3 minutes per individual or 5 minutes if representing a group or organization.*

V. SPECIAL PRESENTATION – Fire District No. 3

VI. CONSENT AGENDA

Page 2 - 9 A. Approval of July 16, 2015 Council Minutes
10 B. Meeting Cancellation for Sept., Nov. and Dec.

VII. ITEMS REMOVED FROM CONSENT AGENDA

VIII. PUBLIC HEARING, ORDINANCES, AND RESOLUTIONS

12 - 43 A. Resolution No. _____, A Resolution Approving a Franchise Agreement Between the City of Central Point and Rogue Valley Sewer Services (Clayton)

45 - 48 B. Resolution No. _____, A Resolution Declaring the City Council's Intent to Initiate an Amendment to the Central Point Urban Growth Boundary (UGB), and the Comprehensive Plan (Map) to Add Land from the City's Urban Reserve Area (URA) CP-3 for Job Creation and Open Space Preservation in the City of Central Point (Humphrey)

50 - 76 C. First Reading – An Ordinance Amending Central Point Municipal Code Chapter 17 Zoning Sections to Correct Errors and Inconsistencies (Humphrey)

IX. BUSINESS

78 - 83	A.	Discussion Regarding Beekeeping in the City Limits (Humphrey)
85	B.	Approval of 2015 Street Inlay/Street Preservation Project Bids (Samitore)
87 - 88	C.	Battle of the Bones Financial Report (Samitore)
90 - 141	D.	Discussion of the Impacts of HB3400 on City's Current Ordinances and Marijuana Tax (Clayton)

X. MAYOR'S REPORT

XI. CITY MANAGER'S REPORT

XII. COUNCIL REPORTS

XIII. DEPARTMENT REPORTS

XIV. EXECUTIVE SESSION

The City Council may adjourn to executive session under the provisions of ORS 192.660. Under the provisions of the Oregon Public Meetings Law, the proceedings of an executive session are not for publication or broadcast.

XV. ADJOURNMENT

Consent Agenda

CITY OF CENTRAL POINT
City Council Meeting Minutes
July 16, 2015

I. REGULAR MEETING CALLED TO ORDER

Council President Bruce Dingler called the meeting to order at 7:00 p.m.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL:

Mayor: Hank Williams, excused
Council Members: Bruce Dingler, Brandon Thueson, Taneea Browning, Rick Samuelson, and Mike Quilty were present. Allen Broderick, excused.

City Manager Chris Clayton; City Attorney Sydnee Dreyer; Police Chief Kris Allison; Community Development Director Tom Humphrey; Parks and Public Works Director Matt Samitore; and City Recorder Deanna Casey were also present.

IV. PUBLIC APPEARANCES

Doreen Lewis, Manzanita Street Resident
Mrs. Lewis is concerned about the trash issues in the neighborhood and around town. She cited several alleys that are being used as a dumping location for mattresses and other household items. They have talked with the Community Service Officer but does not feel that he has the tools to take care of this issue. She also expressed concerns about the dog waste at Pfaff Park.

City Manager Chris Clayton stated that he will work with the CSO and Rogue Disposal to see if there is a solution for this area. Police Chief Kris Allison stated that they are planning to have a community meeting for this neighborhood. She is confident they will be able to solve some of the issues this area is currently facing.

Brett Morgan, Manzanita Street Resident
Mr. Morgan stated that it would be nice if Rogue Disposal does bring an extra bin for that area it should be locked for the residents in the apartments. He is concerned others will fill up the bin if it is not locked.

V. SPECIAL PRESENATION

Mr. Clayton introduced Tammy Westergard the new Jackson County Library Manager. Ms. Westergard stated that the library is managed by a private company. She is excited to be working in the area and can see lots of potential for our library district. They are officially independent of Jackson County at this point and they will be working on a Strategic Plan. She also presented the book “Farm City” to the Council.

VI. CONSENT AGENDA

A. Approval of June 25, 2015 City Council Minutes

Mike Quilty moved to approve the Consent Agenda as presented. Taneea Browning seconded. Roll call: Bruce Dingler, yes; Taneea Browning, yes; Brandon Thueson, yes; Rick Samuelson, yes; and Mike Quilty, yes. Motion approved.

VII. ITEMS REMOVED FROM CONSENT AGENDA - None

VIII. PUBLIC HEARINGS, ORDINANCES AND RESOLUTIONS

A. Resolution No. 1428, A Resolution of the City of Central Point Allowing the City Manager or his Designee to Execute the Revised Local Agency Agreement with ODOT for the Twin Creeks Crossing

Parks and Public Works Director Matt Samitore explained this is the one more step towards completion of the rail crossing into Twin Creeks. The developer, Twin Creeks Development LLC, has completed several physical improvements that were associated with the grant project. Those commitments have been subtracted from the agreement. The revised grant match is $787,515.

Previously, the City reached an agreement with Twin Creeks Development, LLC for $500,000 cash for its share of the crossing. With both of these agreements in place the City's contribution will be a maximum of $287,515, but could be substantially less depending on how much value is associated with the work that is currently underway and how much contingency is used in the project construction.

There may be an issue regarding connecting sidewalks across the creek to the high school. We may be obligated to build a pedestrian bridge over the creek which would increase the cost to the City.

Mr. Clayton added that Mr. Samitore has done a great job working on this agreement with the developer and making all the arrangements. He is comfortable with the projected cost to the city. He feels that ODOT over estimated on the cost of the project.

There was discussion regarding the requirement of rail replacement between Pine Street and Scenic. That is a subject that is still being worked on with the Rail Company. The reasoning behind the rail replacement would be for noise reduction and safety reasons. New tracks would allow them to coordinate the signals between the three crossings. We may be able to use Urban Renewal money for this requirement.

Mike Quilty moved to approve Resolution No. 1428, A Resolution of the City of Central Point Allowing the City Manager or his Designee to Execute the Revised Local Agency Agreement with ODOT for the Twin Creeks Crossing. Brandon Thueson seconded. Roll call: Bruce Dingler, yes; Taneea

Browning, yes; Brandon Thueson, yes; Rick Samuelson, yes; and Mike Quilty, yes. Motion approved.

B. Resolution No. 1429, A Resolution Authorizing the City Manager to Enter into an Agreement for Purchase of Right-of-way with James Sutton of 4511 Hamrick Road in Lieu of Condemnation Proceedings

Mr. Samitore provided a brief background regarding the need to improve the Beebe and Hamrick intersection. He has been negotiating with Mr. Sutton for well over a year regarding the need purchase 259 sq. ft of his property for a new right hand turn lane and future signal.

The final offer to Mr. Sutton includes $8,000 for the purchase of the property, free water for 6 years and the city will not force annex the property for a specific amount of years. In addition a new sound wall will be constructed parallel to Beebe and Hamrick associated with the actual construction.

Upon completion of the agreement the city will have the necessary area needed for a designated right turn lane. This will help immediately with the issues associated with church related functions at the Catholic Church. Additionally, there will be enough land for a future signal. This agreement will avoid condemnation proceedings. If all goes as planned we could begin construction on the turn lane and sound wall in August.

Brandon Thueson moved to approve Resolution No. 1429, A Resolution Authorizing the City Manager to Enter into an Agreement for Purchase of Right-of-way with James Sutton of 4511 Hamrick Road in Lieu of Condemnation Proceedings. Rick Samuelson seconded. Roll call: Bruce Dingler, yes; Taneea Browning, yes; Brandon Thueson, yes; Rick Samuelson, yes; and Mike Quilty, yes. Motion approved.

C. Resolution No. 1430, A Resolution Directing the City Manager or His Designee to Enter into a Second Amendment to a Road Easement Agreement Between Central Oregon & Pacific Railroad, Inc., and the City of Central Point.

Community Development Director Tom Humphrey explained the city entered into two previous agreements with the railroad beginning in June 2008. The Railroad Easement grants the right to construct, reconstruct, maintain and use a street or highway upon and across its right-of-way. Both parties expected to be under construction by the time the first 3-year agreement concluded. Unfortunately, the recession and revisions to the traffic signal layout at the crossing lead to an amendment of the agreement and year to year payments to the railroad. The proposed resolution includes the second and final amendment to the original agreement.

Both parties have mutually agreed to the recitals and substance of the agreement. Approval of the resolution directs staff to enact the agreement and to make one final payment to the railroad relative to a road easement for the Twin

Creeks Crossing. The payment will be made after the railroad signs and returns the amendment. The agreement and final payment will secure the city's right to the crossing location until such time as construction begins and a new crossing is completed.

Taneea Browning moved to approve Resolution No. 1430, A Resolution Directing the City Manager or His Designee to Enter into a Second Amendment to a Road Easement Agreement Between Central Oregon & Pacific Railroad, Inc., and the City of Central Point. Mike Quilty seconded. Roll call: Bruce Dingler, yes; Taneea Browning, yes; Brandon Thueson, yes; Rick Samuelson, yes; and Mike Quilty, yes. Motion approved.

IX. BUSINESS

A. Consideration of a Letter from the City Manager Endorsing the Vietnam Veteran's Memorial Wall

Mr. Humphrey explained that the City has been approached by the Southern Oregon Veterans Benefit (SOVB) organization about bringing an 80% replica of the Vietnam Veterans Memorial Wall to Central Point. Members of the group made a presentation to the Council earlier this year and a land use pre-application has been submitted to the Community Development Department. They have asked the city to write a letter of endorsement for the project and its tentative location in Don Jones Memorial Park.

If the Council approves the letter of endorsement it will aid the organization with fund raising. The organization knows that they have to receive land use approval from the City for a Conditional Use Permit and they have started this process. The Council is very concerned with the limited amount of parking for Don Jones Park. There is not enough parking with the amenities that are in the park now.

Mike Quilty moved to approve a Letter from the City Manager Endorsing the Vietnam Veteran's Memorial Wall. Brandon Thueson seconded. Roll call: Bruce Dingler, yes; Taneea Browning, yes; Brandon Thueson, yes; Rick Samuelson, yes; and Mike Quilty, yes. Motion approved.

B. Planning Commission Report

Community Development Director Tom Humphrey presented the Planning Commission Report for July 7, 2015:

- Unanimously recommended Option C to the City Council as the preferred route for Gebhard Road. There was considerable discussion regarding options for Gebhard Road to connect with East Pine Street. They reviewed the study and conducted a public hearing with affected parties and local residents.
- Continued a public hearing to consider a Transit Oriented Development (TOD) preliminary master plan on 18.91 acres in the Eastside TOD District. The project site is located east of Gebhard Road and North of

Beebe Road. The project site is within the LMR-Low Mix Residential and MMR-Medium Mix zoning districts.

- Continued the consideration of a Tentative Partition Plan to create three parcels in the LMR-Low Mix Residential and MMR-Medium Mix Residential zoning districts within the Eastside TOD District. The Commission conducted a public hearing and took testimony from the proponent and various property owners in the vicinity. This application was associated with and dependent upon the Master Plan approval.
- The Commission unanimously recommended forwarding various amendments to the Municipal Zoning Code. The amendments to the zoning code are for on-going maintenance to ensure clear standards and efficient development. There are eleven minor amendments which are administrative in nature and necessary for clear, concise and consistent use of the Zoning Code. The recommended changes will be reviewed by the City Attorney prior to bringing them forward to the City Council in August.
- The Commission was updated on the Interchange Area Management Plan (IAMP) for I-5 Exit 33 and a proposed schedule for IAMP 33 adoption and corresponding Transportation System Plan (TSP) Amendment. They expect to consider this at their August meeting.

C. Discussion of Agreement with Jackson County Justice Court Building to Include a Central Point Police Department Sub-Station

Mr. Clayton stated that the City was notified by Jackson County in early July that bids for the proposed Jackson County Justice Court at 4173 Hamrick Road had been received. The bids exceeded preliminary cost estimates. Although estimates generated during the design process suggested a total project cost of $1.5 million, the lowest bid received was 2.5 million.

With the northeastern portion of the city being targeted for future commercial and residential growth, an established police substation facility in this portion of the community is strategically desirable when anticipating future public safety needs. The city and county have agreed that a police substation located within the new county court facility would be mutually advantageous. However, with the significantly increased building costs, the county has proposed an increase in the lease cost for the city. The original amount of the annual lease payment would have been $7,000 for a 10 year lease. The new proposal would be an annual payment of $9,734 for 15 years. Staff is looking for direction from the Council if they would like to continue with this project.

There was discussion regarding the advantage of having a substation in different areas of town. When officers are patrolling the east side of town they would be closer to the assigned area when doing their work. There would be faster response times if they are called out and had been in the substation rather than City Hall. Council was concerned that the lease does not have a clause stating that they cannot raise the annual cost for the substation. The east side of Central Point is growing very fast and having this community service available on the

east side would be nice but it is not imperative. It is a good opportunity, but we can also broach other development as it comes available.

Council was in favor of the substation idea, but would like to see a better lease option closer to the original amount. The City Manager is authorized to sign an agreement without bringing it back to Council.

X. MAYOR'S REPORT – No Report

XI. CITY MANAGER'S REPORT

City Manager Chris Clayton reported that:

- He has been working on the rate proposal for the Medford Water Commission. They will be submitting questions for the public hearings regarding the Water Rate Study. They have found some inconstancies in the study that is being done.
- Mr. Samitore has done a great job working with Mr. Sutton who has been hauling water for his residence because of the water issue when work was done on Beebe Road several years ago. The MWC is considering limiting who will be able to haul water, they are thinking of only allowing Medford residents access. He is glad to see that the City will be able to provide Mr. Sutton water.
- The collection of the Excise Tax for the School District came in higher than projected this quarter.
- The Supreme Court Ruling for Rogue River Sewer Services came in today. The Courts ruled in favor of the City of Phoenix. The City of Central Point is now able to proceed with the Franchise Agreement with RVSS.
- The storm that came through last week knocked down several trees in City Parks. We are working with the residents to repair damaged fences.
- The Central Point Cemetery has a change in ownership. We are not sure if this will be a good change yet. There is an RV trailer parked on the cemetery property but we have been assured they are not living on the property. We have been trying to meet with the new owners.

XII. COUNCIL REPORTS

Council Member Mike Quilty reported that:

- He attended an RVACT meeting on Tuesday. There is a push from OTC to include tribes that have interest in the various ACTS. They may need to include tribes when discussing transportation in proposed areas.
- OREGO is a new way to charge for gas tax. There are currently several problems with the new program that have not been worked out yet. They are still looking for volunteers to try the program.
- Washington DC House of Representative is passing bills but have not put anything in place for funding the programs.

Council Member Brandon Thueson reported that he attended the School Board meeting. He updated the Council on their meals program for breakfast and lunch

for students. There is a big push to provide locally grown vegetables. They are providing free lunches in several of our parks.

Council Member Rick Samuelson reported that he attended the 4th of July Parade and Fun Run and a boxing event at the Expo. He was notified that someone from the State is going to all the businesses regarding any improvements to Pine Street downtown. This person is stating that any changes could take up to six years to get approved through the State. Mr. Clayton explained that there are a few sections of Pine Street that belong to the State and County, but the improvements that we have discussed in the past are not part of their jurisdiction.

Council Member Bruce Dingler reported that he attended the Jackson County Task Force for the Homeless. They are trying to get things set up for a homeless camp along the greenway. There is a lot of research that will need to be done before anything can go forward.

Council Member Taneea Browning reported that:

- She attended the Quarter Hour Association presentation of the sponsor check. It was great to see what they bring to the city when they are at the Expo. She was impressed with the amount of work they put in to bring that event to our area.
- She attended the Battle of the Bones, it was a great hit with her family and thanked Sarah Wright for the last minute move to include the water slide.
- She attended a Medford Water Commission meeting.
- The Chamber of Commerce and their team did a fantastic job on the parade and the festival in the parks for the 4th of July. She also thanked the Public Works and Parks Department for all their hard work during the event. She enjoyed riding with the Mayor in the parade.
- She attended the ribbon cutting event for the Twin Creeks cottages.
- She attended a Fire District No. 3 Board meeting where they touched on their mid-year performance report. The District will be working with Central Point nonprofits to bring a little water fun for everyone along with public education on fire risk, reduction, prevention and some new ideas on landscape.

XIII. DEPARTMENT REPORTS

Parks and Public Works Director Matt Samitore reported that:

- As expected attendance was down for Battle of the Bones this year because of the extreme heat. He thanked everyone that helped with the event. He has not heard of any negative comments for the event this year.
- Citizens should start seeing work on Freeman Road in the next week. The work on the water line is almost complete and they will be able to begin constructing the new road.
- They will be receiving a $300,000 grant to start construction for the Skyermann Arboretum Park. There are some amazing trees on that property.

Police Chief Kris Allison reported that:

- The D.A.R.E. Show and Shine will be August 1st, 2015.

- They are preparing for the Annual Police Department Open House to be on September 12th, 2015.
- She has been doing Open House type events throughout the City. They are willing to speak to different organizations if asked.

Community Development Director Tom Humphrey reported that:

- Community Development has been busy over the last few weeks. They have received several building permits and applications.
- He is working on the Boot Camp events that continue for our local businesses.

Council Member Mike Quilty stated that the legislators are passing $4.5 Million worth of grants for our region that are earmarked for non-road improvements. These funds may work for the rail improvements that are required for Twin Creeks Crossing.

City Attorney Sydnee Dryer reported that she will not be at either of the August meetings. She will be working on an Ordinance revision because of House Bill 3400. We may need to repeal our Marijuana Tax that was put in place last year. It is still unclear if the implemented tax would be grandfathered in to the state rules. We may be required to take it to a vote of the people.

XIV. EXECUTIVE SESSION - None

XV. ADJOURNMENT

Brandon Thueson moved to adjourn, Mike Quilty seconded, all said "aye" and the Council Meeting was adjourned at 8:40 p.m.

The foregoing minutes of the July 16, 2015, Council meeting were approved by the City Council at its meeting of August 13, 2015.

Dated:

_____
Mayor Hank Williams

ATTEST:

_____
City Recorder

Return to Agenda

Staff Report

Administration Department
Chris Clayton, City Manager
Deanna Casey, City Recorder

TO: Honorable Mayor and City Council

FROM: Deanna Casey, City Recorder

SUBJECT: Cancellation of Council Meetings

DATE: August 13, 2015

September 24, 2015 Meeting Cancellation

Council Members and staff members would like to attend the League of Oregon Cities Conference September 23- 26, 2015.

Staff is recommending and prepared to cancel the September 24, 2015 City Council meeting.

November 26, 2015 Meeting Cancellation

The second meeting in November falls on Thanksgiving day. Staff recommends cancelling this meeting.

December 24, 2015 Meeting Cancellation

The second meeting in December falls on Christmas Eve. Staff recommends cancelling this meeting.

RECOMMENDED MOTION:

Approve the Consent agenda as presented.

Resolution

RVSS Franchise Agreement

ADMINISTRATION DEPARTMENT

140 South 3rd Street · Central Point, OR 97502 · (541) 664-7602 · www.centralpointoregon.gov

STAFF REPORT
August 13th, 2015

AGENDA ITEM: Adoption of the draft franchise agreement between the City of Central Point and Rogue Valley Sewer Services.

STAFF SOURCE:

Chris Clayton, City Manager

BACKGROUND/SYNOPSIS:

The City of Central Point currently maintains franchise agreements with the following franchisees: Pacific Power & Light (Pacific Corp.); Avista Utilities; Charter Communications; Hunter Communications (Core Digital); L.S. Networks; Qwest Communications; Rogue Disposal and Recycling and the City of Central Point (5% franchise on the City's water system). Each of these franchised utilities currently pays a franchise fee for use of the City of Central Point's public right-of-way. Current franchise rates vary from 5%-6% of gross revenues (within Central Point boundaries), largely due to length of existing agreements. Recently expired agreements have been renegotiated at 6%, while agreements with future expirations have remained at their previously negotiated rate of 5%.

In 2012, the City of Phoenix became the first city to pass a franchise ordinance which places operating requirements, and a franchise fee, on Rogue Valley Sewer Services (RVSS). RVSS has opposed the implementation of such a franchise fee and, ultimately, challenged the City of Phoenix's authority in court. The adjudication of this issue has resulted in both the Circuit Court and Oregon Court of Appeals reaffirming the City of Phoenix's 'home-rule' authority to impose a franchise fee on RVSS, even though they are designated a special sewer district under Oregon Revised Statute Chapter 450. This issue received final consideration from the Oregon Supreme Court in July of 2015, with the Oregon Supreme Court affirming the decision of the lower courts.

Prior to the Oregon Supreme Court's ruling on this matter, the City of Central Point passed a general utility license fee ordinance which allowed for alternate right-of-way use compensation should the court rule in favor of Rogue Valley Sewer Services. A negotiated franchise agreement remains an option under the general utility license fee ordinance, and this has been the preferred alternative of Rogue Valley Sewer Services.

The attached franchise agreement represents a final document which has been subjected to multiple reviews by both the City of Central Point and Rogue Valley Sewer Services. Both agencies had agreed to wait for the Oregon Supreme Court's decision prior to implementing the new franchise agreement.

ATTACHMENTS:

1. Franchise Agreement between the City of Central Point and Rogue Valley Sewer Services.
2. Resolution adopting the Franchise Agreement between the City of Central Point and Rogue Valley Sewer Services
3. Oregon Supreme Court's July 2015 decision (Rogue Valley Sewer Services v. City of Phoenix).

RECOMMENDATION:

1. Approval of the resolution adopting a franchise agreement between the City of Central Point and Rogue Valley Sewer Services.

PUBLIC HEARING REQUIRED:

No – a public hearing is not required.

SUGGESTED MOTION:

Move to approve resolution adopting franchise agreement between the City of Central Point and Rogue Valley Sewer Services.

Return to Agenda

Sewer District Franchise Agreement
Between the City of Central Point and RVSS

This Utility Franchise Agreement (the "Franchise" or "Agreement") is entered into between the City of Central Point (the "City") and Rogue Valley Sewer Services (RVSS)

SECTION 1. Grant of Non-exclusive Franchise and General Utility Easement. The City hereby grants a non-exclusive franchise to, and gives consent and privilege to, RVSS to lay sewers and drains and related facilities in, on or under any public street, highway or road in the City, and for this purpose enter upon it and make all necessary and proper excavations, restoring it to its proper condition, including the right to maintain, operate, construct, upgrade and relocate such sewer lines and drains and related facilities (collectively "Sewer Facilities") for the purpose of supplying sewer service to the inhabitants of the City and persons and corporations beyond the limits thereof.

SECTION 2. Term. The term of this Franchise and General Utility Easement shall begin August 15th, 2015 This Franchise and General Utility Easement shall expire on June 30, 2020.

SECTION 3. Non-exclusive Franchise. The city reserves the right to use the Public Ways for itself or any other entity that provides services to City residences or businesses; and to grant other or further franchises in, along, over, through, under, below or across any of its public rights-of-way. This franchise shall in no way prevent or prohibit the City from using any of its public rights-of-way or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement and dedication of same, including the dedication, establishment, maintenance and improvement of all new rights-of-way, thoroughfares, and other public properties of every type and description, provided, however, that such use shall not unreasonably interfere with RVSS's Sewer Facilities or RVSS's rights granted herein.

SECTION 4. City Regulatory Authority. In addition to the provisions herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or the exercise any other rights, power, or duties required or authorized, under the Constitution of the State of Oregon, the laws of Oregon or City Ordinances.

SECTION 5. Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by RVSS of its Sewer Facilities. RVSS shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of RVSS's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorney's fees for any claim, demand or lien brought hereunder. The City shall: (a) give prompt written notice to RVSS of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the

City's judgment a conflict of interest exists between the City and RVSS with respect to such claim, demand or lien, permit RVSS to assume the defense of such claim, demand, or lien with counsel satisfactory to City. If such defense is not assumed by RVSS, RVSS shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, RVSS shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

SECTION 6. Annexation.

6.1 Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent that City has such authority. All Sewer Facilities owned, maintained, or operated by RVSS located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

6.2 Annexation. When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to RVSS: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

Rogue Valley Sewer Services
PO Box 3130
Central Point, OR 97502

Additional or increased fees or taxes, other than ad valorem taxes, imposed on RVSS as a result of an annexation of territory to the City shall become effective 30 days after the effective date of the annexation provided notice is given to RVSS in accordance with within 10-days of the date the resolution was adopted.

SECTION 7. Planning, Design, Construction and Installation and Maintenance of Sewer Facilities.

7.1 All Sewer Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations, subject to preexisting nonconformities.

7.2 Except in the case of an emergency, RVSS shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. The City shall not assess any fees related to the issuance of the permit. RVSS will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, RVSS shall not be obligated to

obtain a permit prior to performing emergency repairs. In the event of an emergency, RVSS shall obtain a permit as soon as practical after the start of the work.

7.3 To the extent practicable, all Sewer Facilities shall be located so as to cause minimum interference with the Public Ways of the City. All Sewer Facilities shall be constructed, installed, maintained, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

7.4 If, during the course of work on its Sewer Facilities, RVSS causes damage to or alters the Public Way or public property, RVSS shall (at its own cost and expense and in a manner approved by the City) replace and restore it to a condition comparable to that which existed before work commenced.

7.5 Before commencing any street improvements or other work within a Public Way that may affect RVSS's Sewer Facilities, the City shall give written notice to RVSS.

7.6 No structures, buildings or signs shall be erected over RVSS's facilities or in a location that inhibits reasonable access to its facilities.

7.7 RVSS shall provide as-built and electronic maps of newly installed or recently upgraded facilities. As-built information shall be submitted in a format acceptable to the City.

SECTION 8. Relocation of Sewer Facilities.

8.1 The City reserves the right to require RVSS to relocate Sewer Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare

8.2 As the construction and reconstruction of public sewers is of primary interest to the health, safety, and welfare of the public, the City, to the extent that it has the authority, will request public utilities defined under ORS XXXX to relocate their facilities to accommodate public sewer construction and reconstruction.

8.3 RVSS shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development.

SECTION 9. Subdivision Plat Notification. The City shall require that subdivision plats include an approval line for RVSS. Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval and a copy of the plat to RVSS:

Rogue Valley Sewer Services
PO Box 3130
Central Point, OR 97502

SECTION 10. Vegetation Management. RVSS or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with RVSS's Sewer Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300 and the City of Central Point Tree Plan)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent RVSS, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

SECTION 11. Compensation.

11.1 In consideration of the rights, privileges, and franchise hereby granted, RVSS shall pay to the City from and after the effective date of the acceptance of this franchise, five percent (5%) of its gross revenues derived from within the corporate limits of City. The term "gross revenue" as used herein shall be construed to mean any revenue of RVSS derived from the retail sale and use of sewer service within the municipal boundaries of the City after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered. All amounts paid under this Section 11 shall be subject to review by the City; provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies RVSS of its intent to conduct a review shall be subject to such review. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount as may then be allowed by adoption of the change in percentage by the City. The increase shall be effective sixty (60) days after City has provided such written notice to RVSS.

11.2 The franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from RVSS with respect to RVSS's sewer business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting those charges from the amount of said franchise fee paid hereunder.

SECTION 12. Renewal. At least 120 days prior to the expiration of this Franchise, RVSS and the City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. RVSS shall have the continued right to use the Public Way of the City as set forth in the City's Utility License Fee Ordinance in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

SECTION 13. No Waiver. Neither the City nor RVSS shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers,

employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 14. Transfer of Franchise. RVSS shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of RVSS's mortgage(s) shall not constitute a transfer or assignment.

SECTION 15. Amendment. At any time during the term of this Franchise, the City, through its City Council, or RVSS may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties, thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendments(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and RVSS and formally adopted as an ordinance amendment.

SECTION 16. Non-Contestability—Breach of Contract.

16.1 Neither the City nor RVSS will take any action for the purpose of securing modification of this Franchise in any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall RVSS be precluded from seeking relief from the Courts in the event the legislature makes performance under the Franchise illegal.

16.2 In the event RVSS or the City fails to fulfill any of their respective obligations under this Franchise, the City, or RVSS, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

SECTION 17. Notices. Unless otherwise specified herein, all notices from RVSS to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to RVSS pursuant to or concerning this Franchise shall be delivered to the _General Manager, and such other office as RVSS may advise the City of by written notice.

SECTION 18. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity

of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 19. Invoices. RVSS shall be entitled to include a line item on all customer invoices showing the amount of franchise fee imposed.

Return to Agenda

RESOLUTION NO. _____

A RESOLUTION APPROVING A FRANCHISE AGREEMENT BETWEEN THE CITY OF CENTRAL POINT AND ROGUE VALLEY SEWER SERVICES.

RECITALS:

1. The City of Central Point holds rights-of-way in trust for the public and has the responsibility and home-rule authority to manage and conserve the capacity of such rights-of-ways.

2. The City of Central Point is authorized by Chapter 221 of the Oregon Revised Statutes, the City of Central Point Charter and the Central Point Municipal Code to regulate, and receive compensation from, utilities occupying right-of-way within the City.

3. In Rogue Valley Sewer Services v. City of Phoenix, (SC-S062277: July 16, 2015), the Oregon Supreme Court upheld the authority of home-rule municipalities to impose a franchise fee or privilege tax on special districts defined by Oregon Revised Statue Chapter 450 (Sanitary Districts and Authorities; Water Authorities).

Section 1. Franchise Agreement Adopted by City Council: The Franchise Agreement between the City of Central Point and Rogue Valley Sewer Services is hereby adopted by the City Council and approved for signature by the City Manager.

Passed by the Council and signed by me in authentication of its passage this _____ day of _____, 20___.

_____
Mayor Hank Williams

ATTEST:

_____
City Recorder

IN THE SUPREME COURT OF THE
STATE OF OREGON

ROGUE VALLEY SEWER SERVICES,
an Oregon municipality,
Petitioner on Review,

v.

CITY OF PHOENIX,
an Oregon municipality,
Respondent on Review.

(CC 103450E2; CA A148968; SC S062277)

On review from the Court of Appeals.*

Argued and submitted February 15, 2015.

Tommy A. Brooks, Cable Huston, LLP, Portland, argued the cause and filed the briefs for petitioner on review. With him on the brief were Casey M. Nokes and Clark I. Balfour.

J. Ryan Kirchoff, James Holmbeck Kirchoff, LLC, Grants Pass, argued the cause and filed the brief for respondent on review. With him on the brief was Kurt H. Knudsen, Jacksonville.

C. Robert Steringer, Harrang Long Gary Rudnick P.C., Portland, filed the brief for *amici curiae* Clackamas River Water and Special Districts Association of Oregon.

Harry Auerbach, Chief Deputy City Attorney, Portland, argued the cause for *amicus curiae* League of Oregon Cities. Chad A. Jacobs, Beery, Elsner & Hammond, LLP, Portland, filed the brief for *amicus curiae* League of Oregon Cities. With him on the brief were Harry Auerbach, Portland, and Sean E. O'Day, Salem.

H. M. Zamudio, Huycke O'Connor Jarvis, LLP., Medford, filed the brief for *amicus curiae* City of Central Point.

---

* Appeal from Jackson County Circuit Court, G. Philip Arnold, Judge. 262 Or App 183, 329 P3d 1 (2014).

Before Balmer, Chief Justice, and Kistler, Walters, Linder, Landau, and Baldwin, Justices,**

BALMER, C. J.

The decision of the Court of Appeals and the judgment of the circuit court are affirmed.

** Brewer, J., did not participate in the consideration or decision of this case.

BALMER, C. J.

In this declaratory judgment action, we consider whether a home-rule city can impose a five percent franchise fee on a sanitary authority with overlapping jurisdiction. The trial court concluded that the city had authority to impose the fee at issue in this case, but declined to reach an additional question whether the amount of the fee was reasonable, because that issue was not presented by the pleadings. The Court of Appeals affirmed, concluding that the city had authority to enact the ordinance providing for the fee and that the sanitary authority's argument about reasonableness was unpreserved. *Rogue Valley Sewer Services v. City of Phoenix*, 262 Or App 183, 202, 329 P3d 1 (2014). On review, we conclude that the home-rule doctrine is the proper framework for analyzing the fee at issue in this case and that, under that framework, the imposition of the fee was within the authority granted to the city by its charter and was not preempted by state law. We also conclude that the sanitary authority failed to raise the issue of the reasonableness. We therefore affirm.

I. BACKGROUND

Rogue Valley Sewer Services (RVS) owns, operates, and manages equipment for the transmission of sewage. As a "sanitary authority" organized under ORS chapter 450, RVS is a type of local government entity called a local service district. *See* ORS 174.116(2)(r) ("[A]s used in the statutes of this state[,] 'local service district' [includes a] sanitary authority *** organized under ORS 450.600 to 450.989."). Local service districts are municipal corporations and local governments. *See* ORS 198.605 ("Local service districts, as defined by ORS 174.116, are municipal corporations."); ORS 174.116(1)(a) ("[A]s used in the statutes of this state[,] 'local government' means all cities, counties and local service districts located in this state[.]").

Since 2004, RVS has provided sewer services to residents of the City of Phoenix (city)—also a local government under Oregon law, ORS 174.116(1)(a)—although the relationship between RVS and the city has changed over time. In 2004, the city and RVS entered into an intergovernmental

agreement that established the services that RVS would provide and the rates that RVS would charge. At that time, the city was not within the political boundaries of RVS. RVS notes that, under that 2004 contract, it had the right—but not the obligation—to use the city's facilities to provide sewer services.

In 2006, a ballot measure asked voters of the city whether the city should be annexed into the service area of RVS. The ballot indicated to voters that the City Council and the RVS Board of Directors had already "unanimously adopted resolutions supporting this annexation" and that "service rates *will not* be increased as a result of this annexation." (Emphasis in original, underscoring omitted.) The voters' pamphlet statements with respect to the ballot measure did not mention whether the city would or could impose a franchise fee or tax on RVS. The residents of the city voted to annex the city into the service area of RVS. As a result, RVS became obligated to provide sewer services to the residents of the city because, for the purposes of sewer services, the residents were now within RVS's jurisdiction.

In 2009, the city held a special election, and the voters approved a home-rule city charter. The charter provides that the city "has all powers that the constitutions, statutes, and common law of the United States and of this state now or hereafter expressly or impliedly grant or allow," and that the charter is to "be liberally construed so the city may exercise fully all powers possible under this charter and under United States and Oregon law." City of Phoenix Charter, § 4-5.

In 2010, the city passed Ordinance No. 928 (the ordinance) imposing a "franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue of RVS *** in addition to taxes or fees, if any, owed to the City."[1] The

[1] Ordinance No. 928 defines "Gross Revenue" as "any revenue, as determined in accordance with generally accepted accounting principles, received by RVS[] from the operation of its business," with a few items of revenue excluded. Later, in 2010, to "clarify an issue that has been raised in pending litigation between RVS[] and the City," the city modified the ordinance to clarify that the fee is applicable solely to gross revenue "received by RVS[] from the operation of its business within the City limits." Ordinance No. 931, Sept 7, 2010. For clarity, we refer to "the ordinance," although both Ordinance No. 928 and Ordinance No. 931 are at issue in this case.

ordinance directed RVS to pay the fee on a monthly basis starting the first month after adoption of the ordinance.

The ordinance declares that the "primary purpose of the collection of a franchise fee from RVS is to regulate and reimburse the City for its costs associated with RVS, and not to raise revenue." The ordinance elaborates that it was passed for the purposes of "maintenance and operation of the public rights of way" and "recoupment of the full costs and full impacts associated with the use, occupation, and other activities and effects by sanitary authorities and other utilities on the public rights of ways." The ordinance cites costs, including "additional oversight and associated costs incurred from City administration, maintenance and repair of City-owned facilities within City right-of-ways, special services performed by the City, and office and field-related costs." Overall, the ordinance declares that there is a "direct relationship between the fee charged and the burden produced by the fee payer, RVS[]."

RVS projected that the five percent franchise fee, as assessed on the gross revenues that RVS received from residents of the city, would have totaled approximately $30,741 per year. RVS calculated that, "to be fair to all other customers" living outside the city, it would have to raise its rates for single-family residences in the city from $15.90 per month to $16.70 per month.

RVS filed a complaint in circuit court seeking a declaratory judgment and an injunction. Specifically, RVS asked the court to:

> "1. Declar[e] whether the ordinance *** is valid and whether RVS is required to collect and pay over the fee described in said ordinance.
>
> "2. Grant an injunction prohibiting [the city] from collecting the franchise fee ***.
>
> "3. For other such relief as the court may deem equitable."

In the trial court, as part of cross-motions for summary judgment discussed further below, the city reaffirmed the

factual assertions set out in the ordinance. The city claimed that it incurs a variety of costs due to the direct impact of RVS's operations in city streets. Although the direct costs of the paving and construction work are borne by RVS, the city argued that there are additional short-term and long-term impacts that the city bears. Short-term impacts are associated primarily with coordination and include review of plans, inspection during construction, locating utilities, processing encroachment permits, providing water from city fire hydrants for flushing sewer lines, and designing other city utility contracts to avoid RVS facilities. Long-term impacts include costs of maintenance and repair of the streets. Whenever a street surface is cut, a slight differential settlement of the repaired surface is expected, and the joint between the surfaces is more likely to be an entry point for water. Over time, the city Public Works Department expects to fill cracks and make minor repairs on cut streets, until it becomes necessary to conduct a complete asphalt overlay of the street. The city also asserted that, as a direct impact of its relationship with RVS, it incurs general administrative expenses, such as the costs of general administration and oversight, budgeting, coordination of services, interactions with the public, and other expenses. Together, the city estimated that the cost of those impacts for 2009 was $29,425. As such, the city asserted that the five percent franchise fee—at around $30,000 per year—was a reasonable estimate of the annual cost to the city. Additionally, the city pointed out that the five percent fee was consistent with franchise fees that it imposes on other utilities operating in city streets, including the local gas, telephone, power, and cable television companies.

For its part, RVS disputed the existence of any direct relationship between the franchise fee and the costs that RVS's operations impose on the city. RVS argued that the costs that the city identified are part of the normal operations of a city public works department—such as receiving phone calls from citizens—and therefore are not caused by RVS's operations, while other alleged costs are negligible or nonexistent. RVS asserted that, when it proposes a project within the city, it first submits a plan to the city's Public

Works Department for review and comment, and generally receives a phone call or brief letter in response. The city typically observes any paving work to ensure that it meets the city's standards, but, as noted, RVS bears the cost of the paving and construction work associated with its projects. At the time of summary judgment, only one project in the city had required any street cutting or repaving, and only one was planned for the upcoming year. RVS also argued that the costs of its operations in the city are covered by various fees that the city charges—for example, a right-of-way encroachment fee charged to cover the cost of plan review for projects that impact the right-of-way.

Further, in its motion for summary judgment, RVS argued that the city's home-rule authority to impose a franchise fee was preempted by state law because franchise fees are controlled by state statute. RVS also stated in its brief—although in the "Background Facts" section rather than as a legal argument—that, "even assuming that [the city] has authority to impose a franchise fee on RVS, the Ordinance as worded relies upon an improper interpretation of Oregon statutes, is too broadly written and has no rational basis to support the rate." The city filed a cross-motion for summary judgment, arguing that it had authority to enact the ordinance and that the fee "represents a reasonable estimate of the annual cost to the City of the many impacts of RVS identified in the Ordinance," and concluding that "[t]he 5% fee is reasonable by all standards."

The trial court articulated the issue presented as "whether or not the City *** under its home rule charter can charge a franchise fee on sewer operations provided by [RVS]." The court found that "the analysis of the [city] in its motion and in its response to [RVS's] motion is correct in that it has the authority to impose the fee." Therefore, the court granted the city's motion for summary judgment and denied RVS's motion for summary judgment.

The city then submitted a proposed general judgment. RVS objected to the proposed judgment on the ground that the trial court's order resolved only the issue whether the city had authority to charge the fee, but did not resolve

the issue of the reasonableness of the fee. RVS argued that a question of fact existed as to the reasonableness of the fee that precluded summary judgment and pointed to "competing affidavits" on the issue. RVS suggested that a limited judgment—addressing only the issue of the city's authority to impose the assessment—would be more appropriate. In response, the city argued that the amount of the fee should be left to the discretion of the city and was not at issue in the case.

The trial court overruled RVS's objection to the proposed general judgment, concluding that "there [was] nothing left for the Court to adjudicate" because "nothing in the complaint [or in RVS's motion for summary judgment suggested that] RVS[] also challenged the reasonableness of the fee in the event [the city's] authority was upheld." In so holding, the court concluded:

> "To be sure, in arguing the ordinance is too broad, RVS cited the amount of the fee, but any such argument is subsumed within the argument about the propriety of the ordinance (assuming [the city] had the authority to enact it), and the Court's decision upholding [the city]'s authority to impose the fee, the content of the ordinance, and the imposition of the fee, disposed of RVS'[s] argument about the amount of the fee."

The court entered a general judgment in the city's favor.

RVS appealed, arguing that "the trial court erred in concluding that the city was authorized to impose the five percent franchise fee, and, alternatively, that the court erred in granting summary judgment because genuine issues of material fact exist regarding calculation of the fee." *Rogue Valley*, 262 Or App at 187. As to the first argument, the Court of Appeals concluded that RVS's status as a local government did not circumscribe the city's authority as a home-rule municipality and that the city's home-rule authority to enact the fee was not preempted by state law. *Id.* at 188, 199. As to the second argument, the Court of Appeals concluded that RVS had not preserved its argument regarding the reasonableness of the amount of the fee and rejected RVS's argument that the parties had tried the issue by consent. *Id.* at 201-02. RVS petitioned for review in this court, and we allowed the petition.

II. ANALYSIS

Ordinarily, when a "petitioner['s] arguments implicate the authority of [a] city, we begin with *** the authority of such local governments" under the "home-rule" provisions of the Oregon constitution. *Gunderson, LLC v. City of Portland*, 352 Or 648, 658-59, 290 P3d 803 (2012). "'Home rule' itself is not a constitutional term, and the actual constitutional terms differ from state to state. But 'home rule' has been described as the 'political symbol' for the objectives of local authority." *LaGrande/Astoria v. PERB*, 281 Or 137, 140 n 2, 576 P2d 1204, *adh'd to on recons*, 284 Or 173, 586 P2d 765 (1978). Home rule is the authority granted to Oregon's cities by Article XI, section 2, and Article IV, section 1(5), of the Oregon Constitution—adopted by initiative petition in 1906—to regulate to the extent provided in their charters. Article XI, section 2, provides, in part, "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[.]" In the same 1906 election, voters "reserved" initiative and referendum powers "to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district." Or Const, Art IV, § 1(5).

RVS argues, however, that the home-rule analysis does not apply—or does not apply in the same way—in the context of a fee or tax that one governmental entity imposes on another and that the Court of Appeals erred in concluding that RVS's status as a local government has no impact on the city's home-rule authority. As noted above, RVS is a sanitary authority, and the legislature has expressed its intention that sanitary authorities be considered municipal corporations and a type of local government under Oregon law. For those reasons, RVS claims, the trial court erred in granting the city's motion for summary judgment based on its home-rule authority. We review the trial court's rulings on summary judgment "to determine whether 'there is no genuine issue as to any material fact' and whether 'the moving party is entitled to prevail as a matter of law.'" *Bagley v. Mt. Bachelor, Inc.*, 356 Or 543, 545, 340 P3d 27 (2014) (citing ORCP 47 C).

A. *Intergovernmental Taxation*

RVS first argues that this is not a "home rule" case because it involves "intergovernmental taxation." RVS argues that the city must first have unmistakable, express statutory authority before it can impose taxes or fees on another local government. RVS draws that rule from three of this court's cases: *Portland v. Multnomah County*, 135 Or 469, 296 P 48 (1931); *Portland v. Welch et al.*, 126 Or 293, 269 P 868 (1928); and *Cent. Lincoln PUD v. State Tax Com.*, 221 Or 398, 351 P2d 694 (1960). The city responds that this case concerns a fee, rather than a tax, and therefore that that case law is inapplicable.

All three of the cases upon which RVS relies concern the imposition of a tax. In *Welch*, a city had offered land for sale, but had not yet sold that land, and this court held that the county in which the land was located could not impose otherwise applicable property taxes on that land. 126 Or at 294-97. In *Multnomah County*, the opposite occurred: the property was in private ownership on "tax day" when taxes were assessed, but a city bought the property before any tax had been levied. 135 Or at 470. This court held the property was nonetheless "clearly exempt from taxation." *Id.* at 473. In *Central Lincoln*, this court held that plaintiff, a people's utility district (PUD), was subject to a utility corporation excise tax. 221 Or at 401, 407. However, the court concluded that its interpretation of the statute at issue did not necessarily extend the tax to municipal corporations because "[t]he intention to tax a municipality is not to be inferred, but must be clearly manifested by an affirmative legislative declaration." *Id.* at 406. In that case, a clear legislative declaration of the intention to tax PUDs existed, because PUDs were specifically included in the statute. *Id.*

"A tax is any contribution imposed by government upon individuals, for the use and service of the state. A fee, by contrast, is imposed on persons who apply for or receive a government service that directly benefits them." *McCann v. Rosenblum*, 355 Or 256, 261, 323 P3d 955 (2014) (internal quotation and citation omitted). In *McCann*, this court quoted *Qwest Corp. v. City of Surprise*, 434 F3d 1176, 1183 (9th Cir 2006), in support of the rule that the distinction

between a tax and a fee is whether the "charge is expended for general public purposes, or used for the regulation or benefit of the parties upon whom the assessment is imposed." *McCann*, 355 Or at 261-62. Thus, the ballot measure at issue in that case, which would have imposed a markup on wholesale alcohol sales, was properly labeled a "tax," because the revenues generated by the markup would be distributed to the state's general fund, as well as to the general funds of cities and counties, and would be available for general government use. *Id.* at 261-62; *see also Dennehy v. Dept. of Rev.*, 305 Or 595, 605-06, 756 P2d 13 (1988) (state statute did not contravene constitutional limits on property taxation, because "[u]rban renewal financing is not a single, statewide tax to fund public structures or services unrelated to the source of funding"; rather, it "places the cost of urban renewal on the property that benefits from the expenditure of the funds so raised").

A fee, then, is imposed on particular parties and is used to regulate or benefit those parties rather than being used for general public purposes or to raise revenue for such purposes. In this case, the ordinance applies to one particular party only, RVS, and the ordinance directs that the city will "allocate money collected from RVS only for costs and reimbursement connected with proper regulatory purposes." The money collected from the franchise fee is to be used to cover "the full costs and full impacts associated with [RVS's] use, occupation, and other activities" in the city's rights-of-way, including "the additional oversight and associated costs incurred from City administration, maintenance and repair of City-owned facilities within City right-of-ways, special services performed by the City, and office and field-related costs." Although RVS expresses skepticism as to whether the fee actually will be directed towards regulatory purposes related to sanitary services, as the city claims, nothing in the record indicates that the fee will be used for general government purposes, rather than for appropriate regulatory purposes.

In sum, the record establishes that the city will use the money collected from the franchise fee to regulate and benefit the party from whom the fee is collected and to cover

costs directly imposed on the city by that party. That "distribution scheme" and the "uses to which that money [can] be put" demonstrate that the ordinance provides for the collection of a fee, rather than a tax. *McCann*, 355 Or at 262 (wholesale alcohol markup properly labeled a "tax," because not "used to provide services that directly benefit wholesalers" but, rather, distributed to state, cities, and counties for general government use). Because we conclude that the ordinance provides for the collection of a fee, and not a tax, RVS's arguments based on the prohibition of intergovernmental taxation discussed in some of our cases are inapposite here.[2]

B. *Regulation of Other Public Entities*

RVS next argues that the city cannot justify the franchise fee based on its home-rule authority because regulation of another governmental entity is different from regulation of private entities under the city's home-rule powers. To allow regulation of other government entities, RVS argues, would create a hierarchy among local governments that has no support in the law and would allow a city to exercise authority beyond its boundaries. It contends that such "extramural" or "extramunicipal" activity is not within the scope of a city's home-rule powers and is impermissible unless authorized expressly by statute.

RVS is correct that this court has recognized some limits on a local government's authority to compel or coerce another government to take some affirmative action. *See*

[2] At oral argument, RVS also argued that the ordinance cannot be said to provide for a "use fee" because such fees are charged in *exchange* for some service, right, or privilege. RVS claims that the city had already transferred the right to use the right-of-way to RVS by consenting to the annexation. *See* ORS 450.815(7) (a sanitary authority has the power to "[l]ay its sewers and drains in any public street, highway or road in the county, and for this purpose enter upon it and make all necessary and proper excavations, restoring it to its proper condition"). That is, RVS argues, no benefit is conferred on RVS in exchange for the franchise fee, and therefore the ordinance cannot be characterized as a fee. We disagree. As noted, a fee is "'used for the *regulation or benefit* of the [assessed] parties.'" *McCann*, 355 Or at 262 (quoting *Qwest Corp.*, 434 F3d at 1182 (emphasis added)). Although there may be circumstances where the terms of conferring the benefit on an assessed party precludes the later imposition of a fee in the name of regulation, that is not the situation in this case. Even if we were to accept RVS's argument that authority to use the right-of-way was transferred with the annexation, the ordinance provides for a fee for "regulation" of RVS; there is no requirement that the ordinance also confer some additional benefit.

City of Eugene v. Roberts, 305 Or 641, 649-650, 756 P2d 630 (1988) (home rule did not provide city with authority "to compel action by state and county officials" to put an advisory question on the state primary election ballot); *DeFazio v. WPPSS*, 296 Or 550, 582, 679 P2d 1316 (1984) (cities lack authority to "assert coercive authority over persons or property outside [their] boundaries"). For example, in *Kiernan v. Portland*, 57 Or 454, 111 P 379, *recons den*, 57 Or 454, 112 P 402 (1910), *dismissed for lack of jurisdiction*, 223 US 151, 32 S Ct 231, 56 L Ed 386 (1912), the City of Portland amended its charter to provide for construction of the Broadway Bridge and that, "upon completion of the bridge[,] the executive board shall surrender and deliver the possession thereof to the county court of Multnomah County." *Id.* at 462. This court held that it was "beyond the power of the [C]ity [of Portland] to impose the care and maintenance of a public bridge upon Multnomah County without the county authorities[']consent thereto." *Id.* at 463. That was so because Portland was attempting to compel Multnomah County to assume a new governmental function—bridge maintenance—and local governments cannot interfere with another government's exercise of its own governmental power and functions. *See also* Orval Etter, *Municipal Home Rule On and Off: "Unconstitutional Law in Oregon" Now and Then* 103 (Sourcebook ed 1991) (describing *Kiernan* as "the first ruling that home rule does not enable a city to change a power or duty of a governmental entity other than the city"); Letter of Advice dated Dec 24, 1985, to Senator Ken Jernstedt (OP-5863) (concluding that city could impose an excise tax or municipal surcharge on bridge tolls, but could not compel the port to collect a tax on tolls because "a municipality, absent statutory authority, may not impose a duty upon any other political subdivision or agency of the state to collect municipal taxes").

Those principles, however, do not go so far as to prohibit the city's fee in this case. While *City of Eugene* and *Kiernan* demonstrate that a city cannot, on the basis of its home-rule authority, impose a duty on or impair a power of another governmental entity, nothing in those cases would prevent a city from exercising the same kind of regulatory authority over specific services provided by another local

government entity on the same basis as services provided within the city by a private business. In this case, the franchise fee of five percent of RVS's revenue places RVS on an equal footing with other utilities operating within the city. As discussed further below, the legislature has provided a framework for cities to collect a franchise fee from utilities, both public and private, operating within their rights-of-way. *See* ORS 221.420; ORS 221.450. Where cities and utilities have not entered into an agreement for a different fee arrangement, the legislature provides for a five percent fee. ORS 221.450. Although RVS correctly points to limits on the home-rule doctrine that prohibit local governments from compelling affirmative conduct by other government entities, the limitations that it has identified do not restrict the city's authority to pass the ordinance at issue in this case.

C. *Home Rule*

Under a city's home-rule authority, "the validity of local action depends, first, on whether it is authorized by the local charter or by a statute[, and] second, on whether it contravenes state or federal law." *LaGrande/Astoria*, 281 Or at 142. The parties do not contend that the ordinance was not authorized by the city's charter, which provides that the "city has all powers that the constitutions, statutes, and common law of the United States and of this state now or hereafter expressly or impliedly grant or allow" and that the charter is to "be liberally construed so the city may exercise fully all powers possible under this charter and under United States and Oregon law." City of Phoenix Charter, § 4-5. Therefore, we must determine "whether the local rule in truth is incompatible with the legislative policy, either because both cannot operate concurrently or because the legislature meant its law to be exclusive." *LaGrande/Astoria*, 281 Or at 148.

In making that determination, we assume that "the legislature does not mean to displace local civil or administrative regulation of local conditions by a statewide law unless that intention is apparent." *LaGrande/Astoria*, 281 Or at 148-49 (footnote omitted). A state statute will displace the local rule where the text, context, and legislative history of the statute "*unambiguously* expresses an intention to preclude local governments from regulating" in the same

area as that governed by the statute. *Gunderson*, 352 Or at 663 (emphasis added); *see also US West Communications v. City of Eugene*, 336 Or 181, 186, 81 P3d 702 (2003) (applying standard statutory interpretation methodology to a question of home-rule city's authority to impose fee on telecommunications company).

RVS argues that ORS 221.420 and ORS 221.450 establish a comprehensive, statewide scheme that the legislature intended to be the exclusive basis for city imposition of fees upon utilities for using public rights-of-way. The city responds that those statutes do not address sanitary authorities and, therefore, the legislature has not unambiguously expressed any intention to preempt the ordinance at issue here.

ORS 221.420(2)(a) provides that a city may:

> "Determine by contract or prescribe by ordinance or otherwise, the terms and conditions, including payment of charges and fees, upon which any public utility, electric cooperative, people's utility district or heating company, or Oregon Community Power, may be permitted to occupy the streets, highways or other public property within such city and exclude or eject any public utility or heating company therefrom."

RVS, as a sanitary authority organized under ORS chapter 450, is not a "public utility" under ORS 221.420. ORS 221.420(1)(a) provides that "public utility" is to be given the meaning provided in ORS 757.005, which defines "public utility" to include only those entities furnishing "heat, light, water or power." ORS 757.005(1)(a)(A). RVS does not provide heat, light, water or power; it provides sanitation services. Therefore, ORS 221.420(2)(a) does not affirmatively provide authority for the city to impose the fee at issue in this case, but neither does it, standing alone, unambiguously preclude the city from imposing the fee.

RVS also points to ORS 221.450, which provides:

> "[E]very incorporated city may levy and collect a privilege tax from Oregon Community Power and from every electric cooperative, people's utility district, privately owned public utility, telecommunications carrier as defined in ORS 133.721 or heating company. The privilege tax may

> be collected only if the entity is operating for a period of 30 days within the city without a franchise from the city and actually using the streets, alleys or highways, or all of them, in such city for other than travel on such streets or highways. The privilege tax shall be for the use of those public streets, alleys or highways, or all of them, in such city in an amount not exceeding five percent of the gross revenues of the cooperative, utility, district or company currently earned within the boundary of the city. However, the gross revenues earned in interstate commerce or on the business of the United States Government shall be exempt from the provisions of this section. The privilege tax authorized in this section shall be for each year, or part of each year, such utility, cooperative, district or company, or Oregon Community Power, operates without a franchise."

Like ORS 221.420, ORS 221.450 does not explicitly apply to sanitary authorities like RVS.

Read together, RVS argues, ORS 221.420 and ORS 221.450 provide statutory authority that, for the enumerated entities to which they apply, permits a city to either enter into a franchise agreement with a utility or impose a privilege tax in lieu of negotiating a franchise agreement. The legislative history of House Bill (HB) 3021—the 1987 revision to ORS 221.420 and ORS 221.450—suggests that the legislature was told that the statutes would operate so that ORS 221.450 functioned as a "penalty clause," such that,

> "if *** [y]ou, as a private utility *** don't sit down and negotiate a franchise regulation ordinance or agreement so that we're working together, then you're going to pay more. You're going to pay five percent. If you come in and get a franchise, and you sit down at the table *** and we mutually regulate it together, basically, then [you pay less]."

Tape Recording, House Committee on Environment and Energy, HB 3021, Apr 22, 1987, Tape 122, Side B (statement of Larry Shaw).

RVS argues, therefore, that the legislature intended to occupy the field and preempt cities from imposing fees on public utilities other than through the comprehensive scheme established by ORS 221.420 and ORS 221.450. In

particular, RVS argues that the legislature intended the list of utility service providers in ORS 221.420(2)(a) to be construed as an exclusive list of utility service providers that a city may target for such charges and fees—and that all other nonenumerated entities cannot be charged similar charges or fees. Put differently, from those affirmative statutory authorizations of privilege taxes that a city may charge for certain utilities operating within the city, RVS draws the negative implication that a city may not impose such taxes or fees on other utilities.

Even if ORS 221.420 and ORS 221.450 establish a comprehensive scheme as to municipal regulation of some entities—an issue that we do not decide—that conclusion would not preclude the city's fee in this case. RVS essentially argues that, because sanitary authorities are not specifically enumerated in ORS 221.420, the legislature intended to exempt sanitary authorities from franchise fees. Although RVS does not explicitly use the Latin term, that argument invokes the logic of *expressio unius est exclusio alterius*, literally "the expression of one is the exclusion of others." *See Black's Law Dictionary* 701 (10th ed 2014) ("A canon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative. For example, the rule that 'each citizen is entitled to vote' implies that noncitizens are not entitled to vote."). *Expessio unius* arguments are most powerful when there is reason to conclude that a list of enumerated terms was intended to be exhaustive. *See* *Colby v. Gunson*, 224 Or App 666, 671, 199 P3d 350 (2008) ("the *expressio unius* guide to legislative intent corroborates, rather than supplies, meaning to a statute").

To show that the legislature intended the list to be exhaustive, RVS points to legislative history from HB 3021 relating to a proposal to add certain publically owned utilities to the lists of already-enumerated privately owned entities in ORS 221.420 and ORS 221.450. In the hearings on HB 3021, a representative wondered whether the bill would apply to telephone cooperatives and was told it would not "affect" entities that fell outside the definition of "public utility." Tape Recording, House Committee on Environment and Energy, HB 3021, Apr 22, 1987, Tape 122, Side B (statement

of Larry Shaw). From that slim legislative history, RVS concludes that the franchise fee at issue here is invalid because, if the statutes were not intended to apply to telephone cooperatives, they also were not intended to be applied to other nonenumerated public entities.

A party that challenges a home-rule city's authority as preempted by state law is required to show that the legislature "unambiguously" expressed its intent—a high bar to overcome. *Gunderson*, 352 Or at 663. As noted above, in the context of the home-rule doctrine, we begin with the assumption "that the legislature does not mean to displace local civil or administrative regulation of local conditions by a statewide law unless that intention is apparent." *LaGrande/Astoria*, 281 Or at 148-49. Only where the legislature "*unambiguously* expresses an intention to preclude local governments from regulating" in the same area governed by an applicable statute can that presumption against preemption be overcome. *Gunderson*, 352 Or at 663 (emphasis added); *cf. State ex rel Haley v. City of Troutdale*, 281 Or 203, 211, 576 P2d 1238 (1978) (because any legislative intent to preempt local action exceeding state "minimum" construction standards was "not unambiguously expressed[,] local requirements compatible with compliance with the state's standards are not preempted").

The legislative history of HB 3021 does not rise to the level of "unambiguously" expressing legislative intent to occupy the field. *See* *State v. Gaines*, 346 Or 160, 172-73 n 9, 206 P3d 1042 (2009) (reliance on "the beliefs of a single legislator or witness" is "fraught with the potential for misconstruction"). Notably, the legislature has expressly preempted local regulation of certain areas of law by using the word "preempt" itself. *See* ORS 731.840(4) ("[t]he State of Oregon hereby preempts the field," and "[n]o county, city, district, or other political subdivision or agency in this state shall so regulate"); ORS 203.090 ("The[se] provisions *** preempt any laws of the political subdivisions of this state relating to the regulation of private security providers."). In other statutes, it has expressed its disapproval of conflicting local laws in equally clear terms. *See* ORS 461.030(1) ("no local authority shall enact any ordinances, rules or regulations

in conflict with the provisions hereof"). However, we see no reason to *imply* such broad preemption of the entire field of utility regulation from the explicit authorization of regulation of certain other utilities.

Further, ORS 221.420 and ORS 221.450 do not create a statutory scheme that prevents the state law and local ordinance from operating concurrently. *LaGrande/Astoria*, 281 Or at 148. Rather, the state regulates less extensively than the local ordinance, and leaves it to cities to enact reasonable conditions of consent for sanitary authorities. *See* ORS 450.815(7); *cf. State ex rel Haley*, 281 Or at 205, 211 (state building code providing for single wall construction did not indicate that legislature intended to prevent cities from enacting additional safeguards—such as requiring double wall construction—and at minimum such an intention was not "unambiguously expressed"); *Thunderbird Mobile Club v. City of Wilsonville*, 234 Or App 457, 474, 228 P3d 650 (2010), *rev den*, 348 Or 524, 236 P3d 152 (2010) ("Under *LaGrande/Astoria*, *** the occupation of a field of regulation by the state has no necessary preemptive effect ***. Instead, a local law is preempted only to the extent that it 'cannot operate concurrently' with state law, *i.e.*, the operation of local law makes it impossible to comply with a state statute.").

That conclusion is strengthened by two other expressions of the legislature's intent. First, in HB 3021 the legislature provided that, by enacting ORS 221.420 and ORS 221.450, it was simply "*reaffirm[ing]* the authority of cities to regulate use of municipally owned rights of way" and that it "recognize[ed] the independent basis of legislative authority granted to cities in this state by municipal charters." ORS 221.415 (emphasis added).[3] That is, the legislature apparently thought that HB 3021 was not necessary to provide cities with authority to impose taxes and fees because they already possessed that authority. Rather, the legislature passed that bill in response to a then-recent

[3] Although ORS 221.415 goes on to also affirm the authority of cities to "impose charges upon publicly owned suppliers of electrical energy, as well as privately owned suppliers," we do not read that subordinate clause as negating the broader affirmation of the authority of cities to regulate their rights-of-way.

circuit court decision that had held to the contrary with respect to a people's utility district.[4]

Second, in a different statute, the legislature appears to have anticipated the kind of fee at issue in this case and provided that such conditions on the use of the public rights-of-way by a sanitary authority are appropriate. ORS 450.815(7), in defining the powers of a sanitary authority, provides that a sanitary authority may:

> "Lay its sewers and drains in any public street, highway or road in the county, and for this purpose enter upon it and make all necessary and proper excavations, restoring it to its proper condition. *However, the consent of the proper city*, county or state authorities, as the case may be, *shall first be obtained and the conditions of such consent complied with.*"

(Emphasis added.) The legislature apparently intended that use of public rights-of-way by a sanitary authority be contingent upon its compliance with reasonable conditions imposed by a city.

Because neither ORS 221.420 nor ORS 221.450 unambiguously express a legislative intent to preempt local

[4] Specifically, the legislature was reacting to the then-recent circuit court decision in *Columbia River People's Utility District v. City of St. Helens et al*, No. 85-2236 (Columbia County Circuit Court, July 15, 1986). In that case, the circuit court held that "the legislature has declared by inference that People's Utility Districts are not subject to franchise fees (excise taxes) such as defendant cities desire to impose." *Id.* at 3. The legislature passed HB 3021 "just [as] a legislative emergency fix for the problem [presented by the circuit court case] and [did not go] beyond that." Tape Recording, House Committee on Environment and Energy, HB 3021, Apr 22, 1987, Tape 122, Side B (statement of Larry Shaw). Specifically, the legislature was told that the "bill only affects electrical utilities" and that other entities, such as telephone cooperatives, were "not affected by this bill at all." *Id.* Because *Columbia River* was pending before the Court of Appeals at the time, a representative noted that, if the cities wanted to continue their appeal "on a home rule issue that says that the city has the right to [impose a fee]—that's up to them—but that issue stands aside from this bill. The home rule issue is a little broader, I think, than what we are dealing with here." Tape Recording, Senate Agriculture and Natural Resources Committee, HB 3021, Apr 29, 1987, Tape 138, Side A (statement of Rep Bruce Hugo). Therefore, it appears that the legislature did not intend HB 3021 to impact the home-rule authority of cities, but, instead, merely to clarify that such a fee could be imposed on People's Utility Districts. *See also* ORS 221.415 ("Recognizing the independent basis of legislative authority granted to cities in this state by municipal charters, the Legislative Assembly intends *** to reaffirm the authority of cities to regulate use of municipally owned rights of way and to impose charges upon publicly owned suppliers of electrical energy, as well as privately owned suppliers for the use of such rights of way.").

action, and also because the statutes and legislative history suggest that the legislature in fact did not intend to preempt local governments from imposing such conditions on the use of their rights-of-way by sanitary authorities, we conclude that the franchise fee at issue in this case is not preempted by state law.

D. *Reasonableness of the Fee*

Finally, RVS argues that the Court of Appeals erred in ruling that its argument challenging the reasonableness of the franchise fee was not preserved. RVS asks that we remand the case to the trial court to resolve material questions of fact relating to the amount of the fee that may be imposed. *See Eugene Theatre et al. v. Eugene et al.*, 194 Or 603, 613, 243 P2d 1060 (1952) (fee "far in excess of what might be deemed reasonably necessary for purposes of regulation" is invalid). The city responds that the issue is unpreserved because RVS's complaint did not state a separate claim for relief regarding the amount of the fee and RVS's motion for summary judgment focused on whether the city had authority to impose the fee, not whether the fee was reasonable. On that basis, the city argues that the trial court and the Court of Appeals properly declined to reach the issue whether the amount of the fee was reasonable.

Even if the affidavits and cross-motions for summary judgment in this case "might provide a basis for an amendment to the pleadings to make it an issue," a court may not "award relief outside the issues of the case." *Heintz v. Sinner et ux*, 232 Or 529, 533, 376 P2d 478 (1962). As noted, RVS did not seek a declaration that the fee was unreasonable in amount. Rather, RVS's complaint asked the court to:

> "1. Declar[e] whether the ordinance *** is valid and whether RVS is required to collect and pay over the fee described in said ordinance.
>
> "2. Grant an injunction prohibiting [the city] from collecting the franchise fee ***.
>
> "3. For other such relief as the court may deem equitable."

Moreover, RVS did not seek to amend its complaint during or after the summary judgment proceedings.

Here, as the trial court stated, "nothing in the complaint *** challenged the reasonableness of the fee, in the event [the city's] authority was upheld." This court has explained that

> "a decree or judgment must be responsive to the issues framed by the pleadings and a trial court has no authority to render a decision on issues not presented for determination. In absence of amendment of the pleadings, evidence received without objection will not provide a basis for such a decree."

Brown v. Brown, 206 Or App 239, 248, 136 P3d 745 (2006), *rev den,* 341 Or 449 (2006) (internal quotation and citation omitted); *see also Central Oregon Fabricators, Inc. v. Hudspeth*, 159 Or App 391, 403, 977 P2d 416, *rev den*, 329 Or 10 (1999) (trial court erred in granting relief on unpleaded theory, where plaintiffs never sought leave to amend pleadings). Because RVS did not move to amend the pleadings, it was not error for the trial court to overrule RVS's objection to the proposed judgment.[5] We conclude that the trial court correctly declined to rule on an issue not properly before it.

III. CONCLUSION

We hold that the city was authorized, under its home-rule authority, to adopt the ordinance at issue in this case. The franchise fee that the ordinance prescribes is not preempted by state law. RVS did not present the issue of the

[5] Although RVS acknowledges that its complaint did not state a separate claim for relief regarding the amount of the fee, and that it did not otherwise amend its pleading, it nevertheless argues that that issue was tried by consent during the summary judgment proceedings. Under ORCP 23 B, "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." ORCP 23 B; *Navas v. City of Springfield*, 122 Or App 196, 201, 857 P2d 867 (1993) ("Generally, a trial court has no authority to render a decision on an issue not framed by the pleadings. *** ORCP 23 B states a limited exception to this rule: if the parties expressly or impliedly consent, they may try issues not raised in the pleadings."). Here, the amount of the fee was discussed in the summary judgment proceedings in connection with characterizing the ordinance as a tax or fee, but not in seeking a declaration as to whether the amount of a fee was reasonable. We therefore agree with the Court of Appeals that the issue of the reasonableness of the fee was not tried by express or implied consent of the parties. *Rogue Valley*, 262 Or App at 201.

reasonableness of the amount of the fee to the trial court in its pleadings.

The decision of the Court of Appeals and the judgment of the circuit court are affirmed.

Resolution

UGB Amendment for CP-3

STAFF REPORT

August 13, 2015

AGENDA ITEM:

Consideration of a Resolution of Intent to Amend the Central Point Urban Growth Boundary (UGB), Comprehensive Plan (Map) and the Central Point Municipal Code (Map) to Add Land from the City's Urban Reserve Area (URA) CP-3 for Job Creation in the City of Central Point.

STAFF SOURCE:

Tom Humphrey, Community Development Director

BACKGROUND:

The Community Development Department continues to meet with companies and property owners who would like to see other areas of the City's UGB expanded so that additional employment lands can be annexed and developed. The City has received a *Letter of Assertion,* (Attachment A) requesting that the Council pursue a UGB Amendment from Urban Reserve Area (URA) CP-1B. Our Urban Growth Boundary Management Agreement (UGBMA) with Jackson County states that *individuals and groups may petition the County or appropriate City … for initiating major legislative amendments* which this would be. The City adopted an updated Economic Element in 2014 which will be used in determining the need for more employment land.

ISSUES:

The Council is being presented with the above background information in order to determine whether it wants the City to proceed with an Amendment of its Comprehensive Land-Use Plan.

As the Council is aware, the Department of Land Conservation and Development (DLCD) needs to be notified whenever a city proposes changes to its Comprehensive Plan. If the Council is in support of the changes being proposed with this staff report, and would like to proceed, then a Resolution of Intent (Attachment B) can be adopted to start the amendment process. The specifics of the amendment need not be discussed at this time but opinions can be offered, direction can be given to staff and an amendment can be initiated.

ATTACHMENTS:

Attachment "A" – Letter of Assertion from Joel Ockunzzi, Broker, Oregon Opportunities dated 7/31/15
Attachment "B" – Resolution No. ____ A Resolution Declaring the City Council's Intent to Initiate an Amendment to the Central Point Urban Growth Boundary (UGB), and the Comprehensive Plan (Map) to Add Land from the City's Urban Reserve Area (URA) CP-3 for Job Creation and Open Space Preservation in the City of Central Point.

ACTION:

Discuss UGB Amendment and initiate a Comprehensive Land-Use Amendment by Resolution using the provisions in Chapter 17.96.020.

RECOMMENDATION:

Deliberate and 1) Approve a Resolution of Intention to Amend the Comprehensive Land-Use Plan; 2) Defer a Resolution of Intention to a later date; 3) Decline the Letter of Assertion.

Return to Agenda

OREGON
OPPORTUNITIES

July 31st, 2015

Attn; Chris Clayton
City of Central Point City
City Manager
140 S. 3rd Street
Central Point, Oregon 97502
541-664-3321

Chris,

Please be advised that I represent the parties in the process for transacting a purchase and sale of the real property located at the intersection of Peninger Road & East Pine Street known as, [two legally created parcels identified as; 37 2W 02D TL500 & TL600 totaling 17.14+/- acres and commonly known as Norcross].

The purpose for the transaction is for near term future development into an upscale retail commercial center intended to include nationally known large retailers along with consumer friendly pads for establishments, such as eateries, financial, apparel, etc. This will require necessary action on the part of Central Point and Jackson County to initiate the amendment process for expansion of the urban growth boundary, retail commercial zone changes, and all other access requirements.

With the combined support and cooperation of Central Point and Jackson County the enhancement by these actions taken will establish this location as what may best be described as the gateway to the Expo, Jackson County Fairgrounds, and the forward looking identity of Central Point.

This is an exciting opportunity and we look forward to working with you, the City of Central Point, and Jackson County to accomplish our mutual goals!

Thank you in advance for your efforts to help see this through to fruition.

Respectfully,

Joel R. Ockunzzi – Broker licensed in the State of Oregon
Oregon Opportunities

RESOLUTION NO. _____

A RESOLUTION DECLARING THE CITY COUNCIL'S INTENT TO INITIATE AN AMENDMENT TO THE CENTRAL POINT URBAN GROWTH BOUNDARY (UGB), AND THE COMPREHENSIVE PLAN (MAP) TO ADD LAND FROM THE CITY'S URBAN RESERVE AREA (URA) CP-3 FOR JOB CREATION AND OPEN SPACE PRESERVATION IN THE CITY OF CENTRAL POINT

RECITALS:

A. An amendment of the Central Point Comprehensive Land Use Plan may be initiated by adoption of a resolution of intention by the City Council (Chapter 17.96.200.B); and

B. The City's Urban Growth Boundary Management Agreement (UGBMA) with Jackson County states that individuals and groups may petition the County or appropriate City … for initiating major legislative amendments. The City Council has received a request to initiate a UGB amendment for property located in a newly formed Urban Reserve Area (URA) known as CP-3.

C. The City Council has reason to believe that expansion of the UGB into CP-3 and changes to the Comprehensive Plan (map) will facilitate the relocation and growth of a prominent regional business and promote job creation in the city consistent with the development objectives for CP-3.

D. The City Council determines that it is in the City's economic interest and that the public necessity and convenience and general welfare support such an amendment.

The City of Central Point resolves:

Section 1: By this resolution the City Council authorizes the Community Development Department to proceed with consideration of an amendment to the Urban Growth Boundary (UGB), including necessary and related Comprehensive Plan (Map) Amendments.

Section 2: Unless otherwise authorized by the City Council the UGB amendment shall be limited to URA CP-3 and the uses agreed to in the Regional Plan.

Section 3: All conditions of the Regional Plan Element applicable to UGB expansions in general, and to CP-3 specifically, shall be satisfied in order to amend the UGB.

Section 4: Prior to formal application for the actions cited in Section 1 of this resolution the requirements of Section 17.96 of the City of Central Point Municipal Code shall be met.

PASSED by the Council and signed by me in authentication of its passage this 13th day of August, 2015.

_____
Mayor Hank Williams

ATTEST:

_____
City Recorder

Return to Agenda

Ordinance

Amending CPMC Chapter 17 Zoning

The Official Ordinance will be presented at the Council Meeting on Thursday night. The one presented in the packet is a working document for explanation purposes.

STAFF REPORT

August 13, 2015

AGENDA ITEM: IV-A

Consideration of miscellaneous amendments to the Central Point Municipal Code, Zoning Ordinance (Sections 17.08 Definitions; 17.24 R-2 District; 17.28 R-3 District; 17.32 C-N District; 17.37 C-2(M) District; 17.44 C-4 District; 17.46 C-5 District; 17.57 Fences; 17.60 General Regulations; 17.65 TOD District Zoning Regulations and 17.75 Off-Street Parking)

STAFF SOURCE:

Don Burt, Planning Manager
Tom Humphrey, Community Development Director

BACKGROUND:

Periodically it comes to the attention of City staff that the Zoning Code is in need of some minor adjustment to improve its clarity, and hence its administration. At this time staff is proposing eleven (11) minor amendments as follows:

Amendment 1, Section 17.08.010 Definitions, specific and 17.08.410 TOD District and Corridor Definitions and Uses

Added the following definitions:

- "NAICS - North American Industrial Classification System". This term is being used in Amendment 9.
- "Senior Housing" previously not defined in either 17.08.010 or 17.08.410, but used in the Zoning Ordinance.
- "Independent Living" defined as a type of Senior Housing
- "Assisted Living" defined as a type of Senior Housing
- "Personal Care" defined as a type of Senior Housing
- "Nursing Facility" currently not defined, but used in the Zoning Ordinance.

The definitions related to Senior Housing have been added to address the different types of senior housing being provided in today's market. The proposed change does not alter current policy.

Amendment 2, Section 17.24 R-2 District

17.24.020 Permitted Uses amended to clarify that all permitted residential uses must comply with the R-2 districts minimum and maximum density standards, lot coverage and setbacks.

17.24.020(A) amended to read "Single-family detached" eliminating the language "One single-family dwelling". This was done to clarify that single-family detached dwellings are permitted but subject to compliance with density standards. This is necessary to assure that the City meets its density objectives as set forth in the Regional Plan Element.

17.24.020(C) amended to remove reference to "One two-family dwelling" and replace with "Duplex and single-family attached dwellings" as used in the R-3 district.

Amendment 3, Section 17.28 R-3 District

Section 17.28.020(A) and (B) Permitted Uses amended to eliminate as permitted uses single-family detached dwellings and manufactured homes. These two uses cannot meet the density requirements of the R-3 district and are therefore not a use consideration.

Amendment 4, Section 17.32 C-N District

17.32.020(A) Permitted Uses amended to remove "other than those related to health care" for professional and office uses. There was no rational reasoning for this restriction.

17.32.020(H) Permitted Uses amended to add statement regarding "Other uses not specified. . ." used in other zoning districts.

Amendment 5, Section 17.37 C-2(M) District

17.37.020(A) Permitted Uses amended to delete "including" to be replaced with "such as" to convey similarity in intended use.

17.37.020(E) Permitted Uses amended to add statement regarding "Other uses not specified. . ." used in other zoning districts.

Amendment 6, Section 17.44 C-4 District

17.44.020(A) Permitted Uses amended to add veterinary clinics as a permitted use as previously approved by the Planning Commission (File No. 15007).

17.44.020(B) Permitted Uses amended to include the following language to the general description of permitted uses "but not limited to". This clarifies the intent of the language to provide examples of uses permitted.

Amendment 7, Section 17.46 C-5 District

17.46.020(A)(B)(C)(D) amended to include the "but not limited to language"
17.46.020(F) amended to remove the word "including" and replace with "such as" which is broader in application, but retains the descriptive intent in permitted light industrial use types.

Amendment 8, Section 17.57 Fences

17.57.020(C) General Regulations, Table "Fence Regulations" amended to add a maximum height limitation of six (6) feet.

17.57.020(C) General Regulations, Table "Fence Regulations" amended to delete language "Chain Link Fencing, Apace-Board-Type Fencing, etc." to be replaced with "Fences in Floodplain or Drainage Easements". The intent is to regulate fencing in a floodplain or drainage easement, not the type of fencing.

17.57.020(C) General Regulations, Table "Fence Regulations" amended to add a maximum height limitation of six (6) feet. The six (6) foot maximum height limitation has been standard practice.

17.57.020(C) General Regulations, Table "Fence Regulations" explanation (a-1) amended to remove reference to "6' fence" and replaced with "7' fence" per prior modifications.

17.57.020(C) General Regulations, Table "Fence Regulations" explanations (b, c, & d) to remove the asterisks. The asterisks have no known meaning or reference.

17.57.020(C) General Regulations, Table "Fence Regulations" explanation (c) added language referencing sight distance code section.

17.57.020(C) General Regulations, Table "Fence Regulations" explanation (e) added language regarding impeding or diverting water through drainage easements.

17.57.020(C) General Regulations, Table "Fence Regulations" explanation (f) modified language regarding variances.

Amendment 9, Section 17.60 General Regulations

17.60.140(A)(1) Authorization for Similar Use amended to add reference to the NAICS. This legitimizes the City's prior use of the NAICS as a source for determining use similarity.

17.60.140(A)(2) Authorization for Similar Use amended removing the "not anticipated . . ." criteria. This particular criterion is not of value in determining use similarity. It is impracticable for a land use code to consider and track all uses.

Amendment 10, 17.65.050 Zoning Regulations – TOD District and 17.65.060 Land Use – TOD Corridors

17.65.050, Table 1 amended to allow personal service oriented uses in the MMR and HMR district subject to being located on the ground floor of a multiple-family building or as second story offices when located adjacent to an EC district. This applies the same criteria as used for professional offices in the MMR and HMR district.

17.65.060, Table 4 amended to allow personal service oriented uses in the MMR district subject to being located on the ground floor of a multiple-family building. This applies the same criteria as used for professional offices in the MMR TOD Corridor.

17.65.050, Table 1 and 17.65.060, Table 4 amended explanation L3 to read "Permitted in existing commercial building or new construction and clarified area limitation of 10,000 sq. ft. as a maximum. The intent of this amendment is for clarification, particularly as pertains to existing commercial buildings.

Amendment 11, Section 17.75.039 Off-Street Parking Design and Development Standards

17.75.039 Off-Street Parking Design and Development Standards amended to add minimum compact parking spaces. The Zoning Ordinance currently refers to and allows compact parking, but does not identify the minimum dimensions for compact parking.

ISSUES:

All of the above amendments are administrative amendments necessary for the clear, concise, and consistent use of the Zoning Ordinance. The amendments to not result in policy changes.

EXHIBITS/ATTACHMENTS:

Attachment "A" – Ordinance No. _____, An Ordinance Amending the Central Point Municipal Code Zoning Sections to Correct Errors and Inconsistencies.

ACTION:

Consider proposed amendments and 1) forward the ordinance to a second reading, 2) make revisions and forward the ordinance to a second reading or 3) deny the ordinance.

RECOMMENDATION:

Discuss ordinance proposal and forward ordinance and amendments to a second reading.

Return to Agenda

ORDINANCE NO._____

AN ORDINANCE AMENDING CENTRAL POINT MUNICIPAL CODE CHAPTER 17 ZONING SECTIONS TO CORRECT ERRORS AND INCONSISTENCIES.

RECITALS:

A. Pursuant to CPMC, Chapter 1.01.040, the City Council, may from time to time make revisions to its municipal code which shall become part of the overall document and citation.

B. On July 7, 2015, the Central Point Planning Commission recommended approval of code amendments to CPMC Chapters 17.08; Chapter 17.24; Chapter 17.28; Chapter 17.32; Chapter 17.37; Chapter 17.44; Chapter 17.46; Chapter 17.57; Chapter 17.60; Chapter 17.65 and Chapter 17.75. (zoning) .

C. On August 13, 2015, the City of Central Point City Council held a property advertised public hearing; reviewed the Staff Report and findings; heard testimony and comments, and deliberated on approval of the Municipal Code Amendment.

THE PEOPLE OF CENTRAL POINT DO ORDAIN AS FOLLOWS:

SECTION 1. Amendments to Sections 17.08 Definitions; 17.24 R-2 District; 17.28 R-3 District; 17.32 C-N District; 17.37 C-2(M) District; 17.44 C-4 District; 17.46 C-5 District; 17.57 Fences; 17.60 General Regulations; 17.65 TOD District Zoning Regulations and 17.75 Off-Street Parking are intended to correct errors, improve clarity and administration of the municipal code.

Amendment 1

Section 17.08 Definitions

"NAICS" means the North American Industry Classification System (NAICS), the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

"Senior Housing" means housing designed and constructed to accommodate the needs of seniors and includes **the following** as defined herein**: independent living** facility**,** personal care facility, and assisted living facility. Senior housing does not include nursing facilities.

"Independent Living" means a multi-unit senior housing development, also known as congregate housing that provides supportive services such as meals (common dinning), housekeeping, social activities, and transportation.

"Assisted Living" means a state-licensed program offered at senior residential facilities with services that include meals, laundry, housekeeping, medication reminders, and assistance with Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs).

"Personal Care Facility" means a state licensed facility that specializes in caring for the memory impaired resident.

"Nursing Facility" means a facility licensed by the state that provides 24-hour nursing care, room and board, and activities for convalescent residents and those with chronic and/or long-term illnesses. The availability of regular medical supervision and rehabilitation therapy is required. This alternative may be referred to as a Nursing or Convalescent Home.

Section 17.08.410 TOD district and corridor Definitions and uses.

"Senior Housing" means housing designed and constructed to accommodate the needs of seniors and includesthe following as defined in Section 187.08 Definitions;independent living, senior apartments, and assisted living facilities. Senior housing does not include nursing facilities.

Amendment 2

Chapter 17.24 R-2, RESIDENTIAL TWO-FAMILY DISTRICT

17.24.020 Permitted uses.

The following uses and their accessory uses are permitted in the R-2 district:

A. **Residential. The following residential uses are permitted subject to compliance with all the code requirements such as lot coverage, setbacks, etc.the density standards in Section 17.24.055:**

a. ~~One s~~**S**ingle-family **detached** dwelling**s**;

b. **S**ingle-family manufactured home, as defined in Section 17.08.010, and subject to the following conditions:

i. **The** manufactured home shall be multi-sectional and enclose a space of not less than one thousand square feet,

ii. **The** manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than twelve inches above grade,

iii. ~~-~~**The** manufactured home shall have a pitched roof, with a minimum slope of three feet in height for each twelve feet in width,

iv. **The** manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within Central Point or which is comparable to the predominant materials used on surrounding dwellings as determined by the city,

v. **The** manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010,

vi. **The** manufactured home shall have a garage or carport constructed of like material. The city may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of dwellings in the immediately surrounding area**,**

vii. **In** addition to the foregoing, a manufactured home and the lot upon which it is sited shall comply with any and all development standards, architectural requirements and minimum size requirements with which conventional single-family residential dwellings on the same lot would be required to comply.

~~b.~~**c.** ~~**One** two-family dwelling~~ **Duplex and single-family attached dwellings**~~One two-family dwelling~~;

Amendment 3

Chapter 17.28 R-3, RESIDENTIAL MULTIPLE-FAMILY DISTRICT

17.28.020 Permitted Uses.

The following uses and their accessory uses are permitted in the R-3 district:

~~A. Single-family dwellings;~~

~~B. Single-family manufactured home, as defined in Section 17.08.010, and subject to the following conditions:~~

~~1. The manufactured home shall be multi-sectional and enclose a space of not less than one thousand square feet,~~

~~2. The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than twelve inches above grade,~~

~~3. The manufactured home shall have a pitched roof, with a minimum slope of three feet in height for each twelve feet in width,~~

~~4. The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within Central Point or which is comparable to the predominant materials used on surrounding dwellings as determined by the city,~~

~~5. The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010,~~

~~6. The manufactured home shall have a garage or carport constructed of like material. The city may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of dwellings in the immediately surrounding area,~~

~~7. In addition to the foregoing, a manufactured home and the lot upon which it is sited shall comply with any and all development standards, architectural requirements and minimum size requirements with which conventional single-family residential dwellings on the same lot would be required to comply;~~

C. Duplex and single-family attached dwellings;

D. Multiple-family dwellings and dwelling groups;

E. Boardinghouses and rooming houses;

F. Public schools, parochial schools, kindergartens, but not including business, dance, music, art, trade, technical or similar schools;

G. Public parks and recreational facilities;

H. Churches and similar religious institutions;

I. Developer's project office and sales office including mobile homes and trailers adapted to that purpose during construction of the project only;

J. Residential facilities, as that term is defined in Oregon Revised Statutes 197.660(1); provided that the city may require an applicant proposing to site a residential facility to supply the city with a copy of the entire application and supporting documentation for state licensing of the facility, except for information which is exempt from public disclosure under ORS 192.496 to 192.530;

K. Residential homes; and

L. Other uses not specified in this or any other district, if the planning commission finds them to be similar to those listed above and compatible with other permitted uses and with the intent of the R-2 district as provided in Section 17.60.140. (Ord. 1912(Exh. 1), 2008; Ord. 1691 §2, 1993; Ord. 1684 §36, 1993; Ord. 1615 §8, 1989

Amendment 4

Chapter 17.32. C-N, Neighborhood Commercial District

17.32.020 Permitted uses.

The following uses and their accessory uses are permitted outright, subject to compliance with all applicable municipal, state and federal environmental, health, and safety regulations as well as the requirements for site plans in Chapter 17.72:

A. Professional and financial offices and personal service establishments ~~other than those related to health care~~;

B. Retail stores, shops and offices supplying commodities or performing services other than vehicle and fuel sales;

C. Eating and drinking establishments that do not possess a liquor license;

D. Desktop publishing, xerography, copy centers;

Return to Agenda

E. Temporary tree sales, from November 1st to January 1st;

F. Public and quasi-public utility and service buildings, structures and uses;

G. Neighborhood shopping centers, which may include any of the permitted uses in this section. (Ord. 1881 (part), 2006; Ord. 1709 §1(part), 1994).

H. Other uses not specified in this or any other district, if the planning commission finds them to be similar to the uses listed above and compatible with other permitted uses and with the intent of the C-4 district as provided in Section 17.60.140, Authorization for similar uses

---

Amendment 5

Chapter 17.37 C-2(M), Commercial-Medical District

17.37.020 Permitted uses.

The following uses are permitted in the C-2(M) district:

A. Professional and financial **when such uses are in conjunction with health care facilities located in the area, such as**~~, including~~:

1. Hospitals;

2. Health care facilities required to be licensed by the state of Oregon;

3. Professional medical offices; and

4. Medical services, clinics and laboratories.

B. Personal services when the primary use is in conjunction with related health care facilities in the zone, ~~including~~**such as**:

1. Barber and beauty shops;

2. Counseling services; and

3. Day care centers.

C. Retail outlets, when such uses are in conjunction with health care facilities located in the area, ~~including~~**such as**:

1. Drugstore;

2. Health food;

3. Gifts, notions and variety;

4. Sit-down restaurant;

5. Delicatessen, pastry, confectionery, bakery;

6. Jewelry; and

7. Books and stationery.

D. Residential purposes, when developed to the standards of the TOD-LMR, low mix residential district as set forth in Chapter 17.65. (Ord. 1925 §2, 2009; Ord. 1684 §43(part), 1993).

E. Other uses not specified in this or any other district, if the planning commission finds them to be similar to the uses listed above and compatible with other permitted uses and with the intent of the C-4 district as provided in Section 17.60.140, Authorization for similar uses

Amendment 6

Chapter 17.44 C-4 Tourist and Office-Professional District

17.44.020 Permitted uses.

The following uses are permitted in the C-4 district:

A. General professional and financial offices, including, but not limited to:

1. Banks and similar financial institutions;

2. Accounting and bookkeeping offices;

3. Real estate offices;

4. Insurance company offices;

5. Legal services;

6. Architectural and engineering services;

7. Professional photo or art studios;

8. Counseling services;

9. Corporate or government offices;

10. Medical/dental offices;

11. Veterinary Clinics

B. Tourist and entertainment-related facilities, including **but not limited to**:

1. Convenience market, meat, poultry, fish and seafood sales; fruit and beverage stands;

2. Drugstores;

3. Automobile service station, automobile and recreational vehicle parts sales and repairs, and truck rentals;

4. Motel and hotel;

5. Walk-in movie theater;

6. Bowling alley;

7. Photo and art galleries;

8. Photo processing pickup station;

9. Travel agencies;

10. Barber and beauty shops;

11. Sit-down restaurants or dinner houses (including alcohol);

12. Cocktail lounges and clubs serving alcoholic beverages;

13. Tavern with beer only;

14. Commercial parking lot;

15. Community shopping centers which may include any of the permitted uses in this section and may also includ**ing but not limited to** ~~e the following uses~~:

a. Supermarkets;

b. Department stores;

c. Sporting goods;

d. Books and stationery;

e. Gifts, notions and variety;

f. Florists;

g. Leather goods and luggage;

h. Pet sales and related supplies;

i. Photographic supplies;

j. Health food;

k. Self-service laundry;

l. Antique shop;

m. Delicatessen;

n. Pastry and confectionery;

o. General apparel;

p. Shoes and boots;

q. Specialty apparel;

r. Jewelry;

s. Clocks and watches, sales and service;

t. Bakery, retail only;

u. Bicycle shop;

v. Audio, video, electronic sales and service;

w. Printing, lithography and publishing;

16. Mobile food vendors;

18. Other uses not specified in this or any other district, if the planning commission finds them to be similar to the uses listed above and compatible with other permitted uses and with the intent of the C-4 district as provided in Section 17.60.140, Authorization for similar uses;

19. Large retail establishments. (Ord. 1946 (part), 2011; Ord. 1900 §2(part), 2007; Ord. 1882 (part), 2006; Ord. 1835 §1, 2003; Ord. 1823 §4(part), 2001; Ord. 1736 §2, 1996; Ord. 1727 §2, 1995; Ord. 1720 §1, 1995; Ord. 1684 §44, 1993; Ord. 1615 §37, 1989; Ord. 1511 §6, 1984; Ord. 1436 §2(part), 1981).

Amendment 7

Chapter 17.46 C-5, Thoroughfare Commercial District

17.46.020 Permitted uses.

The following uses are permitted in the C-5 district:

A. Professional and financial, including **but not limited to**:

1. Banks and similar financial institutions,

2. Real estate, insurance, and similar offices,

3. Contractor's offices,

4. Medical services, clinics and laboratories;

B. Personal services, including **but not limited to**:

1. Self-service laundry and laundry pickup stations,

2. Photo processing pickup stations,

3. Photo processing laboratories,

4. Small appliance service,

5. Printing, lithography and publishing,

6. Locksmith,

7. Taxicab dispatch office,

8. Ambulance/emergency services,

9. Art and music schools,

10. Business/vocational schools,

11. Physical fitness/conditioning center, martial arts schools,

12. Carwash,

13. Automobile and truck service stations and repair shops,

14. Auto and furniture upholstery shops,

15. Veterinary clinics (within enclosed structure),

16. Barber shops,

17. Beauty salons,

18. Manicure salons;

Return to Agenda

C. Retail outlets, including **but not limited to**:

1. Auto and truck sales (new and used),

2. Tire sales and service,

3. Glass and mirror sales and service,

4. Wallcovering, floorcovering, curtains, etc.,

5. Major appliances sales and service,

6. Hardware sales,

7. Monument sales,

8. Supermarket,

9. Convenience market,

10. Drugstore,

11. Feed, seed and fuel (within enclosed structure),

12. Electrical and plumbing supplies,

13. Heating and air-conditioning equipment,

14. Stone, tile and masonry supplies,

15. Nursery and gardening materials and supplies,

16. Antique shop,

17. Art and engineering supplies,

18. Pawnshop,

19. Sit-down restaurants, including service of beer, wine and liquor,

20. Drive-in fast food establishments,

21. Tavern, beer sales only,

22. Public/quasi-public utilities and services,

23. Florist sales,

24. Pet sales,

25. General apparel,

26. Furniture sales, including used furniture,

27. Sporting goods sales, including firearms,

28. State-regulated package liquor stores,

29. Community shopping centers, which may include any of the permitted uses in this section and the C-4 district,

30. Large retail establishment eighty thousand square feet or less as defined in Section 17.08.010, Retail establishment, large;

D. Tourist/recreational-oriented uses, including **but not limited to**:

1. Hotel and motel,

2. Walk-in theater (fully enclosed),

3. Bowling alley,

4. Ice and roller skating rinks,

5. Dancehalls (nonalcoholic),

6. Billiard/pool hall,

7. Miniature golf,

8. Club and organizational meeting facilities;

E. Commercial parking lots:

1. Recreational vehicle storage lots;

F. Light fabrication, ~~including~~**such as**:

1. Light fabrication, assembly, packaging, mail-order sales and wholesale sales of consumer goods, and

2. Light fabrication and repair shops such as blacksmith, cabinet, electric motor, heating, machine, sheetmetal, signs, stone monuments, upholstery and welding;

G. Other uses not specified in this or any other district, if the planning commission finds them to be similar to the uses listed above and compatible with other permitted uses and within the intent of the C-5 district. (Ord. 1883 (part), 2006; Ord. 1736 §3, 1996; Ord. 1727 §3, 1995; Ord. 1721 §1, 1995; Ord. 1701 §1, 1994; Ord. 1698 §1, 1994; Ord. 1697 §1, 1994; Ord. 1695 §1, 1993; Ord. 1687 §1, 1993; Ord. 1684 §45, 1993; Ord. 1511 §8, 1984; Ord. 1452 §1, 1982; Ord. 1436 §2(part), 1981).

Amendment 8

Chapter 17.57 FENCES

17.57.020 General regulations.

A. Fence Permits. A fence permit is required for all fences constructed within a public right-of-way, per Section 12.20.020. Fences in the floodplain are regulated in accordance with the provisions established in Section 8.24.260(A).

B. Building Permits. A building permit for the following structures shall be accompanied by a permit fee and a plan review fee in an amount based on valuation per the building department fee schedule as adopted by the city:

1. Barriers around swimming pools, as required by the 2003 State of Oregon Dwelling Specialty Code, Chapter 41 and Appendix G; and the 1998 Oregon Structural Specialty Code, Appendix Chapter 4;

~~2. Fences over six feet tall~~;

~~3~~**2**. Masonry walls;

~~3~~**4**. Retaining walls over four feet in height measured from the bottom of the footing to the top of the wall; and

~~4~~**5**. Retaining walls, any height, supporting a surcharge.

C. Setbacks and Design Criteria.

Table 17.57.01

Fence Regulations

	R-L	R-1	R-2	R-3	C-N	C-2(M)	C-4	C-5	M-1	M-2
Maximum Fence Height	**6'**	**6'**	**6'**	**6'**	**6'**	**6'**	**6'**	**6'**	**6'**	**6'**
Fence Permit Required	a, a-1	a, a-1	a, a-1	a, a-1	a, a-1	a, a-1	a, a-1	a, a-1	a, a-1	a, a-1
Front Yard Setback For 6' Fence	20' b	20' b	20' b	20' b	20' b	20' b	20' b	20' b	20' b	20' b
Side Yard Setback	0'	0'	0'	0'	0'	0'	0'	0'	0'	0'
Rear Yard Setback	0'	0'	0'	0'	0'	0'	0'	0'	0'	0'
Corner Lot	10' c	10' c	10' c	10' c	10' c	10' c	10' c	10' c	10' c	10' c
Masonry Walls, Retaining Walls, Fences Over 6' in Height	e	e	e	e	e	e	e	e	e	e
~~Chain Link Fencing, Space-Board-Type Fencing, etc.~~**Fences in Floodplain or drainage easements**	e	e	e	e	e	e	e	e	e	e
Setbacks for Gates	20'	20'	20'	20'	20'	20'	20'	20'	20'	20'
Variances	f	f	f	f	f	f	f	f	f	f

a: A**n encroachment** ~~fence~~ permit is required ~~if~~ **for** fence**s** ~~is to be~~ constructed in **the** public right-of-way.

a-1: A building permit is required for fencing around swimming pools, ~~fences over six feet in height~~, masonry walls and retaining walls.

~~*~~b: Forty-two-inch-high maximum fence~~s~~ **height** allowed within front **yard** setback area.

~~*~~c: No fencing will conflict with the sight distance requirements set by **Section 17.60.110 and 17.60.**~~the public works department~~.

~~*~~d: Fence height will be measured from the finished grade on the side nearest the street.

e: See Section 8.24.260(A) for specific fence construction standards for fences located in or adjacent to a recognized floodplain. **No fence shall impede or divert the flow of water through any drainage easement unless it can be determined that the fence will not adversely impact any property owner and will not adversely impact the overall drainage system.**

f: Requests for ~~variances~~ **exceptions to the standards in Table 17.57.01**shall be made by application ~~on such form as designated by the city manager and will be reviewed in~~ accordance with Chapter ~~17.05~~**17.13**.

Amendment 9

Chapter 17.60 General Regulations

17.60.140 Authorization for similar uses.

The planning commission may rule that a use, not specifically named in the examples of allowed uses of a district shall be included among the allowed uses, if the use is of the same general type and is similar to the permitted uses.

A. The planning commission in ruling upon similar uses shall find as follows:

1. That the use is closely related to listed uses **in the NAICS** and can be shown to exist compatibly with those uses;

~~2. That the use was not anticipated or known to exist on the effective date of the ordinance codified in this title, either because it involves products, services or activities not available in the community at that time or the use involves new products, services or activities that are nonetheless similar to permitted uses in size, traffic, impact, appearance and other attributes;~~

~~3~~**2**. That the use is treated under local, state or national codes or rules in the same manner as permitted uses. Except that these codes or rules shall not include land use or zoning regulations**; and**~~;~~

~~4~~**3**. That the use is consistent with the purpose of the district and the comprehensive plan map and policies.

B. The planning commission may rule upon similar uses for one or more districts either when a similar use is proposed or at the time of amendments to the zoning text or zoning map. The city shall maintain a record of rulings on similar uses. (Ord. 1615 §49, 1989; Ord. 1436 §2(part), 1981).

Amendment 10

Chapter 17.65 TOD DISCTRICTS AND CORRIDORS

17.65.050 Zoning Regulations – TOD Districts

Table 1

TOD District Land Uses

Use Categories	Zoning Districts						
	LMR	MMR	HMR	EC	GC	C	OS
Residential							
Dwelling, Single-Family							
Large and standard lot	P	L5	N	N	N	N	N
Zero lot line, detached	P	P	N	N	N	N	N
Attached row houses	P	P	P	C	N	N	N
Dwelling, Multifamily							
Multiplex, apartment	P	P	P	L1	L1	N	N
~~Congregate (s~~**S**enior~~)~~ housing	L6	P	P	L1	L1	N	N
Accessory Units	P1	P1	P1	C	N	N	N
Boarding/Rooming House	N	C	C	N	N	N	N
Family Care							
Family day care	P	P	P	N	N	N	N
Day care group home	C	C	P	N	N	N	N
Adult day care	C	C	C	N	N	N	N
Home Occupation	P	P	P	P	N	N	N
Residential Facility	P	P	P	N	N	N	N

Table 1

TOD District Land Uses

Use Categories	**Zoning Districts**						
	LMR	**MMR**	**HMR**	**EC**	**GC**	**C**	**OS**
Residential Home	P	P	P	N	N	N	N
Commercial							
Entertainment	N	N	C	P	P	N	N
Professional Office	C	L3	L3, L4	P	P	P	N
Retail Sales and Service							
Sales-oriented	C	L3	L3	P	P	N	N
Personal service-oriented	C	~~C~~**L3**	~~C~~**L3,L4**	P	P	N	N
Repair-oriented	N	N	N	P	P	N	N
Drive-through facilities	N	N	N	P	P	N	N
Quick vehicle service	N	N	N	P	P	N	N
Vehicle sales, rental and repair	N	N	N	P	P	N	N
Tourist Accommodations							
Motel/hotel	N	N	C	P	P	N	N
Bed and breakfast inn	C	C	P	P	P	N	N
Industrial							
Manufacturing	N	N	N	N	P	N	N
Industrial Service							
Light	N	N	N	N	P	N	N
Heavy	N	N	N	N	C	N	N
Wholesale Sales	N	N	N	N	P	N	N
Civic							
Community Services	C	C	C	N	N	P	C
Hospital	C	C	C	C	N	C	N

Table 1 TOD District Land Uses							
Use Categories	**Zoning Districts**						
	LMR	**MMR**	**HMR**	**EC**	**GC**	**C**	**OS**
Public facilities	C	C	C	C	C	C	N
Religious assembly	C	C	C	C	N	P	N
Schools	C	C	C	N	N	P	L2
Utilities	C	C	C	C	C	C	C
Open Space							
Parks and Open Space	P	P	P	P	P	P	P

N--Not permitted.

P--Permitted use.

P1--Permitted use, one unit per lot.

C--Conditional use.

L1--Only permitted as residential units above ground floor commercial uses.

L2--School athletic and play fields only. School building and parking lots are not permitted.

L3~~--~~**Permitted in existing commercial buildings or new construction with g**~~G~~round floor business**es** ~~within a~~**with** multifamily **dwellings** ~~building~~**above ground floor**. Maximum floor area ~~of~~ **for commercial use not to exceed** ten thousand square feet per tenant.

L4--Second story offices may be permitted in areas adjacent to EC zones as a conditional use.

L5--Only permitted as a transition between lower density zones and/or when adjacent to an environmentally sensitive area.

L6--Permitted only when part of an existing or proposed ~~congregate housing~~ **senior housing** project on abutting property under the same ownership within the MMR or HMR district.

Section 17.65.060 – TOD Corridor, Table 4

Return to Agenda

Table 4 TOD Corridor Land Uses				
Use Categories	**Zoning Districts**			
	LMR	**MMR**	**EC**	**GC**
Residential				
Dwelling, Single-Family				
Large and standard lot	P	L4	N	N
Zero lot line, detached	P	P	N	N
Attached row houses	P	P	N	N
Dwelling, Multifamily				
Multiplex, apartment	P	P	L1	L1
Congregate (senior) housing	L5	P	L1	N
Accessory Units	P1	P1	C	N
Boarding/Rooming House	N	C	N	N
Family Care				
Family day care	P	P	N	N
Day care group home	C	C	N	N
Adult day care	C	C	N	N
Home Occupation	P	P	P	N
Residential Facility	P	P	N	N
Residential Home	P	P	N	N
Commercial				
Entertainment	N	N	P	P
Professional Office	C	L3	P	P
Retail Sales and Service				
Sales-oriented	C	L3	P	P
Personal service-oriented	C	~~C~~L3	P	P

Table 4 TOD Corridor Land Uses				
Use Categories	**Zoning Districts**			
	LMR	**MMR**	**EC**	**GC**
Repair-oriented	N	N	P	P
Drive-through facilities	N	N	P	P
Quick vehicle service	N	N	P	P
Vehicle sales, rental and repair	N	N	N	P
Tourist Accommodations				
Motel/hotel	N	N	P	P
Bed and breakfast inn	C	C	P	P
Industrial				
Manufacturing	N	N	N	P
Industrial Service				
Light	N	N	N	P
Heavy	N	N	N	C
Wholesale Sales	N	N	N	P
Civic				
Community Services	C	C	N	N
Hospital	C	C	C	N
Public Facilities	C	C	C	C
Religious Assembly	C	C	C	N
Schools	C	C	N	N
Utilities	C	C	C	C
Open Space				
Parks and Open Space	P	P	P	P

N--Not permitted.

P--Permitted use.

P1--Permitted use, one unit per lot.

C--Conditional use.

L1--Only permitted as residential units above ground floor commercial uses.

L2--School athletic and play fields only. School building and parking lots are not permitted.

L3--**Permitted in existing commercial buildings or new construction with g**~~C~~round floor business with~~in a~~ multifamily **dwellings above ground floor**~~building~~. Maximum floor area **for commercial uses not to exceed** ~~of~~ ten thousand square feet per tenant.

L4--Only permitted as a transition between adjacent lower density zones and/or when adjacent to an environmentally sensitive area.

L5--Permitted only when part of an existing or proposed **senior**~~congregate~~ housing project on abutting property under the same ownership within the MMR or HMR district.

Amendment 11

Chapter 17.75 Design and Development Standards

17.75.039 Off-street parking design and development standards.

All off-street vehicular parking spaces shall be improved to the following standards:

A. Connectivity. Parking lots for new development shall be designed to provide vehicular and pedestrian connections to adjacent sites unless as a result of any of the following such connections are not possible:

1. Topographic constraints;

2. Existing development patterns on abutting property which preclude a logical connection;

3. Traffic safety concerns; or

4. Protection of significant natural resources.

B. Parking Stall Minimum Dimensions. Standard parking spaces shall conform to the following standards and the dimensions in Figure 17.75.03 and Table 17.75.02~~.~~ **provided that compact parking spaces permitted in accordance with Section 17.64.040(G), shall have the following minimum dimensions:**

1. **Width – Shall be as provided in Column "B" in Table 17.75.02;**

Length - Shall reduce column "C" in the table 17.75.02 by no more than three (3) feet.

PASSED by the Council and signed by me in authentication of its passage this ___ day of August 2015.

_____

Mayor Hank Williams

ATTEST:

_____

City Recorder

Business

Discussion regarding Beekeeping in the City Limits

INTEROFFICE MEMO

CENTRAL POINT

Planning Department

Tom Humphrey, AICP,
Community Development Director/
Assistant City Administrator

TO: Honorable Mayor and City Councilors

FROM: Stephanie Holtey, Community Planner
Tom Humphrey, Community Development Director

DATE: August 13, 2015

RE: Bee Ordinance Discussion Item

The City has received citizen requests to allow beekeeping within the city limits, a practice that is currently prohibited in Section 8.094.090 of the Municipal Code. In response, staff has prepared a provisional ordinance for discussion purposes based upon research of beekeeping requirements in the cities of Medford and Ashland (Attachment "A"). Both communities have enacted code amendments to allow urban beekeeping subject to limitations including but not limited to:

- Number of hives permitted,
- Locational factors,
- Equipment requirements,
- Maintenance provisions, and;
- Registration requirements.

A summary of the Medford and Ashland Beekeeping ordinance adoption and current status is attached for your reference (Attachment "B").

Information regarding this discussion item has been posted on the City's website to solicit public input on the matter. An update on any comments received will be presented at the City Council meeting.

The Governor is currently considering House Bill 2653. If signed into law, the State Department of Agriculture will establish best practices for beekeeping in residential areas, including recommended approaches for conflict management arising from beekeeping in residential areas. Based on our review of the legislation, the only mandate is for local governments to evaluate existing ordinances and determine whether to adopt new ordinances related to residential beekeeping within three years. If Council directs staff to initiate code amendments at this time, the proposed amendments would be prepared to satisfy any new requirements set forth by State law.

Based on information available at this time, staff is requesting direction from Council whether to initiate code amendments to permit beekeeping in the city limits.

Enclosure

Return to Agenda

Beekeeping Fact Sheet

Summary of Medford & Ashland Programs

City of Medford

Ordinance Enacted: May 2015 (http://www.ci.medford.or.us/Page.asp?NavID=3415)

City Council & Citizen Concerns: Most concerns were relative to allergies and being stung by bees. Other concerns included the need to minimize/avoid creation of nuisance and decreased livability through property care and maintenance (i.e. continuous water source and keeping bee hives outside of required setback areas.

Registration Process: Form submission, including self-certified compliance. Registrations are maintained in a file and mapped in the GIS for code enforcement and public information purposes. There is no fee required to register.

Summary: The ordinance to allow beekeeping was strongly supported by members of the public that took the time to submit written comments. According to the Planning Department, 70 public comments were received with 95% in favor of beekeeping code amendments. The final vote at the City Council was split with the Mayor voting to break the tie in favor of beekeeping.

Since the ordinance was enacted, three property owners have registered their hives and one complaint has been received. The nature of the complaint is not known at this time. A copy of the Medford Bee Registry form is attached.

City of Ashland

Ordinance Enacted: August 2013 (http://www.ashland.or.us/Page.asp?NavID=15974)

City Council & Citizen Concerns: There was strong opposition and support of urban beekeeping. Most concerns were relative to allergies and being stung by bees.

Registration Process: Online registration, including self-certification of compliance. Submissions are automatically mapped on the City's website for public information purposes. The City follows-up with a letter acknowledging registration and self-certification.

Summary: In response to strong opposition expressed by citizens, the City prepared two iterations of the beekeeping ordinance.

> A more restrictive version would have required notification of surrounding property owners prior to approval. The application would be denied if any resident or property in the notification area could provide a letter from a physician stating that any person residing on the premises has an allergy to bee stings.
>
> A less restrictive ordinance was adopted because beekeeping experts testified that the risk of being stung by a beehive next door is no greater than a bee from a hive located a mile away. The reason for this is that bees roam 1-2 miles in any given day.

Since adoption, the only complaints received have been to report un-registered hives or registered hives without flyway barriers (see note below). No complaints have been received due to aggressive bee behavior, including stings.

Note: Flyway barriers cause bees to fly up at least 6-feet. This sets their trajectory and minimizes impacts to adjacent property owners.

ORDINANCE NO._____

AN ORDINANCE ADDING CHAPTER 6.07 AND AMENDING SECTION 6.06.020 AND 8.04.090 TO ALLOW BEEKEEPING WITHIN THE CITY LIMITS

RECITALS:

A. The City Wide Strategic Plan recognizes the importance of agriculture to the City's economy both past and future. Maintaining opportunities for small scale agriculture is identified as a strategy for protecting agricultural land and managing growth.

B. Small scale urban agriculture, including beekeeping, provides opportunities for residents to continue the tradition of producing locally grown food products while supporting the presence and health of local honeybee populations.

C. It is the purpose and intent of this ordinance to provide for the safe and orderly keeping of bees in the City of Central Point by establishing certain minimum standards for the keeping of bees to protect the public health, safety and welfare of the residents of the City of Central Point.

D. Words ~~lined through~~ in the following ordinance are to be deleted and words **in bold** are added.

The City of Central Point resolves:

Section 1. To amend Section 6.06.020 as follows:

6.06.020 Exemptions.

A. Notwithstanding any restrictions or prohibitions of this chapter, animals of any kind and any number may be kept by a school, museum or zoo for educational purposes; or the exhibition for amusement purposes, temporarily, by a circus, carnival, or other exhibition licensed in accordance with the applicable city ordinance. All rules as to sanitation and humane treatment contained in this title shall govern the keeping of the animals and maintenance of the premises or buildings where such animals are kept.

B. Police service dogs, while in the exercise of their law enforcement duties, are exempt from any restrictions or prohibitions of this title.

C. **Bee keeping established and operated in accordance with the provisions of Chapter 6.07 are exempt from the prohibitions of this title.**

D. ~~C.~~ Any prohibited animal in the possession of an owner or custodian at the time the owner or custodian's real property is annexed into the city limits of Central Point may be kept as a nonconforming use provided the owner or custodian registers the animal(s)

with the code enforcement officer. The animal(s) may be kept until such time as the owner chooses to remove them from the property. No animal so described may then be replaced by another animal. (Ord. 1901 §2(part), 2007).

Section 2. To add Chapter 6.07 "Bee Keeping" as follows:

Chapter 6.07
BEE KEEPING

6.07.010 Definitions

"Apiary" and "apiary property" includes bees, honey, beeswax, bee comb, hives, frames and other equipment, appliances and material used in connection with an apiary.

"Bees" means honey-producing insects of the genus Apis and includes the adults, eggs, larvae, pupae or other immature stages thereof, together with such materials as are deposited into hives by their adults, except honey and beeswax in rendered form.

"Beekeeper" includes any individual, partnership, association or corporation, but does not include any common carrier when engaged in the business of transporting bees, hives, appliances, bee cages or other commodities which are the subject of this chapter, in the regular course of business.

"Colony" or "colonies of bees" refers to any hive occupied by bees.

"Disease" means pests, diseases or any condition affecting bees or their brood

"Hive" means any receptacle or container made or prepared for use of bees, or box or similar container taken possession of by bees.

"Honeycomb" means a mass of hexagonal wax cells built by bees to contain their brood and stores of honey.

6.07.020 Bee Keeping

The keeping or maintaining of bees, colonies of bees, hives, honeycombs, or containers of any kind of character wherein bees are hived is subject to the following:

A. Registration with the city is required prior to establishing any hive or other beekeeping activity on any lot or parcel within the city limits and the Director of Community Development shall provide a beekeeping application and registration process.

B. Number of Hives Permitted

1. **A maximum of three (3) bee hives shall be kept or maintained on a lot or parcel less than one acre in size.**
2. **A maximum of six (6) hives shall be kept or maintained on a lot or parcel greater than one acre in size.**

3. **A beekeeper who owns five or more hives is required by the state to register them with the Oregon Department of Agriculture.**

C. Hives shall ~~be kept in hives with~~ consist of removable frames, which shall be kept in sound and usable condition.

D. Hives shall not be placed within a required front, side or rear yard setback area.

E. In each instance where a hive is kept less than twenty five (25) feet from a property line, a flyway barrier at least six (6) feet in height shall be maintained parallel to the property line for a minimum of ten (10) feet in either direction from the hive The flyway barrier may consist of a wall, fence, dense vegetation or a combination there of, such that bees will fly over rather than through the material to reach the colony.

F. A constant supply of fresh water shall be provided for the colonies on site within fifteen (15) feet of each hive.

G. Each beekeeper shall ensure that no wax comb or other material that might encourage robbing by other bees are left upon the grounds of the property. Such materials once removed from the site shall be handled and stored in sealed containers or placed within a building or other insect proof container.

H. The sale of surplus honey or bee's wax produced on site shall be permitted on the property where the keeping of bees is permitted per applicable business license and/or home occupation regulations. However, outdoor sales are prohibited.

I. Only docile common honey bees shall be permitted. African bees or any hybrid thereof are prohibited.

J. A beekeeper shall immediately replace the queen in a hive that exhibits aggressive characteristics, including stinging or attempting to sting without provocation.

Section 3. To amend Section 8.04.090 Keeping bee's as follows:

8.04.090 Keeping bees.

A. No person shall have, keep or maintain or permit to be kept or maintained upon land under his control, any hives, swarms or colonies of bees**, except as permitted in accordance with the Bee Keeping requirements in Section 6.07.020.**

B. A violation of Section 6.07.020 is declared to be a public nuisance, and may be abated as provided for in this Chapter. ~~The keeping or maintaining of any hives, colonies or swarms of bees is declared to constitute a public nuisance and may be abated as provided in this chapter. (Ord. 817 §6, 1966).~~

Return to Agenda

Business

2015 Street Inlay/Preservation Project Bid

PARKS & PUBLIC WORKS DEPARTMENT Matt Samitore, Director

140 South 3rd Street · Central Point, OR 97502 · (541) 664-7602 · www.centralpointoregon.gov

STAFF REPORT

August 6, 2015

AGENDA ITEM: Business item approving low bid for 2015 street inlay/street preservation projects.

STAFF SOURCE:

Matt Samitore, Director

BACKGROUND/SYNOPSIS:

The Parks & Public Works Department has prepared a bid for pavement preservation for asphalt removal and inlay. The base bid for the package includes the remainder of S. Front, S. Haskell and S. Penninger.

FISCAL IMPACT:

The items are budgeted for the in the 2015/2017 FY Budget.

ATTACHMENTS:

The bid opening is occurring at 2:00 on the 10^{3h} of July. Staff will bring the bid results to the Council meeting. As of the date of this report only Knife River, Inc. has expressed interest on paving.

RECOMMENDATION:

Staff recommends approving the low bid.

PUBLIC HEARING REQUIRED:

No

SUGGESTED MOTION:

I move to approve the low bidder of _____ in the amount of $_____ for the 2015/2017 pavement preservation project.

Return to Agenda

Business

Battle of the Bones 2015 Report

Staff Report

Finance Department
Bev Adams, Finance Director

To: **Mayor & Council**

From: **Bev Adams, Finance Director**
Matt Samitore, Parks & Public Works Director

Date: **August 13, 2015**

Subject: **2015 Battle of the Bones Report**

Background:

On June 26th & 27th the City's Parks and Recreation division held the annual Battle of the Bones event. Total profit from the 2015 BOB event is $3,860.90.

Accounting changes: Last year following the BOB annual report to the Council, there was discussion regarding employee overtime costs that were included in the accounting for this event. Because there are no employees costs tracked or accounted for in other City supported events, Parks & Recreation staff requested that employee costs be removed from the accounting for this event as well. Per this discussion and Council/ Administrative direction, Finance has not included any employee costs in the accounting for the 2015 event. Furthermore, in order to provide a consistent and comparative accounting through all the years of the event, the employee costs have been removed - causing a significant change in the annual recap.

The event: For the second year, the event was held Friday evening from 4 pm to 9 pm; and all day Saturday; a change from prior years when the event was also held on Sunday.

Overall the event planning, organization and clean up was exceptional. We had over 25 teams participate and the response was the barbeque teams and general public was excellent. That being said there was a direct correlation with heat and attendance. As the heat index increased the event attendance went down. We experienced about a 30% drop in attendance on both Friday and Saturday evenings. We believe that was directly related to the heat being around 105° each day.

Attached to this staff report is the financial recap for the 2015 event .

Staff recommends a $3,800 donation to the Parks & Recreation Foundation from the proceeds.

Recommended Action:

That Council review and accept by motion the Battle of the Bones financial recap and approve an amount to be donated to the Parks & Recreation Foundation from the proceeds of the event.

2015 Battle of the Bones Recap

Final Accounting - July 31, 2015

Revenues	Amount	Direct City Costs
Battle of the Bones Revenues (#10-00-00-4811)	64,450.23	
Battle of the Bones Revenues (#10-00-00-4811) (Rec'd in July/2015 YE accrual)	25,613.83	
Total Revenue	**90,064.06**	
Expenses	**Amount**	
BOB Expenses (Acct # 10-40-53-6411)	81,193.44	
BOB Musicians (Acct #10-40-53-6412)	5,000.00	
Refund of BOB ticket (July 2016/2015 YE accrual)	9.72	
Total Expenses	**86,203.16**	
Event Net Profit (Loss)	***$ 3,860.90***	3,860.90
****Donation made to Parks & Recreation Foundation***		
****Cost to City:***	***$ 3,860.90***	3,860.90
****(No Employee costs included)***		

Return to Agenda

Business

HB 3400 Legal Briefing

ADMINISTRATION DEPARTMENT

140 South 3rd Street · Central Point, OR 97502 · (541) 664-7602

STAFF REPORT
August 13, 2015

AGENDA ITEM: A discussion of the impacts of HB 3400 on City's current ordinances and marijuana tax.

STAFF SOURCE:

Sydnee Dreyer, City Attorney

BACKGROUND:

In response to the OMMA and M91, in 2014 the City adopted Ordinance No. 1982 adding Section 5.40 to the CPMC providing for the issuance of business licenses to owners of Dispensaries, subject to the issuance of a conditional use permit. In 2014, the City adopted a temporary moratorium on dispensaries, which expired May 1, 2015. To date no applications have been received. Additionally in 2014 the City adopted Ordinance No. ___ providing for a tax on medical and commercial recreational marijuana sales. Lastly, the City adopted Ordinance No. 2007 adding Section 8.45 to the CPMC providing that all medical and recreational marijuana grows must be conducted indoors.

Effective June 30, 2015, the legislature adopted HB 3400 that amended the Oregon Medical Marijuana Act ("OMMA") and Measure 91 ("M91"). Additionally the legislature adopted SB 460 authorizing early sales of commercial marijuana by medical marijuana dispensaries. As a result of such legislation, the City must consider the implications on its existing ordinances and future regulation of such uses.

FISCAL IMPACTS:

Potential tax revenues from marijuana sales.

DISCUSSION:

Commercial Sales From Dispensaries:

- SB 460 permits dispensaries to dispense small quantities of recreational marijuana beginning October 1, 2015.
- This right of dispensaries to sell recreational marijuana expires December 1, 2016.
- Cities can opt out by adopting an ordinance prohibiting dispensaries from selling recreational marijuana.
- Though the City could adopt such an ordinance, at present no dispensaries exist and no applications for such use have been received.

Prohibition of Commercial production, processing, wholesale, retail and medical marijuana dispensaries and processing sites.

- City could prohibit any or all of the foregoing uses by adopting an ordinance referring the question as to whether to prohibit such uses to its constituents at the next statewide general election in November 2016.
- If adopted, City would not be entitled to any of the tax revenue from marijuana sales after July 1, 2017 (prior to July 1, 2017 state tax revenue distributed proportionately based on population; after July 1 it's based on the number of licensees in the City).
- 53% of City's constituents voted in favor of M91 so it is questionable whether such a referendum would pass.
- If a dispensary or medical marijuana processing site were registered with the OHA and received conditional use permit from City prior to said election, that site would be grandfathered and exempt from the city-wide prohibition.
- Prohibition has no effect on recreational personal grows of marijuana.

Reasonable Time Place Manner Ordinances:

- HB 3400 confirms local government's right to adopt reasonable time place manner restrictions on commercial and medical uses.
- State law currently prohibits medical and commercial marijuana processors, commercial retail stores, and medical marijuana dispensaries in residential zones; dispensaries and retail stores within 1000 feet of certain public and private schools (unless the school is established after the business is approved); dispensaries within 1000 feet of another dispensary; and dispensaries located at a grow site.
- Recreational grows are not included in the list of reasonable TPM restrictions; however, HB 3400 would continue to permit local ordinances that are not inconsistent with the OMMA; M91; and HB 3400.
- City currently has reasonable time place manner ordinances for dispensaries, and medical and recreational grows. No change is recommended at this time for such uses.
- City should consider reasonable time place manner regulations on commercially licensed use which become legal January 1, 2016.

Local Option Tax:

- Local taxes are prohibited except as follows: the City may refer to the electors whether to adopt a tax or fee on commercial retail licenses.
- The tax or fee may not exceed 3%.
- The tax or fee may not be imposed on medical marijuana sales.

- City's current ordinance likely not valid. City must adopt new ordinance referring the question to the voters in order to adopt a tax.
- This would be considered at the next state-wide general election in this case November 2016.
- Staff recommends the City retain a higher ceiling in the event state law changes. Though this might be stricken, it would allow the City to potentially raise the tax rate without the need for further referendum.

Limits on Number of Medical Marijuana Plants:

- Currently state law allows a caregiver to grow up to 6 plants for each cardholder; up to 4 cardholders per caregiver.
- At a particular site, multiple caregivers can grow thus creating the possibility of large medical grow sites.
- HB 3400 adopted new restrictions as follows:
    - Limits in Residential Zones: The new limit for a cardholder located within a residential zone is as follows: maximum 12 plants regardless of the number of cards unless such cardholder was growing more than 12 plants on December 31, 2014, such individual can continue to grow that number of plants, but in no case to exceed 24 plants.
    - Limits in all other Zones: Limited to no more than 48 plants per address. However, if a person was growing more than 48-plants on December 31, 2014, such individual can continue to grow that number but in no case to exceed 96-plants.
    - Other Limits**:** If OHA suspends or revokes a registration for a person responsible for a grow site, then any subsequently produced plants cannot exceed 12 in a residential zone or 48 in other zones.
    - Confiscation: If law enforcement determines that marijuana is being grown in excess of these provisions, only those plants in excess of the number of mature plants permitted may be confiscated.

ATTACHMENTS:

Attachment "A" Council Briefing from City Attorney; Attachment "B" LOC Summary regarding marijuana legislation; Attachment "C" Memorandum from Beery Elsner & Hammond, LLP regarding marijuana legislation.

RECOMMENDATION:

Direct Staff to Prepare an Ordinance referring to the electors the question of whether to adopt a tax of 3% to be considered at the next state-wide general election; or Direct Staff to Prepare and Ordinance Repealing Ordinance No. ___ imposing a tax on medical and recreational marijuana.

Return to Agenda

HUYCKE O'CONNOR JARVIS, LLP

MEMORANDUM

TO: **Central Point City Council**
c/o Chris Clayton

FROM: **Sydnee Dreyer**

RE: **Legislative Update – HB 3400**
Regulation of Medical and Recreational Marijuana

DATE: July 13, 2015

House Bill 3400, Amending Measure 91 (M91) and the Oregon Medical Marijuana Act (OMMA) was adopted on June 30, 2015. The purpose of this memo is to outline those amendments as they relate to the City's ability to regulate, prohibit or tax such uses. HB 3400 also contains provisions relating to criminal penalties, testing, labeling, etc. which are beyond the scope of this opinion.

A. Timing

As the Council is aware, personal recreational growth of marijuana was legalized effective July 1, 2015. Under M91, licensed recreational facilities consisting of production (growth, harvesting); processing (compounding, converting), wholesale, and retail sales become legal January 4, 2016.

However, SB 460 (as of July 7 has not been signed by the governor) will allow registered medical marijuana dispensaries to sell limited quantities of recreational marijuana as of October 1, 2015. Such sales do not include extracts, edibles etc., and quantities are limited. These provisions expire December 31, 2016, at which time presumably dispensaries will be limited to medical sales. However, if signed by the governor, the City may adopt an ordinance prohibiting retail sales from dispensaries.

B. Prohibition

HB 3400 provides some opportunity for cities to prohibit all licensed recreational marijuana facilities (production, processing, wholesale, and retail) as well as dispensaries and medical processing sites either by ordinance, if the city had 55% or more votes against M91, or by referendum if fewer than 55% of the constituents voted no. For qualifying cities with a no vote

of 55% and above, such an ordinance must be adopted within 180-days of the effective date of this legislation, which will be December 27, 2015.

With respect to Central Point, 47% of its constituents voted against M91; thus the abbreviated route is not available to the City. Rather to prohibit such uses, the City would need to adopt an ordinance prohibiting any or all of the foregoing uses and refer the question to the electors of the City, for approval at the next statewide general election following adoption of such ordinance. The City would also be required to provide notice of such ordinance to OHA and/or the OLCC and upon receiving notice of the prohibition said agencies would cease issuing registration/licensing within the City. However, any dispensary or medical processing site that was registered with OHA and had successfully completed a city land use process prior to the adoption of the ordinance would be exempt from such prohibition.

In addition to referring the question, M91 allows constituents to submit a petition to the City to call an election on whether licensed premises should be prohibited within City limits.

NOTE: Personal recreational growth of marijuana (up to 4 plants, and 8 oz. of usable marijuana) cannot be prohibited.

C. Reasonable Time Place Manner Regulations

HB 3400 provides greater clarification as to what constitutes a reasonable time place manner ordinance. HB 3400 clarifies that local government is preempted from regulating marijuana except as provided therein.

The following are listed as reasonable regulations of marijuana. Reasonable conditions on the manner in which:

- licensed growers produce marijuana (growth);
- licensed processors process marijuana;
- licensed wholesalers sell marijuana;
- license retailers sell marijuana;
- the public accesses licensed premises;
- licensed business can be located (i.e. zoning);
- a licensed business operates such as hours of operation, proximity to other uses (except that no requirement may be adopted that requires such uses to be more than 1000 feet apart from one another);
- a medical grow site, medical processing site or dispensary may be located;
- the public accesses a medical marijuana grow site;
- hours of operation for a medical grow site;
- transfers of medical marijuana are made at a processing site or dispensary; and
- a medical grow site, processing site or dispensary is operated.

It is interesting to note that while this is an open-ended list of reasonable regulations, it does not address the right of a City to regulate the manner in which a personal recreational grow takes place. While the statute makes clear that it is intended to supersede and replace any municipal

charter amendment or local ordinance inconsistent with sections 3-70 the City's ordinance regulating personal grows in the City is arguably consistent with HB 3400, in that it allows such grows to occur in all zones and does not limit the amount of marijuana grown or possessed. It simply requires indoor grows, which should continue to be a reasonable time place manner restriction.

D. Local Option Tax

HB 3400 settles the question of a local government tax on marijuana growth and sales. All such local taxes are prohibited except in the following instance: the City may adopt an ordinance to be referred to the electors as to whether to adopt a tax or fee. However the tax or fee may not exceed 3%. Though this is referred to the electors, it may not be included in an ordinance referring the question as to whether to prohibit such uses. Rather these must be submitted as separate questions to the electors.

E. Land Use

HB 3400 also requires cities to issue a land use compatibility statement within 21-days of either: receipt of the LUCS request; or final local permit approval if the use is a conditional use. The LUCS is a requirement for registration/licensing. Issuance of the LUCS is not a land use decision.

F. Medical Grow Site Limits

The last major amendment involves a limit on the number of plants at certain grow sites. While the provision is lengthy, a brief summary is provided below. Law enforcement will need to be well trained as to these issues in order to effectively enforce upon receipt of a complaint.

In general each cardholder may grow 6 plants and each caregiver growing for a cardholder may grow for 4 cardholders. Thus a single caregiver could grow 24-plants. Multiple caregivers can grow significantly more on a site.

Limits in Residential Zones of Cities: The new limit for a cardholder located within a residential zone of a City is as follows: maximum 12 plants regardless of the number of cards. However, if such cardholder was growing more than 12 plants on December 31, 2014, such individual can continue to grow that number of plants, but in no case to exceed 24 plants.

Limits in all other City Zones: Limited to no more than 48 plants per address. However, if a person was growing more than 48-plants on December 31, 2014, such individual can continue to grow that number but in no case to exceed 96-plants.

Other Limits**:** If OHA suspends or revokes a registration for a person responsible for a grow site, then any subsequently produced plants cannot exceed 12 in a residential zone or 48 in other zones.

Confiscation: If law enforcement determines that marijuana is being grown in excess of these provisions, only those plants in excess of the number of mature plants permitted may be confiscated.

G. Next Steps

The City currently has the following marijuana-related ordinances:

1) Time place manner restrictions on dispensaries. There does not appear to be anything in this new legislation that would require amendments to the City's dispensary ordinance;

2) Grow Site Ordinance. This ordinance requires personal and medical grows to be conducted indoors. As discussed above, arguments can be made that this is a reasonable regulation consistent with HB 3400 and need not be amended at this time; and

3) Local Option Tax. As discussed above, the legislature clarified that cities may not adopt a local option tax unless a) it is referred to the voters; and b) it does not exceed 3%. At present the City's ordinance has a ceiling higher than 3%. The City Manager will likely recommend to Council that the City retain a ceiling higher than 3% to allow flexibility for the future, and refer to the electors the question of imposing a tax of 3%. To protect the City we would want to have language that if any component of the ordinance is deemed illegal, it will be stricken and read as if that section had been deleted. That should be an adequate means to deal with a higher ceiling.

Prohibition? The City currently does not prohibit such uses. To do so the City would be required to refer the question to the voters. However, in doing so the City would not be able to share in any state revenues from marijuana. Thus the Council should weigh whether to propose prohibiting some or all of the licensed and registered uses or to allow such uses subject to reasonable regulation and in doing so be permitted to take a share of the state's tax revenues.

Return to Agenda

2015 Marijuana Legislation: What Local Governments Need to Know

Bills

- HB 3400: Omnibus bill that amended the Oregon Medical Marijuana Act and the Measure 91
- HB 2041: Revised the state tax structure for commercial marijuana
- SB 460: Authorized early sales of commercial marijuana by medical marijuana dispensaries
- SB 844: Miscellaneous provisions

Home Rule

Home rule is the power of a local government to set up its own system of governance and gives that local government the authority to adopt ordinances without having to obtain permission from the state. City governments in Oregon derive home rule authority through the voters' adoption of a home rule charter as provided for in the Oregon Constitution. 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. Where the Legislature's intent to preempt local governments is not express and where the local and state law can operate concurrently, there is no preemption. As a result, generally a negative inference that can be drawn from a statute is insufficient to preempt a local government's home rule authority.

Although this document summarizes the provisions of HB 3400A, cities may be able to impose regulations in addition to those authorized under HB 3400A under their home rule authority.

Local Government Ban
(effective June 30, 2015)

What Cities Can Ban (HB 3400A §§ 133(2), 134(1))

There are 7 types of marijuana activities regulated under HB 3400A. Cities can ban any of the following 6 marijuana activities:

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

Cities cannot ban medical marijuana grow sites. However, the law places limits on the number of plants and the amount of marijuana that can be located at any one medical marijuana grow site (HB 3400A §§ 82, 82a):

  - *General Rule*: 12 mature plants per grow site in residential zones; 48 mature plants per grow site in all other zones

- *Grandfathering*: If all growers at the site had registered with the state by January 1, 2015, the grow site is limited to the number of plants at the grow site as of December 31, 2015, not to exceed 24 mature plants per grow site in residential zones and 96 mature plants per grow site in other zones
- *Usable marijuana*: A grower may possess the amount of usable marijuana harvested from the plants not to exceed 12 pounds per plant for outdoor grow sites and 6 pounds per plant for indoor grow sites.

How Cities Can Ban

Under HB 3400A, there are two avenues for cities to ban marijuana activities, but one of those avenues is available only to certain cities and only during a limited time period.

Option 1: Voter Referral (HB 3400A § 134)

All cities have the option of banning any of the marijuana activities listed above through the following voter referral process:

- The city council adopts an ordinance that prohibits any of the 6 marijuana activities listed above.
- The city council provides the text of the ordinance to the Oregon Health Authority (if prohibiting medical marijuana activities) and/or the Oregon Liquor Control Commission (if prohibiting commercial marijuana activities).
- The OHA and OLCC will stop registering and licensing the prohibited activities until the next statewide general election.
- The city council refers the ordinance to the voters at a statewide general election (November elections in even-numbered years).

Option 2: Ban Adopted by the City Council (HB 3400A § 133)

- A city council can adopt a ban on any of the 6 marijuana activities listed above by enacting an ordinance only if the following conditions are met:
  - The city is located in Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, or Wheeler County;[1] AND
  - The city council adopts the ordinance by December 24, 2015 (180 days after the effective date of the legislation)
- The city council must provide the text of the ordinance to the Oregon Health Authority (if prohibiting medical marijuana activities) and/or the Oregon Liquor Control Commission (if prohibiting commercial marijuana activities).
- The OHA and OLCC will stop registering and licensing the prohibited activities.

Effect on Existing Medical Marijuana Processors & Dispensaries (HB 3400 §§ 133(6), (7), 134(6), (7), 135)

- Dispensaries registered with the state by the time the city adopts a prohibition ordinance, or that had applied to be registered by July 1, 2015, are not subject to the prohibition if they have successfully completed a city or county land use application process.

[1] HB 3400A allows a city council ban for cities located in counties that voted against Measure 91 by 55 percent or more.

- Medical marijuana processors registered with the state by the time the city adopts the prohibition ordinance are not subject to the prohibition if they have successfully completed a city or county land use application process.

Tax Implications (HB 3400A §§ 133(5), 134(5); HB 2041 §14(4))

- *Local Tax:* A city that adopts an ordinance prohibiting marijuana activities in its jurisdiction may not impose a local tax on marijuana. (HB 3400A §§ 133(5), 134(5))
- *State Tax:* A city that adopts an ordinance prohibiting marijuana activities is not eligible to receive state marijuana tax revenues from the 17 percent state tax imposed on commercial sales of marijuana. (HB 2041 § 14(4))
    - Collectively, cities will receive 10% of the state marijuana tax revenues, distributed as follows to cities that do not prohibit marijuana activities (HB 2041 § 14(2)):
        - Before July 1, 2017, distributed proportionately based on population
        - After July 1, 2017, distributed based on the number of licensees in the city, with 50 percent distributed based on the number of producer, processor, and wholesale licensees and 50 percent distributed based on the number of retail licensees

Local Government Tax (HB 3400A § 34a)
(effective June 30, 2015)

What Cities Can Tax

Under HB 3400A, cities may impose up to a 3 percent tax on sales made by those with commercial retail licenses.

How Cities Can Impose a Tax

Cities may adopt an ordinance imposing the tax, but it must be referred to the voters at the next statewide general election (meaning a November election in an even-numbered year). However, cities may not impose a local tax if they have prohibited marijuana activities through a local ban.

Time, Place, and Manner Restrictions
(medical provisions operative March 1, 2016; commercial provisions operative January 1, 2016)[2]

State Law Restrictions

- Medical and Commercial Marijuana Processors: Cannot locate in residential zones if processing marijuana extracts. (HB 3400 §§ 14(2)(c), 85(3)(a))
- Medical Marijuana Dispensaries and Commercial Retail Stores
    - Cannot locate in residential zones (HB 3400 §§ 16, 86)
    - Cannot locate within 1000 feet of certain public and private schools, unless the school is established after the marijuana facility (HB 3400 §§ 16, 17, 86, 86a)

[2] Although these provisions do not take effect immediately, some of these provisions are already part of existing state law. Cities should consult their city attorney when enacting time, place, and manner restrictions.

    - Medical marijuana dispensaries cannot locate within 1000 feet of another dispensary (HB 3400A § 86)
    - Medical marijuana dispensaries cannot locate at a grow site (HB 3400A § 86)
- Compliance with Zoning Requirements (HB 3400A § 34(4)): Before issuing any license, the OLCC must request a statement from the city that the requested license is for a location where the proposed use of the land is a permitted or conditional use. If the proposed use is prohibited in the zone, the OLCC may not issue a license. A city has 21 days to act on the OLCC's request, but when that 21 days starts to run varies:
    - If the use is allowed as an outright permitted use, 21 days from receipt of the request
    - If the use is a conditional use, 21 days from the final local permit approval.

What Cities Can Regulate (HB 3400A §§ 33, 89)

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

- The hours of operation of retail licensees and medical marijuana grow sites, processing sites, and dispensaries
- The location of all 4 types of commercial licensees, as well as medical marijuana grow sites, processing sites, and dispensaries, except that a city may not impose more than a 1,000 foot buffer between retail licensees
- The manner of operation of all 4 types of commercial licensees, as well as medical marijuana processors and dispensaries
- The public's access to the premises of all 4 types of commercial licenses, as well as medical marijuana grow sites, processing sites, and dispensaries

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

Early Sales (SB 460)
(awaiting the Governor's signature – effective on passage)

How Early Sales Work (SB 460 §§ 2, 3)

- Starting October 1, 2015, medical marijuana dispensaries may sell the following amounts of commercial marijuana to a person who is 21 or older:
    - 1/4 ounce of dried marijuana leaves and flowers per person per day
    - 4 marijuana plants that are not flowering
    - Marijuana seeds
- Starting January 4, 2016, sales of commercial marijuana from medical marijuana dispensaries will be subject to a 25 percent sales tax (HB 2041 § 21a)
- Commercial sales from medical marijuana dispensaries are allowed through December 31, 2016

How Cities Can Ban Early Sales (SB 460 § 2(3))

A city can adopt an ordinance prohibiting the early sale of commercial marijuana from medical marijuana dispensaries within its jurisdiction. No voter referral is required.

Timeline

June 30, 2015 – HB 3400A becomes effective. However, many provisions of the law do not go into effect immediately.

July 1, 2015 – Personal possession of limited amounts of commercial marijuana is allowed for those 21 or older.

October 1, 2015 – Sales of commercial marijuana from medical marijuana dispensaries begin, unless a city has enacted an ordinance prohibiting early sales pursuant to SB 460 § 2(3).

December 24, 2015 – City councils that are eligible to adopt a prohibition on marijuana activities without a voter referral must have adopted the prohibition by this date.

January 1, 2016 – Most amendments to Measure 91 go into effect. In addition, after this date, medical marijuana growers may apply for an OLCC license to grow commercial marijuana at the same site.

January 4, 2016 – The OLCC must approve or deny commercial license applications as soon as practicable after this date. (HB 3400A § 171). In addition, medical marijuana dispensaries engaging in early sales of commercial marijuana must begin collecting a 25 percent state tax on those sales.

March 1, 2016 – Most amendments to the OMMA go into effect.

November 8, 2016 – Next statewide general election. Cities may refer measures on prohibition of marijuana activities and measures on local taxes at this election.

December 31, 2016 – Early sales of commercial marijuana from medical marijuana dispensaries end.

Return to Agenda

Beery Elsner & Hammond LLP

Blazing the Oregon Trail – Marijuana is Here, Now What?

OCCMA Summer Conference 2015 – Bend, OR

David F. Doughman, Partner
Chad A. Jacobs, Partner

Beery Elsner & Hammond, LLP

July 7, 2015

NOTES

Primer on Recreational Marijuana in Oregon

WHAT IS LEGAL

- ✓ Oregonians over 21 may possess up to 8 oz. of “usable” marijuana in their home and 1 oz. outside their home.
- ✓ Individuals over 21 may grow 4 plants ***per residence***, out of unaided public view.
- ✓ Adults over 21 may consume marijuana at home or on private property out of public view.
- ✓ Adults over 21 may share or giveaway marijuana to other adults 21 and older.
- ✓ Adults over 21 may make edible marijuana products at home and share them with other adults 21 and over.

WHAT IS NOT LEGAL

- ✓ It is illegal to smoke or otherwise consume marijuana in public.
- ✓ It is illegal to transport marijuana in or out of the state, including to and from Washington.
- ✓ It is illegal to possess more than 1 oz. of usable marijuana outside of one's home.
- ✓ It is illegal to give marijuana to anyone under 21 years old.
- ✓ It is illegal to smoke or consume marijuana and drive. Marijuana use and consumption is subject to Oregon DUII laws.
- ✓ It is illegal for individuals to sell marijuana or edible marijuana products even to adults 21 and over.*

Return to Agenda

* Sales in Oregon must be done by licensed retailers regulated by OLCC (or medical marijuana dispensaries).

Most Relevant Sections of HB 3400:

Local Time, Place and Manner Regulations (Sections 33 and 89)

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:
(1) For purposes of this section, “reasonable regulations” includes:
(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;
(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;
(c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;
(d) Reasonable limitations on the hours during which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may operate;
(e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;
(f) Reasonable requirements related to the public’s access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and
(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, 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 section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, 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 section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.
(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.

SECTION 89. (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.

Land Use (Section 34)

SECTION 34. (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 and 215.283.
(4)(a) Prior to the issuance of a license under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, 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.

(b) A city or county that receives a request for a land use compatibility statement under this subsection 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.
(c) A city or county action concerning a land use compatibility statement under this subsection is not a land use decision for purposes of ORS chapter 195, 196, 197 or 215.

Local Option Tax (Section 34a)

SECTION 34a. (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 section 22, chapter 1, Oregon Laws 2015.
(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 3 percent.

Local Option (Sections 133-136)

SECTION 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;
(B) Medical marijuana dispensaries registered under ORS 475.314;

(C) Marijuana producers licensed under section 19, chapter 1, Oregon Laws 2015;
(D) Marijuana processors licensed under section 20, chapter 1, Oregon Laws 2015;
(E) Marijuana wholesalers licensed under section 21, chapter 1, Oregon Laws 2015;
(F) Marijuana retailers licensed under section 22, chapter 1, Oregon Laws 2015; 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.
(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.

SECTION 134. (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 section 85 of this 2015 Act;

(b) Medical marijuana dispensaries registered under ORS 475.314;
(c) Marijuana producers licensed under section 19, chapter 1, Oregon Laws 2015;
(d) Marijuana processors licensed under section 20, chapter 1, Oregon Laws 2015;
(e) Marijuana wholesalers licensed under section 21, chapter 1, Oregon Laws 2015;
(f) Marijuana retailers licensed under section 22, chapter 1, Oregon Laws 2015; 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 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 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 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 (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 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.

SECTION 135. (1) Notwithstanding sections 133 and 134 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, 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.

SECTION 136. (1) Notwithstanding sections 133 and 134 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 on or before July 1, 2015;
(b) Was processing usable marijuana as described in section 85 (1) of this 2015 Act 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.

Preemption (Section 57)

SECTION 57. Section 58, chapter 1, Oregon Laws 2015, is amended to read:
Sec. 58. The provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, 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 sections 3 to 70, chapter 1, Oregon Laws 2015. Amendments and ordinances that are inconsistent with the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, are repealed.

Limits on Grow Sites (Sections 82, 82a and 82b)

SECTION 82. ORS 475.320 is amended to read:
(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 475.304 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 475.304 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 475.304 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 475.304 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 475.304 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 475.304 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 475.304 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.

SECTION 82a. (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 section 81a of this 2015 Act.
(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.

SECTION 82b. The amendments to ORS 475.320 by section 82 of this 2015 Act apply to persons who registered with the Oregon Health Authority under ORS 475.304 before, on or after the operative date specified in section 179 of this 2015 Act.

SB 460 (NB: Governor Brown has not yet signed as of July 7, 2015, though she is expected to do so):

SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 475.300 to 475.346.
SECTION 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.

(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.
SECTION 3. Section 2 of this 2015 Act is repealed on December 31, 2016.
SECTION 4. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Return to Agenda

ORDINANCE NO. ____

AN ORDINANCE ADDING SECTION XXXX TO THE XXXXXXX MUNICIPAL CODE PROHIBITING THE ESTABLISHMENT OF CERTAIN MARIJUANA FACILITIES WITHIN THE CITY.

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

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

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

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

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

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

NOW, THEREFORE, THE CITY OF XXXXXXX ORDAINS AS FOLLOWS:

Section 1. Section XXX – Prohibition on Marijuana Facilities – is added to the XXXXXX Municipal Code to read as follows:

SECTION XXXXXX – Prohibition on Marijuana Facilities.

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

B. Definitions. For the purposes of this section a "marijuana facility" includes:
   1. Marijuana processing sites registered with the Oregon Health Authority;
   2. Medical marijuana dispensaries registered with the Oregon Health Authority;
   3. Marijuana producers licensed by the Oregon Liquor Control Commission;
   4. Marijuana processors licensed by the Oregon Liquor Control Commission;
   5. Marijuana wholesalers licensed by the Oregon Liquor Control Commission; and
   6. Marijuana retailers licensed by the Oregon Liquor Control Commission.

Comment [A1]: A city may prohibit all or any combination of these facilities under HB 3400. The prohibition of any one facility precludes a city from imposing a local tax or sharing in state tax revenues.

{00471268; 2 }

C. Violations and Enforcement.

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

Comment [A2]: Cite to City's nuisance abatement code chapter or section.

Section 2. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on XXXXX x, 2015.

PASSED BY THE COUNCIL THIS ___ DAY OF XXXXX, 2015.

APPROVED BY THE MAYOR THIS ___ DAY OF XXXXX, 2015.

ATTEST **Mayor**

City Recorder

{00471268; 2 }

ORDINANCE NO. ____

AN ORDINANCE PROHIBITING THE SALE OF LIMITED MARIJUANA RETAIL PRODUCT PURSUANT TO OREGON SENATE BILL 460 AND DECLARING AN EMERGENCY

Comment [DD1]: Optional.

WHEREAS, the Oregon Legislature passed and the governor signed SB 460, which permits medical marijuana dispensaries to sell "limited marijuana retail products" beginning October 1, 2015, to persons without a medical marijuana card who are at least 21 years old;

WHEREAS, SB 460 defines a "limited marijuana retail product" as marijuana seeds, dried marijuana leaves/dried marijuana flowers and a marijuana plant that is not flowering;

WHEREAS, SB 460 will permit medical marijuana dispensaries to sell limited marijuana retail products to non-card holders until recreational dispensaries are licensed and established; and

WHEREAS, SB 460 expressly permits cities and counties to enact an ordinance prohibiting medical marijuana dispensaries from doing so.

NOW, THEREFORE, the City/County of _____ ordains as follows:

Comment [DD2]: Users should review their charters to ensure the enactment language is consistent with charter requirements.

Section 1. Medical marijuana dispensaries (a/k/a medical marijuana "facilities") may only sell limited marijuana retail products as that term is defined in Oregon Senate Bill 460 (2015) to persons who are registered cardholders under the Oregon Medical Marijuana Act. Medical marijuana dispensaries are otherwise prohibited from selling limited marijuana retail products to any other persons.

Section 2. In order to preserve the health, safety and welfare of the City/County of _____, its residents and its visitors, the _____ City Council/Board of Commissioners for _____ declare an emergency to exist. Therefore, this ordinance is effective upon its passage.

Comment [DD3]: Only necessary if the ordinance is to be immediately effective. Users should review relevant charter language (if any) to ensure an emergency clause contains all that it needs to.

Return to Agenda

ORDINANCE NO. 3097

AN ORDINANCE AMENDING 18.08, 18.32.025, 18.32.030, 18.40.030, 18.40.040, 18.52.020 AND 18.94.120 OF THE ASHLAND MUNICIPAL CODE ALLOWING MEDICAL MARIJUANA DISPENSARIES IN SPECIFIED PORTIONS OF THE COMMERCIAL (C-1), EMPLOYMENT (E-1), AND INDUSTRIAL (M-1) ZONING DISTRICTS

Annotated to show ~~deletions~~ and **additions** to the code sections being modified. Deletions are **bold ~~lined through~~** and additions are in **bold underline**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

> Powers of the City The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop 20 Or. App. 293; 531 P 2d 730, 734 (1975); and

WHEREAS, the Oregon Legislature enacted House Bill 3460 in 2013 (ORS 475.314) which requires the Oregon Health Authority to develop and implement a process to register medical marijuana facilities; and

WHEREAS, under Oregon law, local governments may regulate the operation and location of certain types of businesses within their jurisdiction limits except when such action has been specifically preempted by state statute; and

WHEREAS, the City Council determined it is necessary to establish rules and regulations permitting medical marijuana dispensaries as a new land use within the City and minimizing the potential impacts to nearby residential neighborhoods; and

WHEREAS, the Planning Commission of the City of Ashland conducted a duly advertised public hearing on the amendments to Title 18 Land Use of the Ashland Municipal Code on May 13, 2014, , and following deliberations, recommended approval of the amendments by a unanimous vote; and

WHEREAS, the City Council of the City of Ashland conducted a duly advertised public hearing on the above-referenced amendments on June 17, 2014 and, following the close of the public

hearing and record, deliberated and conducted first and second readings approving adoption of the ordinance in accordance with Article 10 of the Ashland City Charter; and

WHEREAS, the City Council of the City of Ashland has determined that in order to protect and benefit the public health, safety and welfare of existing and future residents of the City, it is necessary to amend the Ashland Land Use Ordinance in the manner proposed, that an adequate factual base exists for the amendments, that the amendments are consistent with the comprehensive plan and that such amendments are fully supported by the record of this proceeding.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. The above recitations are true and correct and are incorporated herein by this reference.

SECTION 2. Chapter 18.08 [Definitions] is hereby amended to include the following new definition:

SECTION 18.08.486 Medical Marijuana Dispensaries.
Any facility registered by the Oregon Health Authority under ORS 475.300 to 475.346 that dispenses marijuana pursuant to ORS 475.314.

SECTION 3. Section 18.32.025 [C-1 Retail Commercial District – Special Permitted Uses] is hereby amended to read as follows:

SECTION 18.32.025 Special Permitted Uses.
The following uses and their accessory uses are permitted outright subject to the requirements of this section and the requirements of Chapter 18.72, Site Design and Use Standards.

A. Commercial laundry, cleaning and dyeing establishments.
1. All objectionable odors associated with the use shall be confined to the lot upon which the use is located, to the greatest extent feasible. 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.
2. The use shall comply with all requirements of the Oregon Department of Environmental Quality.

B. Bowling alleys, auditoriums, skating rinks, and miniature golf courses. If parking areas are located within 200' of a residential district, they shall be shielded from residences by a fence or solid vegetative screen a minimum of 4' in height.

C. Automobile fuel sales, and automobile and truck repair facilities. These uses may only be located in the Freeway Overlay District as shown on the official zoning map.

D. Residential uses.

1. At least 65% of the total gross floor area of the ground floor, or at least 50% of the total lot area if there are multiple buildings shall be designated for permitted or special permitted uses, excluding residential.
2. Residential densities shall not exceed 30 dwelling units per acre in the C-1 District, and 60 dwelling units per acre in the C-1-D District. For the purpose of density calculations, units of less than 500 square feet of gross habitable floor area shall count as 0.75 of a unit.
3. Residential uses shall be subject to the same setback, landscaping, and design standards as for permitted uses in the underlying C-1 or C-1-D District.
4. Off-street parking shall not be required for residential uses in the C-1-D District.
5. If the number of residential units exceeds 10, then at least 10% of the residential units shall be affordable for moderate income persons in accord with the standards established by resolution of the Ashland City Council through procedures contained in the resolution. The number of units required to be affordable shall be rounded down to the nearest whole unit.

E. Drive-up uses as defined and regulated as follows:

1. Drive-up uses are defined as any establishment which by design, physical facilities, service or by packaging procedures encourages or permits customers to receive services, obtain goods other than automobile fuel, or be entertained while remaining in their motor vehicles. The components of a drive-up use include kiosks, canopies or other structures; windows; stalls; queuing lanes and associated driveways. Drive-up uses may be approved in the C-1 District only, and only in the area east of a line drawn perpendicular to Ashland Street at the intersection of Ashland Street and Siskiyou Boulevard.
2. Drive-up uses are prohibited in Ashland's Historic Interest Area as defined in the Comprehensive Plan. The four existing non-conforming financial institution drive-up use in operation in the Historic Interest Area as of August 7, 2012 may redevelop or relocate within the C-1 and C-1-D zoned portions of Ashland Historic Interest Area subject to the following requirements:
   a. Relocation or redevelopment of a drive-up use within the C-1 or C-1-D zoned portions of the Historic Interest Area shall be subject to a Type II Site Review procedure as a Special Permitted Use.
   b. Relocated or redeveloped drive-up uses may only be placed on a secondary building elevation, and only accessed from an alley or driveway. A secondary building elevation is defined as a building's side or rear elevation which does not face a street, other than an alley.
   c. Driveways serving relocated or redeveloped drive-up uses shall not enter from or exit to a higher order street frontage or through a primary elevation of the building, and driveways or queuing lanes shall be not placed between a building and the right-of-way other than an alley.
   d. No demolition of or exterior change to a building considered to be a historic resource shall be permitted to accommodate the relocation or redevelopment of a drive-up use.
   e. Regardless of the number of drive-up windows/lanes in use in the current location, with a relocation or remodel the number of windows/lanes shall be reduced to one (1).

3. Drive-up uses are subject to the following criteria:
   a. The average waiting time in line for each vehicle shall not exceed five minutes. Failure to maintain this average waiting time may be grounds for revocation of the approval.
   b. All facilities providing drive-up service shall provide at least two designated parking spaces immediately beyond the service window or provide other satisfactory methods to allow customers requiring excessive waiting time to receive service while parked.
   c. A means of egress for vehicular customers who wish to leave the waiting line shall be provided.
   d. The grade of the stacking area to the drive-up shall either be flat or downhill to eliminate excessive fuel consumption and exhaust during the wait in line.
   e. The drive-up shall be designed to provide as much natural ventilation as possible to eliminate the buildup of exhaust gases.
   f. Sufficient stacking area shall be provided to ensure that public rights-of-way are not obstructed.
   g. The sound level of communications systems shall not exceed 55 decibels at the property line and shall otherwise comply with the Ashland Municipal Code regarding sound levels.
   h. The number of drive-up uses shall not exceed the 12 in existence on July 1, 1984. Drive-up uses may be transferred to another location in accord with all requirements of this section. The number of drive-up window stalls shall not exceed 1 per location, even if the transferred use had greater than one stall.
   i. A separate ministerial "Drive-Up Transfer" permit shall be obtained for the transfer of any drive-up use when such transfer is not associated with a Site Review or Conditional Use permit application in order to formally document transfer of the use.
   j. Drive-up uses which are discontinued without a properly permitted transfer shall be deemed to have expired after unused for six (6) months. Discontinuation of a drive-up use is considered to have occurred when the drive-up use is documented as having ceased on site through a ministerial, Site Review or Conditional Use permit review, or upon on-site verification by the Staff Advisor.
   k. All components of a drive-up use shall be removed within sixty (60) days of discontinuation of the use through abandonment, transfer, relocation or redevelopment.

F. Kennel and veterinary clinics where animals are housed outside, provided the use is not located within 200' of a residential district.

G. Medical marijuana dispensaries meeting all of the following requirements:

1. The dispensary must be located on a property with a boundary line adjacent to a boulevard, except that dispensaries are not permitted in the Downtown Design Standards zone.

2. The dispensary must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the dispensary is prohibited.

3. Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain

Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.

4. **The dispensary must not have a drive-up use.**
5. **The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the dispensary's exterior refuse containers.**
6. **The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.**

SECTION 4. Section 18.32.030 [C-1 Retail Commercial District – Conditional Uses] is hereby amended to read as follows:

SECTION 18.32.030 Conditional Uses.

The following uses and their accessory uses are permitted when authorized in accordance with the chapter on Conditional Use Permits:

A. Electrical substations.
B. Automobile fuel sales, and automobile and truck repair facilities, except as allowed as a special permitted use in 18.32.025.
C. New and used car sales, boat, trailer, and recreational vehicles sales and storage areas, except within the Historic Interest Area as defined in the Comprehensive Plan.
D. Hotels and motels.
E. Temporary uses.
F. Outdoor storage of commodities associated with a permitted, special permitted or conditional use.
G. Hostels, provided that the facility be subject to an annual Type I review for at least the first three years, after which time the Planning Commission may approve, under a Type II procedure, a permanent permit for the facility.
H. Building material sales yards, but not including concrete or asphalt batch or mixing plants.
I. Churches or similar religious institutions.
J. Wireless Communication Facilities not permitted outright and authorized pursuant to Section 18.72.180.
K. Structures which are greater than forty (40) feet in height, but less than fifty-five (55) feet, in the "D" Downtown Overlay District.
L. Medical marijuana dispensaries, except as allowed as a special permitted use in 18.32.025, and meeting all of the following requirements:
   1. **The dispensary must be located 200 feet or more from a residential zone, except that dispensaries are not permitted in the Downtown Design Standards zone.**
   2. **The dispensary must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the dispensary is prohibited.**
   3. **Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain**

Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.

4. **The dispensary must not have a drive-up use.**
5. **The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the dispensary's exterior refuse containers.**
6. **The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.**

SECTION 5. Section 18.40.030 [E-1 Employment District – Special Permitted Uses] is hereby amended to read as follows:

SECTION 18.40.030 Special Permitted Uses.

The following uses and their accessory uses are permitted outright subject to the requirements of this section, including all requirements of 18.72, Site Design and Use Standards.

A. Bottling plants, cleaning and dyeing establishments, laundries and creameries.
   1. All objectionable odors associated with the use shall be confined to the lot upon which the use is located to the greatest extend feasible. 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.
   2. The use shall comply with all requirements of the Oregon Department of Environmental Quality.

B. Wholesale storage and distribution establishments. Provided, however, that for the uses specified in subsection A and B above, no deliveries or shipments shall be made from 9pm to 7am where the property on which the use is located is within 200 feet of any residential district.

C. Recycling depots, provided the use is not located within 200' of a residential district.

D. Kennels and veterinary clinics where animals are housed outside, provided the use is not located within 200' of a residential district.

E. Residential uses. As indicated as R-Overlay on the official zoning map, and in conformance with the Overlay Zones chapter 18.56.

F. Cabinet, carpentry, machine, and heating shops, if such uses are located greater than 200' from the nearest residential district.

G. Manufacture of food products, but not including the rendering of fats or oils. For any manufacture of food products with 200' of a residential district:
   1. All objectionable odors associated with the use shall be confined to the lot upon which the use is located, to the greatest extent feasible. 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. Odors which are in violation of this section include but are not limited to the following:

a. Odors from solvents, chemicals or toxic substances.
b. Odors from fermenting food products.
c. Odors from decaying organic substances or human or animal waste.

2. Mechanical equipment shall be located on the roof or the side of a building with the least exposure to residential districts. Provided, however, that it may be located at any other location on or within the structure or lot where the noise emanating from the equipment is no louder, as measured from the nearest residential district, than if located on the side of the building with least exposure to residential districts. Mechanical equipment shall be fully screened and buffered.

H. Cold Storage Plants, if such uses are located greater than 200' from the nearest residential district.

I. Automobile and truck repair facilities, excluding auto body repair and paint shops. All cars and trucks associated with the use must be screened from view from the public right-of-way by a total sight obscuring fence. Facilities of 3 bays or larger shall not be located within 200' of a residential district.

J. Medical marijuana dispensaries meeting all of the following requirements:

1. The dispensary must be located on a property with a boundary line adjacent to a boulevard.

2. The dispensary must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the dispensary is prohibited.

3. Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.

4. The dispensary must not have a drive-up use.

5. The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products must not be placed within the dispensary's exterior refuse containers.

6. The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.

SECTION 6. Section 18.40.040 [E-1 Employment District – Conditional Uses] is hereby amended to read as follows:

SECTION 18.40.040 Conditional Uses.

The following uses and their accessory uses are permitted when authorized in accordance with the chapter on Conditional Use Permits:

A. Electrical substations.
B. Mini-warehouses and similar storage areas.
C. Contractor equipment storage yards or storage and rental of equipment commonly used by a contractor.
D. Automobile fuel sales.

Return to Agenda

E. New and used car sales, boat, trailer and recreational vehicles sales and storage areas, provided that the use is not located within the Historic Interest Area as defined in the Comprehensive Plan.
F. Hotels and motels.
G. Any use which involves outside storage of merchandise, raw materials, or other material associated with the primary use on the site.
H. Private college, trade school, technical school, or similar school.
I. Cabinet, carpentry, machine, and heating shops, if such uses are located less than or equal to 200' from the nearest residential district.
J. Cold storage plants, if such uses are located less than or equal to 200' from the nearest residential district.
K. Automotive body repair and painting, including paint booths.
   1. The use shall not be located within 200' of the nearest residentially zoned property.
   2. All objectionable odors associated with the use shall be confined to the lot, to the greatest extent feasible. 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.
   3. The use shall comply with all requirements of the Oregon Department of Environmental Quality.
L. Churches and similar religious institutions.
M. Nightclubs and Bars.
N. Theaters (excluding drive-in) and similar entertainment uses.
O. Temporary uses.
P. Wireless Communication Facilities not permitted outright and authorized pursuant to Section 18.72.180.
Q. Medical marijuana dispensaries, except as allowed as a special permitted use in 18.40.030, and meeting all of the following requirements:
   1. The dispensary must be located 200 feet or more from a residential zone.
   2. The dispensary must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor storage of merchandise, raw materials, or other material associated with the dispensary is prohibited.
   3. Any modifications to the subject site or exterior of a building housing the dispensary must be consistent with the Site Design Use Standards, and obtain Site Review approval if required by section 18.72.030. Security bars or grates on windows and doors are prohibited.
   4. The dispensary must not have a drive-up use.
   5. The dispensary must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the dispensary's exterior refuse containers.
   6. The dispensary is registered with the Oregon Health Authority under the state of Oregon's medical marijuana facility registration system under ORS 475.300 – ORS 475.346, and meets the requirements of OAR Chapter 333 Division 8 Medical Marijuana Facilities.

SECTION 7. Section 18.52.020 [M-1 Industrial District –Permitted Uses] is hereby amended to read as follows:

SECTION 18.52.020 Permitted Uses.

The following uses and their accessory uses are permitted outright:

A. Any manufacturing, processing, assembling, research, wholesale or storage use.
B. Railroad yards and freight stations, trucking and motor freight stations and facilities.
C. Public and public utility service buildings, structures and uses.
D. **Permitted, special permitted and** ~~C~~conditional uses in the Employment District listed in Section **18.40.020,** 18.40.030 and 18.40.040 of this Chapter, except residential uses. **Medical marijuana dispensaries must meet the special use requirements of 18.40.030.J.**
E. Building materials sales yards.
~~**F. Permitted uses in the Employment District listed in Section 18.40/020 of this Chapter.**~~

SECTION 8. Section 18.94.120 [Home Occupations – Prohibited Uses] is hereby amended to read as follows:

SECTION 18.94.120 Prohibited Uses.

The following uses are prohibited as home occupations:

A. Any activity that produces radio or TV interference, noise, glare, vibration, smoke or odor beyond allowable levels as determined by local, state or federal standards.
B. Any activity involving on-site retail sales, except as allowed in the Historic Railroad District or items that are incidental to the occupational use, such as the sale of beauty products from salons, lesson books or sheet music for music teachers, or computer software for computer consultants.
C. Any uses described in this section or uses with similar objectionable impacts because of automobile traffic, noise, glare, odor, dust, smoke or vibration:
    1. Ambulance service;
    2. Ammunition or firearm sales;
    3. Ammunition reloading business;
    4. Animal hospital, veterinary services, kennels or animal boarding;
    5. Auto and other vehicle repair, including auto painting;
    6. Repair, reconditioning or storage of motorized vehicles, boats, recreational vehicles or large equipment on-site; **and**
    7. Medical marijuana dispensaries.

SECTION 9. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 10. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", or another word,

and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions, and text descriptions of amendments (i.e. Sections 1-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the 17 day of June, 2014, and duly PASSED and ADOPTED this 1 day of July, 2014.

Barbara M. Christensen, City Recorder

SIGNED and APPROVED this 7 day of July, 2014.

Dennis Slattery, Council Chair

Reviewed as to form:

David Lohman, City Attorney

Return to Agenda

ORDINANCE No. 3868

AN ORDINANCE AMENDING ORDINANCE NO. 3848, AN ORDINANCE RELATED TO NUISANCES; AND DECLARING AN EFFECTIVE DATE

Whereas, the City Council recognizes that drying, production, processing, keeping or storage of marijuana, without appropriate safeguards in place, can have a detrimental effect upon public safety and neighboring citizens; and

Whereas, the City Council finds and declares that the health, safety and welfare of its citizens are promoted by requiring that persons engaged in drying, cultivation, production, processing, keeping, or storage of marijuana to ensure that it is not accessible to unauthorized persons and that its odor does not travel to other properties;

NOW THEREFORE, THE CITY OF PENDLETON ORDAINS AS FOLLOWS:

Section 9 shall be amended in the following manner:

SECTION 9. Odors and Perceptible Effects of Presence of Marijuana.

A. No person may permit or cause unreasonable quantities of soot, cinders, noxious acids, fumes or gases to escape, causing harm to another person or to the public, or endangering the health, comfort and safety of any person or the public, or permit or cause such materials to injure or damage property or business.

B. For purposes of this Section, the following definitions apply:

(a) Marijuana. 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, whether kept for medicinal use or otherwise.

(b) Odor of marijuana. The characteristic of marijuana that may be perceived by the sense of smell.

C. For purposes of this Section, every law enforcement officer that is certified by the Oregon Board of Police Standards and Training, is sufficiently trained to identify the sight and odor of marijuana and whose opinion as to the presence of the odor of marijuana shall be presumed affirmative proof thereof.

D. Unlawful Release of Marijuana Odor. No owner of real property or person in charge thereof shall allow, permit or cause the odor of marijuana to emanate from that premises to any other property.

E. Screening requirements. No owner of real property or person in charge thereof shall permit the possession, cultivation or production of marijuana in a place that may be seen by normal unaided vision from a public place or neighboring property.

F. Violation of Subsections D. and E. herein are declared to be a public nuisance, punishable pursuant to Section 29. Violations of this section may be abated in the manner provided in this ordinance.

PASSED by the City Council and approved by the Mayor June 2, 2015.

APPROVED:_____
Phillip W. Houk, Mayor

ATTEST: _____
Andrea Denton, City Recorder

Approved as to Form:

_____
Nancy Kerns, City Attorney

Return to Agenda

CHAPTER 31
MEDICAL MARIJUANA

31.001. Purpose. The purpose of this Chapter is to create a licensing and regulatory program for Medical Marijuana Facilities that protects the public health, safety, and welfare.

31.005. Definitions. Except as the context otherwise specifically requires, as used in this Chapter, the following mean:

(a) Career school has the meaning as defined on Oregon Administrative Rule 333-008-1010(5).

(b) Chief means the Chief of the Salem Police Department or the Chief's designee.

(c) Elementary school has the meaning as defined in Oregon Administrative Rule 333-008-1010(10).

(d) Fire Code Official means the Fire Chief of the Salem Fire Department or the Fire Chief's designee.

(e) License means the written form of permission required in order to operate a business or pursue a vocation as required by this Chapter, and is not intended to be an endorsement of a particular business or vocation or licensee.

(f) Licensee means a person engaged in the business of furnishing or operating a business defined by this Chapter, whether upon contract or by offering such service to the public generally.

(g) Marijuana has the meaning given that term in ORS 475.302.

(h) Medical marijuana means marijuana used for the exclusive benefit of a person to mitigate the symptoms or effects of the person's debilitating medical condition.

(i) Medical marijuana facility, or "facility," means a facility that is registered by the Oregon Health Authority and that sells, distributes, transmits, gives, dispenses, or

otherwise provides medical marijuana to a natural person with a registry identification card. A "facility" includes all premises, buildings, cartilage, or other structures used to accomplish the storage, distribution and dissemination of marijuana.

(j) Person means any natural person, partnership, corporation, Limited Liability Company, government entity, association or other entity in law or fact.

(k) Person or persons with a financial interest means any person that has loaned or given money or real or personal property to the applicant, or principal of the applicant for use by the proposed facility within the preceding year.

(l) Principal means members, partners, or corporate officers, and all stockholders holding more than ten percent of the voting stock for any applicant who is not a natural person.

(m) Registry identification card means a document issued by the Oregon Health Authority that identifies a person authorized to engage in the medical use of marijuana, and the person's designated primary caregiver, if any.

31.010. Administration; Rulemaking.

(a) The Chief shall administer and enforce the provisions of this Chapter, and shall have the authority to render written and oral interpretations, and to adopt administrative rules and procedures necessary for its proper administration and enforcement.

(b) The Chief may investigate any applicant for a license to ensure compliance with the requirements of this Chapter. The Chief may require, as part of any application for a license, that any premises sought to be licensed be inspected to ensure compliance with the requirements of this Chapter. The Chief may require the fingerprinting of any natural person whose name is required to be furnished in connection with any application, may require the submission of a criminal history including, but not limited to, an FBI Identification Record, and may require an applicant to provide such additional information that the Chief determines is necessary to evaluate the application. The applicant is responsible for any fees or costs associated with the criminal background check.

31.015. License Required. A license issued pursuant to this Chapter shall be required for any person engaging in the operation of a medical marijuana facility.

31.020. License Fees; Proration.

(a) Fees for licenses required by this Chapter shall be set by resolution of the City Council in an amount not to exceed $2,000.00.

31.025. License Term and Renewal.

(a) A license shall be valid from the date of issuance for a period of one year.

(b) A license may be renewed for additional one year terms as provided by this Chapter.

31.030. Transferability. Licenses issued under this Chapter shall not be transferred to any other person.

31.035. Display of License. Upon request, the licensee shall show the license to any person with whom the licensee is dealing as part of the licensed activity or to the Chief or the Chief's designee.

31.040. License Requirements. In addition to any other requirement set forth in this Chapter, each licensee shall:

(a) Notify the Chief in writing within ten business days of any change in the material information related to the license including, but not limited to, change of name, address, telephone number, additional employees or volunteers, additional principals or persons with a financial interest, criminal history, or registered agent. No new principal may become involved in a licensed business until an application is submitted to and approved

by the Chief for that new principal. If a new principal does become involved in a licensed business prior to approval, the Chief may revoke the license pursuant to the procedures set forth in SRC 31.045.

(b) Advertise for business only in the name in which a license is issued.

31.045. New Licenses.

(a) Application. An application for a new license shall include the following information, in addition to any other information specifically required elsewhere in this Chapter:

(1) The applicant's name and address;

(2) The names and residence addresses of all principals of the applicant;

(3) The names and residence addresses of all persons with a financial interest that have loaned or given money or real or personal property to the applicant, or principal of the applicant for use by the proposed facility within the preceding year;

(4) The names and residence addresses of all persons who are or anticipated to be at the time of application an employee or volunteer at the proposed facility;

(5) The address to which mail concerning the license may be sent;

(6) All business addresses maintained or to be maintained by the applicant in the state of Oregon;

(7) Submission of 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 Facility;

(8) The names of at least three natural persons who can give an informed account of the business and moral character of the applicant and principals;

(9) The signature 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;

(10) The address of the proposed facility;

(11) If the applicant is leasing the property where the facility will be located, the name and address of the owner, landlord, and property manager of the location of the proposed facility;

(12) A complete description of the proposed accounting and inventory systems for the facility;

(13) Certification that the proposed facility is registered as a facility with the Oregon Health Authority pursuant to ORS 475.314;

(14) Other information deemed reasonably necessary by the Chief to complete review of the application.

(b) Review of Application.

(1) No application shall be deemed complete until all of the information required by subsection (a) of this section has been provided and the applicant has paid all fees associated with the license, including a non-refundable application fee.

(2) Upon receipt of a complete application, the Chief shall conduct such investigation as the Chief deems necessary to determine whether the application meets the qualifications for the license and whether statements made in the application are true. The Chief shall conduct a criminal background check on all applicants, principals, persons with a financial interest, employees and volunteers of the proposed Facility.

(c) Issuance of New License. A new license shall be granted to the applicant unless:

(1) The applicant made an untrue or incomplete statement on, or in connection with, the application for the license; provided, that if such untrue or incomplete

statement was the result of excusable neglect, the applicant may resubmit an application in which such defect is corrected.

(2) The applicant fails to meet all requirements of federal, state and local laws and regulations, including, but not limited to, other permitting or licensing requirements and land use regulations, except that a license application for a facility will not be denied solely because marijuana is illegal under federal law.

(3) The applicant, principal, or person with a financial interest in the facility fails the criminal background check as required by SRC 31.090.

(4) The applicant, principal, or person with a financial interest in the Facility has an outstanding warrant for his or her arrest.

(d) Notification to Applicant.

(1) If an application for a new license is approved, the Chief shall notify the applicant in writing that the application has been approved. The notice shall contain any conditions placed on the approval and any further requirements the applicant must meet before a license will be issued.

(2) If an application for a new license is denied, the Chief shall notify the applicant in writing that the application has been denied. The notice shall contain a short and plain statement of the reason for the denial and a statement that the applicant may appeal the denial as set forth in SRC Chapter 20J.

(e) Issuance; Effective Date.

(1) After notice to the applicant, and upon payment of all fees associated with the license, the Chief shall issue the license.

(2) A license is effective as of the date of issuance.

31.050. Renewal of License.

(a) Renewals Permitted. A license may be renewed. An application to renew an existing license shall be submitted not less than thirty days prior to the expiration date of the existing license and shall be accompanied by any non-refundable application fee. If an application to renew an existing license is not submitted within such thirty day period, a new license is required.

(b) Application. An application to renew an existing license shall include the following information, in addition to any other information specifically required elsewhere in this Chapter:

(1) The applicant's name;

(2) A copy of the license for which renewal is sought;

(3) A list of any and all crimes for which the applicant has been convicted within the twelve months preceding the date of the renewal application, together with the dates and places of such convictions;

(4) Identification and correction of any change in the information submitted in the application for the existing license;

(5) The signature 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.

(c) Review of Application.

(1) No application to renew an existing license shall be deemed complete until all of the information required by subsection (b) of this section has been provided, and the applicant has paid all fees associated with the application.

(2) Upon receipt of an application to renew an existing license, the Chief may make such investigation as the Chief deems necessary to determine whether the Facility is in compliance with all federal, state, and local laws and regulations,

except that a license renewal application may not be denied solely because marijuana is illegal under federal law.

(d) Criteria for Renewal of License. An application to renew an existing license shall be granted unless:

(1) The applicant made an untrue or incomplete statement on, or in connection with, the application to renew; provided, that if such untrue or incomplete statement is the result of excusable neglect, the applicant may resubmit an application to renew an existing license within the times provided in this section.

(2) The applicant no longer meets all requirements of federal, state, and local laws and regulations, including, but not limited to, other professional licensing regulations and land use regulations, except that a license renewal application may not be denied solely because marijuana is illegal under federal law.

(3) Any person required to submit to a criminal background check as required by SRC 31.090 fails the criminal background check.

(4) The applicant has an outstanding warrant for his or her arrest.

(5) The applicant has maintained or conducted the licensed business or vocation in a manner contrary to the terms of the existing license or contrary to any provision of this Chapter.

(6) Any other license or permit required to engage in the business or vocation has been denied, suspended, revoked, or cancelled.

(7) The applicant has engaged in any behavior or activity that would endanger public health, safety and welfare.

(e) Notification to Applicant.

(1) If an application to renew an existing license is approved, the Chief shall notify the applicant in writing that the renewal has been approved. The written notice shall contain any conditions placed on the renewal and any further requirements the applicant must meet as a condition of renewal.

(2) If an application to renew an existing license is denied, the Chief shall notify the applicant in writing that the renewal has been denied. The written notice shall contain a statement of the reasons for the denial and statement that the applicant may appeal the denial as set forth in SRC Chapter 20J.

(f) Issuance; Effective Date.

(1) After notice to the applicant, and upon payment of all renewal fees, the Chief shall issue the renewal license.

(2) A renewed license is effective as of the expiration date of the prior license.

31.055. License Revocation.

(a) A license issued pursuant to this Chapter shall be revoked if:

(1) The licensee, principal, employee, volunteer or person with a financial interest in the facility fails to allow inspection or examination of the facility, or examination of records, books, surveillance videotape or digital recordings as required in this Chapter.

(b) A license issued pursuant to this Chapter may be revoked if:

(1) The licensee fails to comply with any of the requirements of this Chapter of the license.

(2) The licensed activity is being conducted in a manner that presents an immediate danger to property or public health, safety or welfare.

(3) The licensee or principal of licensee is arrested or convicted of any felony or drug related misdemeanor.

(4) The Oregon Health Authority suspends or revokes the registration of the medical marijuana facility to which the license pertains.

(5) The licensee is doing business in violation of any applicable federal, state, or local law or regulation, except that a license for a medical marijuana facility may not be revoked solely because marijuana is illegal under federal law.

(6) The licensee provides or has provided false or misleading material information or has failed to disclose a material fact on the application for the license or in connection with the licensed activity.

(7) The licensee has been assessed a civil penalty in connection with the licensed activity and fails to pay the penalty within the time required.

(8) Federal or state statutes, regulations, or guidelines are modified, changed, enforced, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the facility.

(c) The Chief shall provide written notice of revocation to the licensee. The written notice shall state the basis for revocation of the license and shall inform the licensee of the right to appeal the revocation as set forth in SRC Chapter 20J.

(d) The notice shall be given at least fifteen business days before the revocation becomes effective. If the licensee corrects the basis for the revocation within the fifteen business day period, the Chief may discontinue the revocation proceedings.

(e) A licensee who has had his or her license revoked may, after ninety calendar days from the date of revocation, apply for a new license in the manner provided by this Chapter. A licensee who has had his or her license revoked two times within any consecutive twelve-month period shall be ineligible to apply for a license for two years from the date of the last revocation.

31.060. Civil Enforcement.

(a) Civil Penalty. Any person who fails to comply with the requirements of this Chapter or the terms of a license issued hereunder, who undertakes an activity regulated by this Chapter without first obtaining a license, or who fails to comply with a cease and desist order issued pursuant to this Chapter shall be subject to a civil penalty as provided in SRC Chapter 20J, not to exceed $2,000 per violation. Each day that a violation continues shall constitute a separate violation.

(b) Civil Penalties Against Agents. Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.

(c) Abatement. Any building or structure established, operated, or maintained contrary to this Chapter is a public nuisance and may be abated as provided in SRC Chapter 50.

(d) Appeals. Any person who is a party to a decision of the Chief, or any administrative enforcement order issued by the City pursuant to this section, may appeal the decision or enforcement order to the Hearings Officer by following the process set forth in SRC Chapter 20J. The hearing on the appeal shall follow the contested case procedures set forth in SRC 20J.240 through 20J.430.

(e) Proceedings by City Attorney. The City Attorney, upon request of the Chief, 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 the licensed activity, and any use or occupation of any building or structure used in violation of this Chapter.

(f) Remedies not Exclusive. The remedies provided in this Chapter are cumulative and not mutually exclusive and are in addition to any other rights, remedies, and penalties available under any other provision of law.

31.065. Unlawful Failure to Obtain License.

(a) It shall be unlawful for a person to engage in any business or vocation for which a license is required by this Chapter without first obtaining a license therefor.
(b) A violation of this section is a misdemeanor.
(c) Upon conviction for the above offense, the court may in addition to any other sanction or condition of probation authorized by law, prohibit the defendant from operating, being employed, volunteering or having a financial interest in the medical marijuana facility.

31.070. Unlawful Activity by Licensee.
(a) It shall be unlawful for a licensee to engage in a licensed activity, or to allow or permit the licensee's employees or agents to engage in the licensed activity, in violation of any applicable standard in the Chapter, or of any license issued pursuant to this Chapter.
(b) A violation of this section is a misdemeanor.
(c) Upon conviction for the above offense, the court may in addition to any other sanction or condition of probation authorized by law, prohibit the defendant from operating, being employed, volunteering or having a financial interest in the medical marijuana facility.

31.075. Unlawful Engaging in Licensed Activity While License is Suspended or Revoked.
(a) It shall be unlawful for a licensee to knowingly engage in a licensed activity, or to allow the licensee's employees or agents to engage in a licensed activity, when the license has been suspended or revoked pursuant to this Chapter.
(b) A violation of this section is a misdemeanor.
(c) Upon conviction for the above offense, the court may in addition to any other sanction or condition of probation authorized by law, prohibit the defendant from operating, being employed, volunteering or having a financial interest in the medical marijuana facility.

31.080. Standards of Operation. A medical marijuana facility must comply with the following requirements, in addition to any other state or local requirements:
(a) Registration in good standing with the Oregon Health Authority as a medical marijuana facility pursuant to state law, and compliance with all applicable laws and regulations administered by the Oregon Health Authority for Facilities.
(b) The facility must meet applicable laws and regulations, including, but not limited to, the building and fire codes and the Unified Development Code.
(c) The facility must not be co-located on the same unit of land or within the same building as a tobacco social or smoking club or as a marijuana social or smoking club.
(d) A facility may not be operated as a home occupation.
(e) A facility may not have a walk-up window or a drive-through.
(f) Operating hours must be no earlier than 10:00 a.m. or later than ~~7:00~~ ***8:00*** p.m. on the same day.
(g) All persons allowed within the facility, except for the Chief, the Chief's designee, or other members of law enforcement, must have a valid registry identification card, except that a person who does not have a valid registry identification card but who is a parent or legal guardian of a minor who has a valid registry identification card may accompany the minor into the facility for the sole purpose of procuring the minor's medical marijuana.
(h) Minors that possess a valid registry identification card are allowed within a facility only for the purpose of obtaining the minor's medical marijuana, but are only allowed in the lobby or public area of a facility, and are prohibited from all areas where usable

marijuana or immature plants are available for transfer to a patient or designated primary caregiver.

(i) Facilities must maintain adequate outdoor lighting over each exterior exit.

(j) The facility must utilize an air filtration and ventilation system that confines all odors associated with the facility to the facility premises.

(k) All products containing medical 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.

(l) The facility must not manufacture or produce any extracts, oils, resins, or similar derivatives of marijuana on-site and must not use open flames or gases in the preparation of any products.

(m) The facility must provide for secure disposal of marijuana remnants or by-products; marijuana remnants or by-products shall not be placed within the facility's exterior refuse containers.

(n) All applicants, principals, persons with a financial interest, employees and volunteers shall pass a criminal background check performed by the Salem Police Department.

31.085. Location.

(a) A facility may only operate where retail use is permitted.

(b) A facility shall not be located:

(1) In the Central Business Zoning District.

(2) Within a residence or mixed-use property that includes a residence.

(3) Within:

(A) 1000 feet of another licensed facility.

(B) 1000 feet from a public or private elementary, secondary or career school, including any parking lot appurtenant thereto and any property used by the school where minors and students routinely congregate.

(C) 500 feet of a public park or public playground. Public park means all park land designated in the Salem Parks System Master Plan that is open to the public. Playground means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swing sets, and teeterboards.

(D) 100 feet of a residentially-zoned property unless the location of the facility abuts a Major Arterial or Parkway, as those terms are defined by the Salem Transportation System Plan, or

(F) 100 feet of a certified child care facility as determined by the Oregon Department of Human Services.

(c) For purposes of subsection (b), all distances shall be measured from the property line of the affected property, (for example; a school) to the closest point of the space occupied by the facility.

(d) A change in use (including a rezone) to a neighboring property to a use identified in this section after a license has been issued for a facility shall not result in the facility being in violation of this section, nor shall it be grounds to refuse to renew a license.

31.090. Criminal Background Checks.

(a) All applicants, principals, employees, volunteers, and persons with a financial interest in the facility must pass a criminal background check performed by the Chief.

(b) All employees or volunteers at a facility must, prior to beginning employment or volunteering, pass a criminal background check as provided in this section.

(c) A conviction for any felony or drug related misdemeanor within 15 years of the date of the application for a license, or release from incarceration for any felony within 10 years of the date of application for a license, shall result in a failure of the criminal background check.

31.095. Inspection.

(a) Facilities shall be open for inspection and examination by any police officer or Fire Code Official of the City during all operating hours.

(b) The Chief may investigate all applicants, principals, employees, volunteers, and persons with a financial interest in the facility, and may inspect licensed facilities. Nothing in this subsection is intended, or shall be construed, to limit the authority of the Chief, the Chief's designee, or members of the Salem Police Department from investigating crimes or otherwise performing their duties as assigned.

31.100. Examination of Books, Records, and Premises.

(a) To determine compliance with the requirements of any and all applicable laws and regulations, the Chief, or the Chief's designee, may examine a facility, including wastewater from the facility, and any and all facility financial, operational, and facility information, including, but not limited to, video surveillance recordings, books, papers, payroll reports, and state and federal income tax returns. Every facility is required to furnish to the Chief the means and opportunity for making such examinations.

(b) The Chief may require an audit to be made of the books of account and records of a facility on such occasions as the Chief may consider necessary. Such audit may be made by an auditor to be selected by the Chief that shall likewise have access to all books and records of the facility.

(c) 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, the Chief or his or her designee shall be allowed to view surveillance videotapes or digital recordings at any reasonable time.

(d) Without reducing, limiting, or waiving any provision of this Chapter, the Chief shall have the same access to the facility, its records, and its operations, as allowed to state inspectors.

31.105. 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:

(a) The disclosure of licensee names and facility addresses.

(b) The disclosure of general statistics in a form which would prevent identification of financial information regarding a facility.

(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.

(d) The disclosure of information upon request of a local, state, or federal law enforcement official.

(e) The disclosure of information when such disclosure is ordered under the Oregon Public Records Law.

ORDINANCE NO. 2015-02

AN ORDINANCE AMENDING CHAPTERS 17.10, 17.44, AND 17.50 OF THE SANDY MUNICIPAL CODE RELATED TO MEDICAL MARIJUANA FACILITIES AND DECLARING AN EMERGENCY.

Whereas, Chapter 17.10, Definitions contains a definition for Medical Facility specifically excluding Medical Marijuana Facilities;

Whereas, Sections 17.44.20(B) and 17.50.20(B) specify those uses requiring Conditional Use Permit review prior to approval in the C-2, General Commercial and I-2, Light Industrial Zoning Districts;

Whereas, Ordinance No. 2014-03 adopted by City Council January 21, 2014, effectively prohibits medical marijuana facilities;

Whereas, the Sandy Development Code currently lists "medical facility" as a permitted use and provides a definition, but does not list "medical marijuana facility" or provide a definition for such use;

Whereas, the addition of medical marijuana facilities as a conditional use in the C-2 and I-2 zones ordinance will only apply if the Sandy City Council repeals Ordinance No. 2014-03;

Whereas, although state law currently limits medical marijuana facilities from locating within 1000 ft. of another facility and 1000 ft. from schools, the Sandy City Council wants to further limit these facilities from locating within 1000 ft. of a preschool and a day care facility, places where children congregate;

Whereas, if the council repeals Ordinance No. 2014-03 in the future, medical marijuana facilities (authorized by state law) will be permitted as a conditional use in the C-2 and I-2 Zoning Districts and no other zones.

NOW, THEREFORE, THE CITY OF SANDY ORDAINS AS FOLLOWS:

Section 1: 17.10.030 of the Sandy Municipal Code shall be amended to add a definition for *"Medical Marijuana Facility"* as follows: "A facility registered by the Oregon Health Authority that is allowed to receive marijuana or immature marijuana plants and transfer that marijuana to a patient or a patient's caregiver if the patient or caregiver has an Oregon Medical Marijuana Program card."

Section 2: 17.10.030 of the Sandy Municipal Code shall be amended to add a definition for "Preschool" as follows: "A facility providing care for children 36 months of age to school age that is primarily educational for four hours or less per day and where no preschool child is present at the facility for more than four hours per day."

Section 3: The definition for "Day Care Facility found in 17.10.030 of the Sandy Municipal Code "Day Care Facility" shall be replaced with the following language: "A child care facility certified to care for thirteen or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling. Also known as a "Certified Child Care Center" as defined in OAR 414, Division 300."

Section 4: Chapter 17.44, General Commercial, Section 17.44.20(B) of the Sandy Municipal Code shall be amended to add "Medical marijuana facility as a Conditional Use as follows:

B. Conditional Uses:
1. Buildings designed for one or more occupants with more than 60,000 square ft. of gross floor area;
2. Major public facility;
3. Medical marijuana facility
~~3.~~ 4. Planned unit developments, including but not limited, to single-family attached and detached residential and multi-family developments, in conjunction with recreation or supportive commercial facilities. Residential uses are limited to a maximum of 50 % of the total gross acreage;
~~4.~~ 5. Traveler accommodation facilities including campgrounds, overnight travel parks, and recreational vehicle parks;
~~5.~~ 6. Other uses similar in nature.

Section 5: Section 17.44.30 shall be amended to create a new subsection (C) as follows: Special Requirements for Medical Marijuana Facilities

A medical marijuana facility shall be further restricted as follows:

1. In addition to requiring compliance with all State requirements, a medical marijuana facility shall also be located at least 1,000 feet from all of the following uses: another medical marijuana facility, a K-12 school, a preschool and a day care facility;

   For purposes of this subsection, distances are measured by a straight line between any point on the boundary line of the real property containing the medical marijuana facility to any point on the boundary line of the real property containing the school, preschool, day care facility, or other medical marijuana facility.

2. In addition to the requirements of Chapter 17.22, Notices, notice shall be provided to property owners within 1,000 feet, excluding street right-of-way, of the building or development site of the proposed medical marijuana facility;

3. Hours of operation shall be limited to between 10 a.m. and 8 p.m.;

4. Entrances and off-street parking areas shall be well lit and not visually obscured from public view;

Section 6: Chapter 17.50, Light Industrial, Section 17.50.20(B) of the Sandy Municipal Code shall be amended to add "Medical marijuana facility" as follows:

B. Conditional Uses:
1. Automotive fueling station;
2. Concrete or asphalt batch plant;
3. Convenience market/store of less than 2,500 gross square feet
4. Drive-up/drive-in/drive-through (drive-up windows, kiosks, ATM, restaurants, car wash, quick vehicle servicing, and similar uses);
5. Major public facility;
6. Medical marijuana facility

6. 7. Stand-alone retail uses of less than 5,000 gross square feet;
~~7.~~ 8. Other uses similar in nature.

Section 7: Section 17.50.40 shall be amended to create a new subsection (D) as follows: Special Requirements for Medical Marijuana Facilities

A medical marijuana facility shall be further restricted as follows:

1. In addition to compliance with all State requirements for location, a medical marijuana facility shall also be located at least 1,000 feet from all of the following uses: another medical marijuana facility, a K-12 school, a preschool, and a day care facility;

   For purposes of this subsection, distances are measured by a straight line between any point on the boundary line of the real property containing the medical marijuana facility to any point on the boundary line of the real property containing the school, preschool, day care facility, or other medical marijuana facility.

2. In addition to the requirements of Chapter 17.22, Notices, notice shall be provided to property owners within 1,000 feet, excluding street right-of-way, of the building or development site containing the proposed medical marijuana facility;

3. Hours of operation shall be limited to between 10 a.m. and 8 p.m.;

4. Entrances and off-street parking areas shall be well lit and not visually obscured from public view;

Section 8: All preschools, K-12 schools and day care facilities, in addition to other requirements the development code imposes on these uses, must locate at least 1000 feet from any medical marijuana facility authorized pursuant to the development code and state law. Distances are measured by a straight line between any point on the boundary line of the real property containing the medical marijuana facility to any point on the boundary line of the real property containing the school, preschool or day care facility. Subject to Section 7 of this ordinance, the council authorizes the city manager or his designee to codify these restrictions on preschools, K-12 schools and day care facilities by adding consistent language in the development code.

Section 9: A medical marijuana facility will only exist as a conditional use in the C-2 and I-2 zoning districts and no other zoning districts if the city council repeals Ordinance No. 2014-03. Therefore, the amendments in Sections 1 - 8 of this ordinance will only be effective if Ordinance No. 2014-03 is repealed and the amendments will not be codified until that time.

Section 10: Findings supporting this ordinance are attached as Exhibit A.

Section 11: All remaining provisions of the Sandy Comprehensive Plan and Title 17 of the Sandy Municipal Code are reaffirmed in their entirety.

Section 12: In order to protect the peace, health and welfare of the City of Sandy, its residents and its visitors, the city council declares the existence of an emergency and, therefore, this ordinance is effective immediately upon its enactment by the council.

THIS ORDINANCE IS ADOPTED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR THIS 6th DAY OF APRIL, 2015.

William King
Mayor

ATTEST:

Lisa Young
City Recorder

Return to Agenda