



LEAGUE OF OREGON CITIES

GUIDEBOOK

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**LOCAL GOVERNMENT  
REGULATION OF  
MARIJUANA IN OREGON**

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**SIXTH EDITION  
REVISED JULY 2018**



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## Introduction and a Word of Caution

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

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

Since that time, the Oregon Liquor Control Commission (OLCC), the agency charged with implementing the recreational marijuana licensing process, and the Oregon Health Authority (OHA), the agency charged with implementing the OMMA, have engaged in rulemaking. In addition, in 2016, 2017 and 2018, the Legislature again amended Oregon’s marijuana laws with the adoption of additional legislation—HB 4014 (Or Laws 2016, ch 24), SB 1511 (Or Laws 2016, ch 83), SB 1598 (Or Laws 2016, ch 23), SB 1057 (Or Laws 2017, ch 183; amended ORS 475B.800), HB 3470 (Or Laws 2017, ch 725), and SB 1544 (Or Laws 2018, ch 103). Some of the changes made by those bills are discussed below in more detail.

Those changes have made it difficult for local government officials to stay on top of this ever-evolving regulatory landscape. Consequently, the League has prepared this sixth edition of the guide, revising its regulatory guidance to reflect the latest statutory and administrative rule changes, as well as providing sample ordinance wording for both medical and recreational marijuana facilities. Because most experts believe that the medical marijuana and recreational marijuana systems will eventually merge, the sample ordinance provisions in this edition do not differentiate between medical marijuana or recreational marijuana

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

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

businesses and treat both the same for purposes of regulating the time, place, and manner of those activities.

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

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

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

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

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## Home Rule in Oregon

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

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

Instead, municipal corporations in Oregon obtain home rule authority through the adoption of a home rule charter. The voters of a municipal corporation have the power to adopt a home rule charter under Article XI, section 2, of the Oregon Constitution, which was amended in 1906 by the people’s initiative. Article XI, section 2, provides, in part:

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

A home rule charter operates like a state constitution in that it vests all government power in the governing body of a municipality, except as expressly stated in that charter or as preempted by state or federal law. According to the League’s records, all of Oregon’s 241 incorporated cities have adopted home rule charters.

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

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

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

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

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

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

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

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

## Federal Law

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

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

In December 2014, Congress directed the U.S. Department of Justice (DOJ) not to use any of its funding to prevent states like Oregon from implementing their medical marijuana laws. On August 16, 2016, the United States Court of Appeals for the Ninth Circuit, in *United States v. McIntosh*, held that the Congress's 2014 law prevents the DOJ from spending its money on prosecuting individuals who engage in conduct associated with the use, distribution, possession and cultivation of medical marijuana, provided the individuals' conduct was specifically permitted by a state statute and the individual fully complied with the terms of said state statute. This decision is only applicable to medical marijuana. The Ninth Circuit's decision cautioned that the manufacture, distribution, and possession of marijuana is still a federal crime, and that while the DOJ is not presently able to prosecute individuals for these crimes, this limitation on the DOJ is temporal in nature.

More recently, United States Attorney General Jeff Sessions rescinded the so-called "Cole Memo." The Cole Memo stated that the DOJ would not use its prosecutorial resources on violations of the CSA so long as the production, processing, sale, and possession of marijuana complied with state law.<sup>6</sup> After the rescission of the Cole Memo, local United States Attorneys are left with discretion to choose how they use their resources in prosecuting violations of the CSA. On May 18, 2018, United States Attorney for the District of Oregon Billy Williams released a memo in which he detailed how his office would use its resources to enforce the CSA in Oregon.<sup>7</sup> The Williams memo explained that federal law enforcement officials in Oregon would primarily focus their resources on situations involving one or more of the following "priorities": (1) Overproduction and interstate trafficking; (2) Protection of children; (3) Violence, firearms, or other public safety threats; (4) Organized crime; and (5) Protection of federal lands in Oregon and other natural resources.

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<sup>6</sup> See Memo from James M. Cole to All United States Attorneys, Guidance Regarding Marijuana Enforcement (Aug 29, 2013), available at <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

<sup>7</sup> See Memo from The United States Attorney for the District of Oregon: Priorities in Enforcement of Federal Laws Involving Marijuana in the District of Oregon (May 18, 2018), available at [http://media.oregonlive.com/marijuana/other/2018/05/18/USAOR-Marijuana%20Enforcement%20Priorities-Final%20\(1\).pdf](http://media.oregonlive.com/marijuana/other/2018/05/18/USAOR-Marijuana%20Enforcement%20Priorities-Final%20(1).pdf).

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

## An Overview of Oregon's Marijuana Laws

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

### *Oregon Medical Marijuana Act*

Oregon has had a medical marijuana program since 1998, when voters approved Ballot Measure 67, the Oregon Medical Marijuana Act (OMMA) (codified at ORS 475B.785 to ORS 475B.949). Since that time, the Legislature has amended the OMMA on several occasions. Generally, under the OMMA, a person suffering from a qualifying debilitating health condition must get a written statement from a physician that the medical use of marijuana may mitigate the symptoms or effects of that condition. The person may then obtain a medical marijuana card from the Oregon Health Authority, the agency charged with regulating medical marijuana. The patient may designate a caregiver and a grower if the patient decides not to grow his or her own marijuana, each of whom also get a medical marijuana card. Patients, caregivers, and growers with medical marijuana cards, who act in compliance with the OMMA, are immune from state criminal prosecution for any criminal offense in which possession, delivery or manufacture of marijuana is an element. Those without medical marijuana cards may also claim immunity from state criminal prosecution if they are in compliance with the OMMA and, within 12 months prior to the arrest at issue, had received a diagnosis of a debilitating medical condition for which a physician had advised medical marijuana could mitigate the symptoms or effects. The OMMA also provides protection from state criminal prosecution for medical marijuana processors and medical marijuana dispensaries acting in compliance with the law.

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

Legislation in 2015, 2016, 2017, and 2018 addressed some of the local government concerns about the lack of regulation that had not been addressed in the original legislation. For example, a medical marijuana grow site now can have only a limited number of mature marijuana plants and a limited amount of usable marijuana harvested from those plants. In addition, medical marijuana is now classified as a farm crop, but the Legislature was careful to carve out local regulatory authority not available for other farm crops. The Legislature also added a new registration category for medical marijuana processors and imposed greater restrictions on those facilities. Along similar lines, the Legislature also added further restrictions on where certain

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

With the Legislature's more robust statutory scheme came more extensive medical marijuana administrative rules from the OHA. Those rules, found primarily in Oregon Administrative Rule 333-008-0010 *et seq*, cover many of the gaps left by the Legislature, including setting out a detailed registration system and requirements for testing, reporting, background checks, security and advertising, among other things.

### *Recreational Marijuana*

In November 2014, Oregon voters approved Ballot Measure 91, which decriminalized the production and recreational use of certain amounts of marijuana by persons 21 years of age or older. The OLCC is charged with licensing and regulating the growing, processing, and sale of marijuana in the recreational market. In particular, the Legislature tasked the OLCC with administering a license program for producers, processors, wholesalers, and retailers; under that program, a person may hold more than one type of license.

Since the voters approved Measure 91, the Legislature has made notable changes to its structure, primarily by increasing accountability and safety requirements. For example, the Legislature added testing, labeling, inspection, and reporting requirements for licensees, required handlers permits for those working with marijuana, and charged the OLCC with licensing OHA-accredited laboratories to conduct the required testing. The Legislature also expanded the OLCC's rulemaking authority, tasking the agency with, among other things, developing and maintaining a seed-to-sale tracking system, and adopting restrictions on the size of recreational marijuana grows. The Legislature also tasked the OLCC with certifying public and private marijuana researchers. As noted above, the Legislature tasked the OLCC with creating a system for transitioning medical marijuana registrants to OLCC recreational licensing, with the possibility for recreational licensees to register with the OLCC to engage in activities related to medical marijuana. The rules governing this transition took effect on September 20, 2016. The recreational marijuana rules can be found primarily in Oregon Administrative Rule 845-025-1000 to 845-025-8750.

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

### *Industrial Hemp*

Under HB 4089 (2018), the OLCC is tasked with developing rules to govern the transfer of industrial hemp products into the retail marijuana market. Hemp is a plant similar to marijuana

but without psychoactive properties. Hemp is often used for fiber to make rope and fabrics, but contains cannabidiol (CBD), which can be used for medicinal purposes. Prior to HB 4089, hemp growers and processors could develop hemp products and sell them in OLCC-licensed retailer without much oversight.

The Oregon Department of Agriculture licenses hemp growers, processors, and seed providers. To sell hemp products at an OLCC-licensed marijuana retailer, a hemp processor must obtain a “hemp certificate” from the OLCC, and must transfer their product to an OLCC-licensed processor. OLCC-licensed processors, in turn, must receive a “hemp endorsement” from the OLCC to receive raw hemp material and process that material into concentrates or extracts. After processing, hemp material may be transferred to OLCC-licensed wholesalers or OLCC-licensed retailers.

For more information on industrial hemp in the marijuana market, see HB 4089 (2018). The OLCC is currently working on writing rules to implement HB 4089.

### *State Taxation of Recreational Marijuana and State Shared Revenue*

The sale of marijuana items by OLCC-licensed retailers is subject to a 17 percent state sales tax, to be collected by those retailers.<sup>8</sup> The Legislature has clarified that medical marijuana cardholders and caregivers will not have to pay the state tax on the retail sale of marijuana items. (Or Laws 2016, ch 91, § 2.)

Of that state tax revenue, 10 percent will be transferred to cities under the Control and Regulation of Marijuana Act, *i.e.* the law regulating recreational marijuana.<sup>9</sup> That 10 percent was distributed using different metrics before and after July 1, 2017. Before that date, tax revenues collected will be distributed proportionately to all Oregon cities based on their population. Today, those revenues are distributed as follows: 75 percent based on population, and 25 percent on licensure numbers in the city compared to the total licenses in all cities. Only cities that have not banned marijuana premises for the six current license types and have provided a timely OLCC certification will receive state shared revenue payments for state marijuana taxes collected after June 30, 2017.<sup>10</sup> Cities without any retailers or medical marijuana shops are eligible to receive a quarterly share of future state revenues (from the population-based portion) if they have not banned any of the licensed premises. Quarterly payments began October 2017.

Electronic certifications to the OLCC, confirming whether a city has banned marijuana facilities in its jurisdiction, are required quarterly. A city's failure to timely certify will result in a forfeiture of its share of the state revenue, with that city's share going to the cities that filed the

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<sup>8</sup> See ORS 475B.705.

<sup>9</sup> The remaining tax revenues will be distributed as follows: 40 percent to the Common School Fund; 20 percent to the Mental Health Alcoholism and Drug Services Account; 15 percent to the State Police Account; and 10 percent to counties.

<sup>10</sup> See ORS 475B.759(4)(A).

required certifications. State shared marijuana tax payments will be bundled with any local tax payments for those cities that have an intergovernmental agreement with the Oregon Department of Revenue (DOR) for the collection of their local tax. (See Appendix D for the sample agreement.) To receive an accompanying report to the tax payment distributed, cities must provide a secrecy laws certificate to the DOR. (See Appendix D for the form.)

OLCC certification questions should be directed to [marijuana@oregon.gov](mailto:marijuana@oregon.gov) or (503) 872-6366. DOR tax questions should be directed to [marijuanatax.dor@oregon.gov](mailto:marijuanatax.dor@oregon.gov) or 503-947-2597.

### *Registration and License Types*

Taking into consideration both the medical system and the retail system, there are 10 marijuana activities that require registration or a license from the state.<sup>11</sup> The table on the next page provides a summary of each type of activity and its registration/licensing requirements along with a citation to the laws that governs those activities.

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<sup>11</sup> This guide focuses on regulation of those activities. In 2016, the Legislature preempted cities from prohibiting or otherwise limiting homegrown marijuana production, processing, and storage as described in ORS 475B.245 and a medical marijuana patient and caregiver's possession of seeds, plants, and usable marijuana as allowed under state law. (HB 4014, § 33).

## Oregon's Ten Regulated Marijuana Activities

	Grow	Make Products	Wholesale	Transfer to User	Research & Testing*
Medical Regulated Activities	<p><b>Marijuana Grow Site:</b></p> <p>Location for planting, cultivating, growing, trimming, or harvesting marijuana or drying marijuana leaves or flowers</p> <p><i>Register with OHA</i></p> <p>ORS 475B.810; OAR 333-008-010 to 333-008-0750</p>	<p><b>Marijuana Processing Site:</b></p> <p>Location for compounding or converting marijuana into medical products, concentrates or extracts</p> <p><i>Register with OHA</i></p> <p>ORS 475B.840; OAR 333-008-1600 to 333-008-2200</p>	<p><b>Wholesaler:**</b></p> <p>Purchase marijuana items for resale to a person other than a consumer.</p> <p><i>License with OLCC</i></p> <p>Or Laws 2016, ch 83, § 4.</p>	<p><b>Dispensary:</b></p> <p>Transfer usable marijuana, immature marijuana plants, seed, and medical products, concentrates and extracts to patients and caregivers.***</p> <p><i>Register with OHA</i></p> <p>ORS 475B.858; OAR 333-008-1000 to OAR 333-008-1248</p>	<p><b>Laboratories:</b></p> <p>Conducts testing of recreational and medical marijuana items.</p> <p><i>Obtain license under ORS 475B.560 and OAR 845-025-5000 to 845-025-5075.</i></p> <p><i>Obtain accreditation from OHA</i></p> <p>ORS 475B.565</p>
Recreational Regulated Activities****	<p><b>Producers:</b></p> <p>Manufacture, plant, cultivate, grow, harvest</p> <p><i>Obtain license from OLCC</i></p> <p>ORS 475B.070; OAR 845-025-2000 to OAR 845-025-2080</p>	<p><b>Processors:</b></p> <p>Process, compound or convert marijuana into products, concentrates or extracts, but does not include packaging or labeling</p> <p><i>Obtain license from OLCC</i></p> <p>ORS 475B.090; OAR 845-025-3200 to OAR 845-025-3290</p>	<p><b>Wholesalers:</b></p> <p>Purchase marijuana items for resale to a person other than a consumer</p> <p><i>Obtain license from OLCC</i></p> <p>ORS 475B.100; OAR 845-025-3500</p>	<p><b>Retailers:</b></p> <p>Sell marijuana items to a consumer</p> <p><i>Obtain license from OLCC</i></p> <p>ORS 475B.105; OAR 845-025-2800 to OAR 845-025-2890</p>	<p><b>Researchers:</b></p> <p>Public or private research of medical and recreational marijuana, including medical and agricultural research</p> <p><i>Certification from OLCC</i></p> <p>ORS 475B.286 and OAR 845-025-5300 to 845-025-5350</p>

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

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

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

\*\*\*\*In addition to the ten types of regulated activities, certain employees must also obtain an OLCC handlers permit. ORS 475B.261; OAR 845-025-5500 to OAR 845-025-5590.

## *Early Sales of Recreational Marijuana*

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

Under current law, medical marijuana dispensaries may sell the following to a person who is 21 or older and presents proof of age:

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

Beginning on June 2, 2016, medical marijuana dispensaries were permitted to begin selling the following items to a person who is 21 or older and presents proof of age:

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

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

During the 2016 legislative session, the Legislature amended the state's recreational marijuana laws to begin shifting towards a consolidated system. The Legislature imposed a requirement on the OLCC to adopt rules governing the process of transitioning from medical registration with the OHA to medical/recreational licensing with the OLCC. Specifically, HB 4014 provides that the OLCC will establish a program that allows medical registrants to convert to a retail license. (HB 4014 §§ 24 and 25 (2016)). In addition, SB 1511 created new provisions allowing recreational licensees to register with the OLCC to engage in the same retail license activity for medical marijuana purposes, essentially allowing one licensee to engage in retail and as medical marijuana activities under the regulatory control of the OLCC. (SB 1511, §§ 1-6) The OLCC's rules took effect September 20, 2016.

Although oversight of marijuana activities was somewhat consolidated into the OLCC, it is important to note that for now the recreational and medical programs continue to retain separate characteristics, and businesses operating within them will be subject to different rules. For example, in 2016 the Legislature added a separate description of what constitutes medical marijuana, with a definition that suggests that medical products may carry a different potency than recreational marijuana. (SB 1511, § 11). Additionally, as discussed below, the spacing requirements remain different (for recreational retailers, local governments cannot require more than a 1,000 foot buffer, but medical marijuana under state law must be at least 1,000 feet from

each other.) Thus, a person licensed to conduct both retail and medical marijuana activities will still be operating under different sets of rules for each activity.

### *Liens*

If the owner of a building or premises knowingly has used the building or premises for, or allowed the building or premises to be occupied for, the production, processing, sale or use of marijuana items contrary to the provisions of any state law or local ordinance regulating the production, processing, sale or use of marijuana items, the building or premises is subject to a lien for, and may be sold to pay all fines and costs assessed against the occupants of the building or premises for, any violation of a state law or local ordinance regulating the production, processing, sale or use of marijuana items.

### *Illegal Marijuana Market Enforcement Grant Program*

Under SB 1544 (2018), the Legislature created the Illegal Marijuana Market Enforcement Grant Program (the “Program”). The purpose of the program is to help cities and counties defray the costs incurred by local law enforcement agencies in addressing unlawful marijuana cultivation and distribution. The program is administered by the Oregon Criminal Justice Commission. The commission is required to develop rules for reviewing and approving grant applications and awarding grants and must also develop a process for evaluating the efficacy of local law enforcement programs and services funded by the program.

The program is funded with \$1.5 million per year, paid for out of the funds that go to the Oregon Liquor Control Commission for OLCC marijuana operations. Cities in rural parts of the state—particularly southwest Oregon—with high marijuana production and inadequate law enforcement should seriously consider participation in the new program.

## Local Government Options for Regulation of Marijuana

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

As set out in ORS 475B.486, ORS 475B.928, and under their home rule authority, cities have several options for regulating marijuana activities. Whether to regulate is a local choice. What follows is an overview of the options available to cities. However, before embarking on any form of regulation, cities should begin by examining the 10 types of marijuana activities authorized by state statute and the restrictions state law (including administrative regulations adopted by the OLCC [OAR chapter 845, division 25] and the OHA [OAR chapter 333, division 8]) places on each type of activity to determine whether a gap exists between what state law allows and what the community desires to further restrict.

### State Restrictions on the Location of Medical and Recreational Marijuana Activities

Before regulating or prohibiting state-registered or licensed marijuana activities, cities should examine the restrictions in state law. It is important to know about any state restrictions that create a regulatory “floor.” In other words, although the courts generally have upheld a city’s authority to impose more stringent restrictions than those described in state law, a city likely cannot impose restrictions that are more lenient than those described in state law. So, for example, when state law requires a 1,000-foot buffer between medical marijuana dispensaries, a city could not allow dispensaries to locate within 500 feet of each other. Moreover, some cities may determine that state regulation of marijuana activities is sufficient, and that local regulation is therefore unnecessary.

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

#### *Medical Grow Sites and Recreational Producers*

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

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

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

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

OAR 845-025-1230. Recreational marijuana growers are additionally prohibited from locating on public land, the same tax lot or parcel as another licensed grower under common ownership, and other areas that local governments should review and consider when adopting their own time, place and manner ordinances. *See* OAR 845-025-1115.

In addition to location restrictions, state statutes and administrative rules place limitations on the number of plants that a medical marijuana grower can grow in residential zones, and on the size of recreational marijuana grow canopies. Generally, a medical marijuana grow site may have up to 12 mature plants if it is in a residential zone, and up to 48 mature plants if it is located in any other zone. However, there are exceptions for certain grow sites that were in existence and had registered with the state by January 1, 2015. For those grow sites, the number of plants is limited to the number of plants that were at the grow site as of December 31, 2015, as long as that number does not exceed 24 mature plants per grow site in a residential zone and 96 mature plants per grow site in all other zones. A grower loses the right to claim those exceptions, however, if the grower's registration is currently suspended or revoked.

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

### ***Medical Processing Sites and Recreational Processors***

Processors that produce medical marijuana extracts may not be located in an area zoned for residential use. The OHA has defined "zoned for residential use" to mean "the only primary use allowed outright in the designated zone is residential." OAR 333-008-0010(69).

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

### ***Medical Marijuana Dispensaries***

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

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

elementary or secondary school, teaching children as described in ORS 339.030(1)(a).<sup>12</sup> As a practical matter, that means that dispensaries cannot locate within 1,000 feet of most public and private elementary, middle, and high schools. However, if a school is established within 1,000 feet of an existing dispensary, the dispensary may remain where it is unless the OHA revokes its registration. In addition, under the 2016 legislation, a city can allow a dispensary within 500 feet of a school under limited circumstances involving physical or geographic barriers between the school and establishment. *See* SB 1511, § 29.

### *Wholesalers and Recreational Retailers*

Wholesale and retail licensees may not locate in an area that is zoned exclusively for residential use and are subject to the same general OLCC restrictions on location noted in the prior section. The same requirements that apply to medical marijuana dispensaries regarding their proximity to schools apply to retail licensees. As a practical matter, a retail licensee may not locate within 1,000 feet of most public and private elementary, middle, and high schools. However, if a school is established within 1,000 feet of an existing retail licensee, the licensee may remain where it is unless the OLCC revokes its license. In addition, under the 2016 legislation, a city can allow a dispensary within 500 feet of a school under limited circumstances where a physical or geographic barrier prevents easy access to the marijuana seller.

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

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

In addition to express restrictions on the location of certain marijuana facilities, state law also requires certain marijuana facilities to obtain a land use compatibility statement (LUCS) from a local government before the state will issue a license. In particular, recreational producers, processors, wholesalers, and retailers must request a land use compatibility statement from a local government before the OLCC issues a license. ORS 475B.063. A LUCS describes

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<sup>12</sup> ORS 339.020 provides, “Except as provided in ORS 339.030:

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

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

whether the proposed use is allowable in the zone requested, and must be issued within 21 days of:

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

Certain small-scale medical marijuana growers outside of a city's limits do not have to request a LUCS when applying for a recreational marijuana license. ORS 475B.074.

A local government that has a ballot measure proposing to ban marijuana activities does not have to act on the LUCS while the ballot measure is pending. ORS 475B.063(3).

## Local Government Means of Regulation

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

### *Taxes*

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

In ORS 475B.491, adopted in 2015, the Legislature vested authority to “impose a tax or fee on the production, processing or sale of marijuana items” solely in the Legislative Assembly, thereby preempting local governments from imposing their own tax, except as provided by law. The Legislature also provided that a city may not “adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items,” except as provided by law. The Legislature went on to provide that cities may adopt an ordinance, which must be referred to the voters, imposing a tax or fee of up to 3 percent on the sale of marijuana items by a retail licensee. The ordinance must be referred to the voters in a statewide general election, meaning an election in November of an even-numbered year.<sup>13</sup> However, if a city has adopted an ordinance prohibiting the establishment of any recreational marijuana licensees or any medical marijuana registrants in the city, the city may not impose a local tax under that provision. In addition, in 2016, the Legislature adopted a restriction on local governments by providing that a local tax may not be imposed on a medical marijuana patient or caregiver. *See* SB 1511, § 18.

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<sup>13</sup> If a city council amends an existing marijuana ordinance to prohibit or allow any of those listed below, the ordinance can be amended without referring the amendment to the electors of the city: a marijuana processing site; a medical marijuana dispensary; a marijuana producer that holds a license issued under ORS 475B.070 and that has been designated as an exclusively medical licensee; or, a marijuana retailer that holds a license issued under ORS 475B.110 and is designated as an exclusively medical licensee.

Cities that do impose a local tax may look to the state for help in administering that tax. Recognizing that cities, particularly smaller cities, may not have the resources to administer and enforce a local marijuana tax, the Legislature, in 2016, authorized the Oregon Department of Revenue (DOR) to collect, enforce, administer, and distribute locally-imposed marijuana taxes by intergovernmental agreement. ORS 305.620(1). The DOR has prepared a sample intergovernmental agreement that cities may use as a starting point in their negotiations with the DOR when seeking the agency's assistance in collecting the local tax. The sample agreement is located in Appendix D. If the municipality has an agreement with the DOR for tax administration, the marijuana business would make local tax payments the same way it makes state tax payments. The business would also include the local tax information on the quarterly return filed with the DOR. DOR tax questions and collection agreement questions should be directed to [marijuanatax.dor@oregon.gov](mailto:marijuanatax.dor@oregon.gov) or (503) 947-2597.

For those cities that enacted taxes on medical or recreational marijuana prior to the Legislature's adoption of ORS 475B.491, the status of those taxes remains an open question. Arguably, cities that had "adopt[ed] or enact[ed]" taxes prior to the effective date of ORS 475B.491 are grandfathered in under the law. However, the issue is not free from doubt, and cities that decide to collect on pre-ORS 475B.491 taxes should be prepared to defend their ability to do so against legal challenge. Consequently, cities that plan to continue to collect taxes imposed prior to the passage of ORS 475B.491 should work closely with their city attorney to discuss the implications and risks of that approach.

### *Ban on State-Registered and Licensed Activities*

Under ORS 475B.968, cities may prohibit within their jurisdiction the operation of recreational marijuana producers, processors, wholesalers, and retailers, as well as medical marijuana processors and medical marijuana dispensaries. The law is silent on whether a city can ban medical marijuana growers, marijuana laboratories, and marijuana researchers from operating in the city. However, ORS 475B.968 does not indicate that the bill's process for banning marijuana activities is the exclusive means to do so. Cities considering banning medical marijuana grow sites, marijuana laboratories, or marijuana researchers should consult their city attorney about whether they can do so under either home rule, federal preemption or both legal theories. Please be advised that this approach may entail significant risk of litigation and potential financial implications.

Before December 24, 2015, cities located in counties that voted against Measure 91 by 55 percent or more (Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, and Wheeler Counties) had the opportunity to enact a ban through council adoption of an ordinance prohibiting any of the six activities listed in ORS 475B.968. For cities that did not take that approach within the required timeline, and for cities not located in those counties, the city council may adopt an ordinance banning any of the six activities listed above, but that ordinance must be referred to the voters at a statewide general election, meaning an election in November of an even-numbered year. Medical marijuana dispensaries and medical marijuana processors that have registered with the state by the time

their city adopts a prohibition ordinance are not subject to the ban if they have successfully completed a city or county land use application process.

Under either procedure, as soon as the city council adopts the ordinance, it must submit it to the OHA for medical bans and the OLCC for recreational bans, and those agencies will stop registering and licensing the banned facilities. In other words, for cities using the referral process, the council's adoption of an ordinance acts as a moratorium on new facilities until the election occurs.<sup>14</sup> Adoption of such an ordinance will also make a city ineligible for state shared revenues from the state marijuana tax distributions, as cities are required to certify quarterly to the OLCC that they do not ban to receive payment. *See* ORS 475B.759(4)(a).

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

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

If a city that has imposed a ban decides to lift that ban, the governing body may repeal the ordinance, and must give notice of the change to the appropriate regulatory agency (either OHA or OLCC). *See* ORS 475B.496.

It is also important to note that in 2016 the Legislature preempted cities from imposing restrictions on certain aspects of the personal possession of recreational and medical marijuana. ORS 475B.477. As a result, cities interested in enacting a ban on any aspect of personal use and growing of marijuana should consult with their city attorney to discuss the scope of the preemption, and whether the city can regulate or ban under either home rule, federal preemption or both legal theories. Again, this option involves risks that could have legal and financial implications for a city.

### *Business License Ordinance*

Although ORS 475B.968 provides an avenue for cities to ban certain marijuana activities, nothing in the statute makes that the exclusive means for prohibiting marijuana activities. As a result, some cities may not need to go through the procedures outlined in ORS 475B.968 to ban

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<sup>14</sup> For cities using the referral process, it is also important to note that once the elections official files the referral with the county election office, the ballot measure is certified to the ballot. At that point, the restrictions on public employees engaging in political activity will apply. Consequently, cities should consult the secretary of state and their city attorney to ensure that public employees are complying with state elections law in their communications about the pending measure.

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

Several cities have imposed a ban through their general business license ordinance. Many business license ordinances provide that it is unlawful for any person to operate a business within the city without a business license, and further provide that the city will not issue a business license to any person operating a business that violates local, state or federal law. Because the cultivation, processing, transfer, sale, and possession of marijuana violates federal law, some cities have denied business licenses to marijuana facilities. Cities that have a business license ordinance in place should review their existing codes to determine if such wording already exists. Additionally, whether adopting a new business license program or amending an existing one to provide that the city will not issue a business license to any person operating a business that violates local, state or federal law, a city should work with its legal counsel to ensure that its business license ordinance includes an enforcement mechanism to address a situation in which a person is operating a business without a business license.

In addition, cities that decide to enforce a business license ordinance instead of adopting a ban under ORS 475B.968 should consult their city attorney regarding *City of Cave Junction v. State of Oregon* (Josephine County Circuit Court Case #14CV0588; Court of Appeals Case #A158118) and *Providing All Patients Access v. City of Cave Junction* (Josephine County Circuit Court Case #14CV1246, Court of Appeals Case #A160044). At issue in those cases was whether the city of Cave Junction could enforce its business license ordinance, which prohibits issuance of a business license to a business operating in violation of local, state or federal law, to effectively prohibit medical marijuana dispensaries from operating. Two trial courts upheld the city's business license ordinance against challenges that it was preempted by the OMMA (prior to its amendment by HB 3400). The Oregon Court of Appeals determined that the issue was moot, due to later statutory amendments to the OMMA, and thus did not rule on the preemption issue.<sup>15</sup> Using a general business license ordinance to effectively ban marijuana facilities, however, remains a viable option for cities.

### *Development Code*

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

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<sup>15</sup> See *City of Cave Junction v. State of Oregon*, 289 Or App 216 (2017).

## *Land Use Code*

As noted previously, state law places restrictions on where certain marijuana activities can locate, including prohibiting certain processors, dispensaries, and retail establishments from locating in residential zones. In addition to those state requirements, cities can impose their own more stringent land use requirements and restrictions. Moreover, cities that desire to prohibit marijuana facilities altogether might also do so through amendments to their land use code. Before considering this option, cities should work with their legal counsel to first determine if the wording of their zoning code already prohibits marijuana operations, and if not, to identify the appropriate land use procedures and the amount of time it would take to comply with them. If the wording in a city's zoning code does not prohibit marijuana operations, the city has different options. One option is to add wording such as "an allowed use is one that does not violate local, state or federal law" to the city's zoning code. Cities that adopt a prohibition that references federal law would then rely on existing mechanisms in their ordinances for addressing zoning violations.<sup>16</sup>

It is important to note that under ORS 475B.063, a land use compatibility statement (LUCS) is required as part of the OLCC's licensing process. In particular, before issuing a producer, processor, wholesaler or retailer license, an applicant must request a LUCS from the city that the requested license is for a location where the proposed use of the land is a permitted or conditional use. If the proposed use is prohibited in the zone, the OLCC may not issue a license. A city has 21 days to act on the OLCC's request, but when that 21 days begins varies. If the land use is allowed as an outright permitted use, the city has 21 days from receipt of the request; if the land use is a conditional use, the city has 21 days from the final local permit approval. The city's response to the OLCC is not a land use decision, and the city need not act on a LUCS request while a measure proposing to ban marijuana facilities is pending.

## *Time, Place, and Manner Regulations*

ORS 475B.486 and ORS 475B.928 provide that local governments may impose reasonable regulations on the time, place, and manner of operation of recreational and medical marijuana facilities, respectively. The League believes that, under the home rule provisions of the Oregon Constitution, local governments do not need legislative authorization to impose time, place, and manner restrictions, and that the Legislature's decision to expressly confirm local authority to

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<sup>16</sup> Under existing law, the League believes a city may enforce civil regulations of general applicability (such as zoning codes, business licenses and the like) through the imposition of civil penalties. Although a city likely cannot directly recriminalize conduct allowed under state criminal law, it is a different legal question whether a city may impose criminal penalties for violating a requirement of general applicability when the conduct at issue is otherwise immune from prosecution under state law (i.e. whether a city may impose criminal penalties for operation of a medical marijuana dispensary in violation of a city's land use code). *Cf. State v. Babson*, 355 Or 383 (2014) (explaining that generally applicable, facially neutral law, such as a rule prohibiting use of public property during certain hours, may be valid even if it burdens expressive conduct otherwise protected under Article I, section 8, of the Oregon Constitution). Consequently, a city should work closely with its city attorney before imposing criminal penalties against a person operating a medical marijuana facility in violation of a local civil code, such as a zoning, business license or development code.

impose certain restrictions does not foreclose cities from imposing other restrictions not described in state law.

ORS 475B.486 and ORS 475B.928 provide that cities may regulate marijuana facilities by imposing reasonable restrictions on:

- The hours of operation of recreational marijuana producers, processors, wholesalers, and retailers and medical marijuana grow sites, processing sites and dispensaries;
- The location of recreational marijuana producers, processors, wholesalers, and retailers, as well as medical marijuana grow sites, processing sites and dispensaries, except that a city may not impose more than a 1,000-foot buffer between recreational marijuana retailers;
- The manner of operation of recreational marijuana producers, processors, wholesalers, and retailers; production and processing by marijuana researchers; and medical marijuana grow sites, processing sites and dispensaries; and
- The public's access to the premises of recreational marijuana producers, processors, wholesalers, and retailers, as well as medical marijuana grow sites, processing sites and dispensaries.

What regulations a city ultimately adopts will depend on community wants and needs, as well as on future changes to the law and to the rules adopted by the OHA and the OLCC. As a result, although cities may want to begin considering the types of regulations that they want to impose, cities should be aware that local needs may change with experience and as new laws and administrative rules go into effect.

### *Federal RICO Lawsuits*

The federal Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, was enacted in 1970 as Title IX of the Organized Crime Control Act of 1970. RICO is primarily known as tool to help law enforcement prosecute organized criminal enterprises. RICO also contains a civil provision, however, that allows a person who suffers economic harm because of criminal activity to file a lawsuit for injunctive relief, treble damages, and attorney fees. Because the possession and sale of marijuana remain illegal under federal law, marijuana retailers, wholesalers, and processors are potentially vulnerable to a civil RICO lawsuit.

In fact, civil RICO has already been used successfully to shut down a retail marijuana store in Colorado. In that case, a marijuana dispensary opened near a hotel that had historically hosted the Boy Scouts during retreats in the Rockies. Because of the new marijuana dispensary, the Boy Scouts stopped using the hotel, which cost the hotel significant revenue. The hotel sued the marijuana dispensary under civil RICO, along with all of the dispensary's associated business partners (the landlord, construction contractor, bank, bonding company, and accountant). One by one, the dispensary's various business partners agreed to stop doing business with the dispensary to avoid being liable for the hotel's damages. The dispensary eventually went out of

business. *See New Vision Hotels v. Medical Marijuana of the Rockies*, 15-cv-350 (D Colo, Feb 19, 2015).

While not widespread, civil RICO lawsuits have the potential to seriously disrupt the marijuana economy. A civil RICO suit could theoretically be filed by a city or county, assuming the city or county could show that it experienced economic damages as a result of the marijuana activity.

# Appendix A

## Opt Out by Voter Referral

## APPENDIX A

### Opt Out by Voter Referral

Since December 24, 2015, all cities that desire to ban certain marijuana activities must do so by referral at a statewide general election, meaning an election in November of an even-numbered year. Cities should consult the secretary of state’s referral manual and work with the city recorder or similar official to determine the procedures necessary to refer an ordinance to the voters.

Once a city council adopts an ordinance, its city must submit the ordinance to the Oregon Health Authority (if banning medical marijuana businesses) and/or the Oregon Liquor Control Commission (if banning recreational marijuana businesses). Those agencies will then stop registering and licensing the prohibited businesses until the next statewide general election, when the voters will decide whether to approve or reject the ordinance. In other words, the council’s adoption of an ordinance acts as a moratorium on new facilities until the election. Each agency has a form for submitting the ordinances.

Medical marijuana dispensaries are grandfathered and can operate despite a ban if they: (1) applied to be registered by July 1, 2015, or were registered prior to the date on which the ordinance was adopted by the city council, and (2) successfully completed the land use application process (if applicable). Medical marijuana processors are grandfathered and are able to operate despite a ban if they: (1) were registered under ORS 475B.840 to ORS 475B.855 and were processing usable marijuana on or before July 1, 2015; or (2) are registered under ORS 475B.840 prior to the date on which the ordinance is adopted by the governing body; and (3) have successfully completed a local land use application process (if applicable).

Cities that adopt an ordinance prohibiting the establishment of medical or recreational marijuana businesses are not eligible to receive a distribution of state marijuana tax revenues or to impose a local tax under section ORS 475B.491.

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

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

Whereas, ORS 475B.840 to 475B.876 directs the Oregon Health Authority will register medical marijuana processing sites and medical marijuana dispensaries;

Whereas, ORS 475B.010 to 475B.545 directs the Oregon Liquor Control Commission to license the production, processing, wholesale, and retail sale of recreational marijuana;

Whereas, ORS 475B.968 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city;

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

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

DEFINITIONS.

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

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

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

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

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

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

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

BAN DECLARED. As described in section ORS 475B.968, the City of {Name} hereby prohibits the establishment {and operation}<sup>1</sup> of the following in the area subject to the jurisdiction of the city {select desired options from the list below}:

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

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

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

EXCEPTION. The prohibition set out in this ordinance does not apply to a marijuana processing site or medical marijuana dispensary that meets the conditions set out in ORS 475B.968(8)-(9).

REFERRAL. This ordinance shall be referred to the electors of the city of {name} at the next statewide general election on {date}.

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

\*\*\*\*\*

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

Whereas, section ORS 475B.968 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city;

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

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

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

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

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

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<sup>2</sup> Some cities approve the ballot title, question, summary, and explanatory statement by adopting an ordinance, rather than by adopting a separate resolution.

<sup>3</sup> Exhibit 1 should include the question and summary.

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

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

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

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

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

**EFFECTIVE DATE.** This resolution is effective upon adoption.

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

#### BALLOT TITLE

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

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

#### QUESTION

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

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

#### SUMMARY

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<sup>4</sup> Alternatively, the council may prepare the ballot title and attach it to the resolution for approval. In that case, this section might say, “The ballot title for the measure set forth as Exhibit {number} to this resolution is hereby adopted.” A city’s local rules may dictate who will prepare the ballot title.

<sup>5</sup> The Notice of Measure Election is a form provided by the Oregon Secretary of State where cities provide the ballot title, question, summary, and explanatory statement. The form can be found on the Secretary of State’s website at [www.sos.oregon.gov](http://www.sos.oregon.gov).

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

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

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

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

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

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#### EXPLANATORY STATEMENT

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

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

Approval of this measure would prohibit the establishment {and operation}<sup>7</sup> of certain marijuana activities within the city.

ORS 475B.840 to 475B.876 directs the Oregon Health Authority will register medical marijuana processors and medical marijuana dispensaries. Medical marijuana processors compound or convert marijuana into concentrates, extracts, edible products, and other products intended for human consumption and use. Medical marijuana dispensaries facilitate the transfer of marijuana and marijuana products between patients, caregivers, processors, and growers. ORS 475B.010 to 475B.545 directs the Oregon Liquor Control Commission will license recreational marijuana

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

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

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

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

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

Approval of this measure has revenue impacts. Currently, ten percent of state marijuana tax revenues will be distributed to cities under ORS 475B.759(3)(b)(A). If approved, this measure would make the city ineligible to receive distributions of state marijuana tax revenues.

Currently, under ORS 475B.491, a city may impose up to a three percent tax on the sale of marijuana items by a marijuana retailer in the city. However, a city that adopts an ordinance prohibiting the establishment of medical marijuana processors, medical marijuana dispensaries, or recreational marijuana producers, processors, wholesalers, or retailers may not impose a local tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. Approval of this measure would therefore prevent a city from imposing a local tax on those activities.

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

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

# Appendix B

## City Council Repeal of Ordinance that Prohibits Marijuana Businesses

## APPENDIX B

### City Council Repeal of Ordinance that Prohibits Marijuana Businesses

Under ORS 475B.496, cities may repeal an earlier ordinance prohibiting the establishment of marijuana businesses, as provided for in ORS 475B.968. A repeal under ORS 475B.496 does not need to be referred to the voters. Alternatively, a city can “opt-in” to allowing marijuana facilities by adopting an ordinance under ORS 475B.968 and referring that ordinance to the voters at the next statewide general election. Cities should consult the secretary of state’s referral manual and work with their city recorder or similar official to determine the procedures necessary to refer an ordinance to the voters. The process for referring an “opt-in” ordinance will be the same as the process for referring an “opt-out” ordinance, as set forth in Appendix A, with the appropriate changes in ballot title language.

If a city adopts a repeal ordinance under ORS 475B.496, the city must submit the ordinance to the Oregon Health Authority (if the ordinance being repealed relates to medical marijuana businesses) or the Oregon Liquor Control Commission (if the ordinance being repealed relates to recreational marijuana businesses). Each agency has a form for submitting the ordinances.

If a city adopts an “opt-in” ordinance under ORS 475B.968, the Oregon Liquor Control Commission or the Oregon Health Authority (depending upon whether a recreational marijuana or medical marijuana business is involved) will begin licensing businesses on January 1 following the November election. That delay should provide cities with an opportunity to update its ordinances and codes to add any needed time, manner, and place restrictions.

Any referral election to opt-in or opt-out under ORS 475B.968 must be held at the next statewide general election following the council’s adoption of the predicate ordinance.

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

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

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

Whereas, ORS 475B.496 provides that a city council may adopt an ordinance repealing ordinances that prohibit the establishment of marijuana related businesses in the area subject to the jurisdiction of the city;

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

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

DEFINITIONS.

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

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

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

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

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

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

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

**BAN REPEALED.** As described in ORS 475B.496, the City of {Name} hereby repeals its ordinance {s} {list ordinance by name/number/date} prohibiting the establishment {and operation

of the following in the area subject to the jurisdiction of the city {select desired options from the list below}:

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

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

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

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

# Appendix C

## Local Tax by Voter Referral

## APPENDIX C

### Local Tax by Voter Referral

ORS 475B.491 allows cities to impose a tax on sale of marijuana items made by those with recreational retail licenses. The local tax may not exceed 3 percent. To adopt a local tax under ORS 475B.491, a city must refer an ordinance to the voters at a statewide general election, meaning an election in November of an even-numbered year.<sup>1</sup>

ORS 475B.968, however, which provides a mechanism for prohibiting the establishment of certain marijuana businesses, states that a city that adopts a prohibition under those sections may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. As a result, if a city refers a local tax ordinance to the voters at the same election that it refers a prohibition ordinance to the voters, the city will want to consult its attorney regarding the effect of those two ordinances. The sample below includes wording for cities that put both ordinances on that same ballot. However, a city planning to refer both measures to the ballot should work closely with its city attorney on preparing those ordinances and referral documents.

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

\*\*\*\*\*

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

Whereas, ORS 475B.491 provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax {or fee} on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

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

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

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

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

DEFINITIONS.

Marijuana item has the meaning given that term in ORS 475B.015(19).

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

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

TAX IMPOSED. As described in ORS 475B.491, the City of {Name} hereby imposes a tax {or fee} of {up to three} percent on the retail sale price of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city.

COLLECTION. The tax {or fee} shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.<sup>3</sup>

INTEREST AND PENALTY.

(A) Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return to the Oregon Department of Revenue was originally required to be filed by the marijuana retailer to the time of payment.

(B) If a marijuana retailer fails to file a return with the Oregon Department of Revenue or pay the tax as required, a penalty shall be imposed upon the marijuana retailer in the same manner and amount provided under ORS 314.400.

(C) Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid by the marijuana retailer and remitted to the Oregon Department of Revenue.

(D) Taxes, interest, and penalties transferred to {Name of City} by the Oregon Department of Revenue will be distributed to the City's {Name of Designated Fund}.

(E) If at any time a marijuana retailer fails to remit any amount owed in taxes, interest or penalties, the Oregon Department of Revenue is authorized to enforce collection on behalf of the City of the owed amount in accordance with ORS 475B.700 to 475B.760, any agreement between the Oregon Department of Revenue and {Name} under ORS 305.620 and any applicable administrative rules adopted by the Oregon Department of Revenue.

REFERRAL. This ordinance shall be referred to the electors of {city} at the next statewide general election on {date}.

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<sup>3</sup> Cities may want to include information about where, how, and when the tax must be remitted.

\*\*\*\*\*

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

Whereas, ORS 475B.491 provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

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

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

MEASURE. A measure election is hereby called to submit to the electors of the city of {name} a measure imposing a {up to three} percent tax on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city, a copy of which is attached hereto as “Exhibit 1,” and incorporated herein by reference.<sup>5</sup>

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

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

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

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

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<sup>4</sup> Some cities approve the ballot title, question, summary, and explanatory statement by adopting an ordinance, rather than by adopting a separate resolution.

<sup>5</sup> Exhibit 1 should include the question and summary.

<sup>6</sup> Alternatively, the council may prepare the ballot title and attach it to the resolution for approval. In that case, this section might say, “The ballot title for the measure set forth as Exhibit {number} to this resolution is hereby adopted.” A city’s local rules may dictate who will prepare the ballot title.

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

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

EFFECTIVE DATE. This resolution is effective upon adoption.

\*\*\*\*\*

BALLOT TITLE

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

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

QUESTION

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

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

SUMMARY

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

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

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

{Under state law, a city that adopts an ordinance that prohibits the establishment in the area subject to the jurisdiction of the city of a medical marijuana processor, medical marijuana dispensary, or recreational marijuana producer, processor, wholesaler, or retailer may not impose

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<sup>7</sup> The Notice of Measure Election is a form provided by the Oregon Secretary of State where cities provide the ballot title, question, summary, and explanatory statement. The form can be found on the Secretary of State’s website at [www.sos.oregon.gov](http://www.sos.oregon.gov).

a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. This measure would become operative only if the measure proposing to prohibit the establishment of any of those marijuana entities does not pass by a majority of votes.}<sup>8</sup>

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### EXPLANATORY STATEMENT

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

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

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

Under Measure 91, adopted by Oregon voters in November 2014, codified in ORS chapter 475B and amended by the Legislature in 2016, 2017, and 2018, the Oregon Liquor Control Commission must license the retail sale of recreational marijuana. ORS 475B.491 provides that a city council may adopt an ordinance imposing up to a three percent tax on the sale of marijuana items (which include marijuana concentrates, extracts, edibles, and other products intended for human consumption and use) by retail licensees in the city, but the council must refer that ordinance to the voters at a statewide general election. The City of {name} city council has adopted an ordinance imposing a {up to three} percent tax on the sale of marijuana items by a retail licensee in the city, and, as a result, has referred this measure to the voters.

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

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

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

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

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

# Appendix D

## Sample Time, Place, and Manner Restrictions on Marijuana Businesses

## APPENDIX D

### Sample Time, Place, and Manner Restrictions on Marijuana Businesses

#### Scope

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

#### How to Use this Model

**This document is not a substitute for legal advice.**

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

- Findings
- Definitions
- Rulemaking
- Licenses / Registration
  - License/Registration Required
  - License/Registration Application
  - Issuance of License/Registration
  - Fees
  - Display of License/Proof of Registration
  - Term, Renewal and Surrender
  - Transferability
  - Indemnification

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

## Findings

### Discussion

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

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

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

### Sample Text

1. State law authorizes the operation of medical and recreational marijuana businesses and provides those businesses with immunity from state criminal prosecution.
2. Although the State of Oregon has passed legislation authorizing marijuana businesses and providing criminal immunity under state law, the operation of those businesses remains illegal under federal law.
3. The city council has home rule authority to decide whether, and under what conditions, certain commercial conduct should be regulated within the city and subject to the general and police powers of the city, except when local action has been clearly and unambiguously preempted by state statute.
4. Whether a certain business should operate within a local jurisdiction is a local government decision, and local governments may enforce that decision through the general and police powers of that jurisdiction.
5. *[If using an existing or creating a new license/registration system for a marijuana business]* The city's licensing *[or registration]* and regulatory system should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any

other license or regulatory requirement imposed by any other provisions of city ordinance or local, regional, state or federal law.

6. The city council wants to regulate the operation of marijuana businesses in the city in ways that protect and benefit the public health, safety and welfare of existing and future residents and businesses in the city.
7. The ordinance is intended to impose restrictions, not provide authorizations.
8. The ordinance is intended to apply only to recreational marijuana businesses, and not to medical marijuana businesses or to personal possession, growing or use of marijuana as authorized by the state in ORS 475B.797 to ORS 475B.807. [*Use this provision only if the city does not want to combine its medical marijuana ordinance with this ordinance or wants to address medical marijuana as part of a separate ordinance.*]
9. [*If the city intends to refer a local sales tax option to its citizens to approve a sales tax of up to 3 percent pursuant to ORS 475B.491, the following finding could be added.*] Upon approval of city voters, the city shall impose a local sales tax of \_\_\_% [*up to 3 percent*] on the sales of recreational marijuana by marijuana retailers in order to recover its costs incurred in connection with the city's recreational marijuana licensing program.
10. The operation of a marijuana business without proper authority from either the Oregon Liquor Control Commission or the Oregon Liquor Control Commission (OREGON LIQUOR CONTROL COMMISSION) is prohibited within the city.

## Definitions

### Discussion

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

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

## Sample Text

1. Licensee means a person who holds a license issued by the city to engage in a marijuana business in accordance with this chapter.
2. Licensee representative means an owner, director, officer, manager, employee, agent or other representative of a licensee, to the extent that the person acts in a representative capacity.
3. Marijuana means all parts of the plant cannabis family *Cannabaceae*, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.
4. Marijuana business means (1) any business licensed by the Oregon Liquor Control Commission to engage in the business of producing, processing, wholesaling, or selling marijuana or marijuana items, or (2) any business registered with the Oregon Health Authority for the growing, processing, or dispensing of marijuana or marijuana items.

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

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

## Rulemaking

### Discussion

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

### Sample Text

1. Rulemaking. The city manager [*administrator*] or the city manager's [*administrator's*] designee [*or some other designated public official, such as "chief of police"*] has authority to

adopt administrative rules and procedures necessary for the proper administration and enforcement of this chapter [*or if not creating a new chapter, “ordinances relating to the operation of a marijuana business”*].

## Licenses / Registration

### License/Registration Required

#### Discussion

Cities that want to regulate marijuana businesses can do so in several ways. Many cities, particularly those with larger staffs, have decided to regulate marijuana businesses through a license or permit system. Even those cities that are using a licensing system are imposing differing levels of regulation, from basic registration and tracking to extensively restricting the activities of marijuana businesses. Because a licensing approach allows cities to both track and regulate marijuana businesses, with multiple enforcement mechanisms, the sample wording provides for a licensing system. Although this sample only requires a marijuana business license, a city could also require the employees of marijuana businesses to get licenses.

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

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

#### Sample Text

1. **Local License Required.** Marijuana businesses must possess a valid license issued under this chapter to operate within the city. The license required by this chapter facilitates the registration and the city’s oversight of a marijuana business. The license required by this chapter should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other regulatory or license requirement imposed by any other provision of city ordinance or local, regional, state or federal law.
2. **State Registration Required.** To be eligible to apply for a license under this chapter, marijuana businesses must be either registered with the Oregon Health Authority or licensed by the Oregon Liquor Control Commission and otherwise authorized by state law to operate a marijuana business.

## License/Registration Application

### Discussion

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

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

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

### Sample Text

1. Application/Renewals. Applications for new and renewed licenses must be submitted to \_\_\_\_\_ [*designated public official or city department*] on a form provided by the city. A separate application must be submitted for each proposed marijuana business. The initial or renewal application must include the following information:
  - a. Certification that the proposed marijuana business is licensed at that location as a marijuana business with the Oregon Health Authority or the Oregon Liquor Control Commission.
  - b. The applicant’s name, residence address, and date of birth. [*A city may want to require photo identification, such as a driver’s license or other government-issued identification.*]
  - c. The names and residence addresses of:
    - i. Any person or legal entity that has an ownership interest in the marijuana business, including all principals of the applicant;
    - ii. Any person or legal entity with a financial interest that has loaned or given money or real or personal property to the applicant, or principal of the applicant, for use by the proposed marijuana business within the preceding year;
    - iii. Any person or legal entity that has leased real property to the applicant for use by the marijuana business and any person who manages that property; and
    - iv. Any person who is anticipated at the time of the application to be an employee or volunteer at the proposed facility.
  - d. The business name.

- e. The address and telephone number of the proposed marijuana business.
- f. The mailing address for correspondence about the license.
- g. A detailed description of the type, nature and extent of the business, including a description of the category of marijuana business to be operated.
- h. The proposed days and hours of operation.
- i. A detailed description of the proposed accounting and inventory system of the marijuana business.
- j. Certification that the licensed premises for the proposed marijuana business has met all applicable requirements of the city development and sign code.
- k. Certification that all applicable taxes and fees have been paid.
- l. A complete application for a criminal background check for the applicant, and all principals, persons with a financial interest, employees and volunteers of the proposed marijuana business.

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

- m. The names of at least three natural persons who can give an informed account of the marijuana business and moral character of the applicant and principals.
  - n. The signature, under penalty of perjury, of the applicant, if a natural person, or otherwise the signature of an authorized agent of the applicant, if the applicant is other than a natural person.
  - o. Other information deemed necessary by \_\_\_\_\_ [*designated public official*] to complete review of the application or renewal.
  - p. The city may inspect the proposed licensed premises prior to issuing a license and at any time during normal business hours following the issuance of a license. If, during the inspection, the city determines that the applicant or the licensed premises are not in compliance with this chapter or any other chapter of the city’s building, development, zoning, nuisance or other city ordinance or code, the applicant will be provided with a notice of the failed inspection and that the requirements of this chapter have not been met. [*If the city chooses, a process for an additional inspection or hearing following a failed inspection could be added to this provision.*]
2. Continuing obligation to update information. All information provided in an initial or renewal application must be kept current at all times, including after a license is issued. Each

licensee shall notify \_\_\_\_\_ [*designated public official or department*] in writing within \_\_\_\_\_ [*time period, such as ten business days*] of any change in the information provided to obtain the license.

## Issuance of License/Registration

### Discussion

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

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

### Sample Text

1. Determination. Within \_\_\_\_\_ [*time period*] after receiving a complete [*initial or renewal*] application and license fee for a medical marijuana business license, the \_\_\_\_\_ [*designated public official or department*] will issue the license if \_\_\_\_\_ [*designated public official or department*] finds that the facility is licensed as a marijuana business with the Oregon Health Authority or the Oregon Liquor Control Commission and that all other requirements under this chapter have been met. The city license will list the specific category of marijuana business license being issued.
2. Denial. In addition to denial for failure to meet the requirements of this chapter, the \_\_\_\_\_ [*designated public official or department*] may deny a license if:
  - a. The applicant made an untrue, misleading, or incomplete statement on, or in connection with, the application for the license or a previous application for a license;
  - b. Notwithstanding the federal Controlled Substances Act, the applicant fails to meet all requirements of local, state, and federal laws and regulations, including, but not limited to, other permitting or licensing requirements and land use regulations; or
  - c. The \_\_\_\_\_ [*applicant, principals, employees, volunteers, persons with a financial interest in the facility*] have been convicted of \_\_\_\_\_ [*specified crimes*].
3. Notice of denial. The city shall issue a notice of denial to an applicant in writing specifying the reasons for the denial. [*The city may add any appeal or hearing rights it wishes to provide to an applicant or cross reference to another portion of the city code that relates to appeals and hearings.*]

## Fees

### Discussion

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

### Sample Text

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

## Display of License/Proof of Registration

### Sample Text

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

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

## Term, Renewal and Surrender

### Discussion

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

## Sample Text

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

## Transferability

### Discussion

Cities should consider whether they want to allow licensees to transfer their license, and, if so, the process for allowing such a transfer. For example, under certain circumstances, a city might allow the license to be transferred if the business is sold. The alternative sample text below provides for a license transfer. Cities that allow for transfer might consider creating a transfer application, which could require an accompanying fee, to ensure that the new licensee is eligible to hold the license.<sup>32</sup>

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<sup>32</sup> The Oregon Administrative Rules provide regulations regarding the transferability of state-issued licenses.

## Sample Text

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

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

## Indemnification

### Sample Text

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

## Criminal Background Checks

### Discussion

Under ORS chapter 475B an individual may be required by the Oregon Health Authority and Oregon Liquor Control Commission to submit to a criminal background check. Generally speaking, persons convicted within the last two years of manufacture or delivery of a controlled substance, having more than one conviction of manufacture or delivery of a controlled substance, or (with respect to recreational licenses) any conviction or delivery of a control substance to a person under 21, are not eligible for state licensing or registration. Cities may want to require additional background checks for licensees, owners, employees, volunteers or other individuals associated with a marijuana business and may want to include additional disqualifying

convictions. Alternatively, cities could require license applicants and others associated with licensed facilities to self-report that information as part of the application process, as provided in the License Application alternative sample text above.

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

## Sample Text

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

## Standards of Operation

### Discussion

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

First, state law provides that time, place and manner regulations need to be “reasonable,” however the statute does not define that term. As noted above, the preemptive effect of SB 1531 (now codified in ORS 475B.486) is currently the subject of litigation. Nonetheless, until that litigation is resolved, regulations that exceed what others think are needed to meet public health, welfare and safety concerns could face legal challenge as being “unreasonable.” Consequently, a city will be better positioned against a potential legal challenge if it makes specific findings as to why the regulations serve public health, welfare and safety concerns.

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

Third, when deciding what restrictions to impose, cities should become familiar with the conditions the state is placing on marijuana businesses by reviewing the most recent version of OAR 845-025-1000 to OAR 845-025-8080. After reviewing those conditions, cities should consider whether they want to impose additional requirements or whether they want to include

similar requirements in their code so that they can independently enforce those provisions of state law through local enforcement mechanisms.

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

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

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

## **Sample Text**

1. **Registration and Compliance with State Law.** The marijuana business’s state license or authority must be in good standing with the Oregon Health Authority or Oregon Liquor Control Commission and the marijuana business must comply with all applicable laws and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.
2. **Compliance with Other Laws.** The facility must comply with all applicable laws and regulations, including, but not limited to, the development, land use, zoning, building and fire codes.
3. **Hours of Operation.** Operating hours for a marijuana business must be as follows: (i) for a business engaged in sales or transfer of marijuana or marijuana products to a consumer: no earlier than \_\_\_\_\_ and no later than \_\_\_\_\_ on the same day. *[consider using same time period as allowed under any applicable ordinance relating to liquor stores]*; for all other medical business activities: no earlier than \_\_\_\_\_ and no later than \_\_\_\_\_ on the same day: for processor: no earlier than \_\_\_\_\_ and no later than \_\_\_\_\_ on the same day. *[Note, existing land use ordinances may already prohibit activities at certain times using same time period as allowed under any applicable ordinance relating to liquor stores]*

4. **Public View.** All doorways, windows and other openings shall be located, covered or screened in such a manner to prevent a view into the interior from any exterior public or semipublic area.
5. **Odors.** The marijuana business must use an air filtration and ventilation system which is certified by an Oregon Licensed mechanical engineer to ensure, to the greatest extent feasible, odor is confined all objectionable odors associated with the marijuana to the licensed premises. For the purposes of this provision, the standard for judging “objectionable odors” shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
6. **Lighting.** Facilities must maintain adequate outdoor lighting over each exterior exit.
7. **Sales.** Sales or any other transfers of marijuana must occur inside the licensed premises and must be conducted only between the marijuana business and individuals 21 years of age and older.
8. **On-Site Use.** Marijuana and tobacco products must not be smoked, ingested, consumed or otherwise used on the licensed premises.
9. **On-Site Manufacturing.** With the exception of marijuana processors, manufacturing or processing of any extracts, oils, resins or similar derivatives of marijuana is prohibited at any licensed premises. Marijuana processors may engage in processing in industrial zones only.
10. **Outdoor Storage.** Outdoor storage of merchandise, raw materials or other material associated with the marijuana business is prohibited.
11. **Secure Disposal.** The facility must provide for secure disposal of marijuana remnants or by-products; marijuana remnants or by-products shall not be placed within the marijuana business’s exterior refuse containers.
12. **Home Occupation.** A marijuana business may not be operated as a home occupation.
13. **Drive-Through, Walk-Up.** A marijuana business may not have a walk-up window or a drive-through.
14. **Labeling.** All products containing marijuana intended to be ingested (i.e. edibles) must be labeled with the product’s serving size and the amount of tetrahydrocannabinol in each serving in accordance with Oregon Health Authority and Oregon Liquor Control Commission rules.
15. **Accounting Systems.** The marijuana business must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash and sufficient to maintain detailed, auditable financial records. If the \_\_\_\_\_ [*designated public official*] finds the books and records of the facility are deficient in any way or if the marijuana business’s accounting system is not auditable, the marijuana business must modify

the accounting system to meet the requirements of the \_\_\_\_\_ *[designated public official]*.

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

- a. Daily wholesale purchases (including grow receipts) if licensed as a marijuana wholesaler and retail sales, if licensed as a retailer, including a cash receipts and expenses journal;
- b. State and federal income tax returns;
- c. State quarterly sales tax returns for retail sales;
- d. True names and any aliases of any owner, operator, employee or volunteer of the marijuana business;
- e. True names and addresses and any aliases of persons that have, or have had within the preceding year, a financial interest in the marijuana business; and
- f. \_\_\_\_\_ *[designated public official]* may require additional information as he or she deems necessary.

## Location

### Discussion

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

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

- A residential zone or a multi-use zone which includes residences;
- Places where children congregate;

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

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

In addition, cities should consult their city attorney if they are imposing restrictions that are more stringent than those imposed under state law, by, for example, requiring facilities to locate 2,000 feet from other medical marijuana businesses. Note, however, that state law does restrict cities from imposing a buffer requirement on recreational retailers. Specifically, cities cannot restrict retailers from locating more than 1,000 feet from another recreational retailer. See ORS 475B.486(2)(a). Consequently, a standard buffer of 1,000 feet will work for both medical as well as recreational facilities. However, anything greater than a 1,000 feet requirement can only apply to Medical dispensaries. Although the courts have generally upheld local authority to impose more stringent requirements than those imposed by state law, a city should consult its city attorney regarding the risks associated with taking a more restrictive approach. That is true particularly if the regulations have the effect of prohibiting marijuana businesses within the city. However, a city that takes that route should work closely with its legal counsel to follow current court cases in this area and be prepared to defend its regulations against a legal challenge.

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

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

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

### Sample Text

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

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

## Signs

### Discussion

No sample text is provided because cities that want to regulate the signs on marijuana businesses or facilities should consider applying their existing sign code. If a city does not have a sign code or wishes to amend and update its sign code, that city should consult the League’s “Guide to Drafting a Sign Code,” available at <http://www.orcities.org/Portals/17/Library/GuidetoDraftingSignCode03-09-18.pdf>. Cities that want to impose sign restrictions on medical marijuana facilities other than those already in the city sign code should consult their city attorney about possible free speech implications.

## Examination of Books, Records, and Premises

### Discussion

Cities regulating marijuana businesses and facilities should consider who will enforce those regulations and how. One aspect of that decision is whether a city will provide for inspections, and, if so, what those inspections will entail and who will conduct them. In addition, cities that provide for inspection of a licensed premises and its records may want to specify which records a marijuana business or facility must keep, and for how long. Sample text on records retention is provided in the Standards of Operation section above.

### Sample Text

1. Examination of Books, Records and Premises. To determine compliance with the requirements of this chapter and other chapters of \_\_\_\_\_ [*city’s code*], a licensee shall allow \_\_\_\_\_ [*designated public official*] to examine or cause to be examined by an

agent or representative designated by \_\_\_\_\_ [*designated public official*], at any reasonable time, the licensed premises, including wastewater from the facility, and any and all marijuana business financial, operational and licensed premises information, including books, papers, payroll reports, and state and federal income tax returns, and quarterly sales tax returns for marijuana retailers. Every licensee is directed and required to furnish to \_\_\_\_\_ [*designated public official*] the means, facilities and opportunity for making such examinations and investigations.

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

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

## Civil Enforcement

### Discussion

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

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

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

\_\_\_\_\_ [*designated public official*]. The findings of \_\_\_\_\_ [*designated public official*] shall be final and conclusive.” In addition, if the ordinance allows for an appeal, the city may want to include in the ordinance whether the appeal stays the pending enforcement action.

- Will the ordinance put limitations on how soon after revocation a person or entity can apply for a new license? For example, “A person or entity who has had a license revoked may not apply for a new license until \_\_\_\_\_ [*time period*] from the date of the revocation.”

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

### **Sample Text**

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

## Public Nuisance

### Discussion

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

### Sample Text

1. **Public Nuisance.** Any premises, house, building, structure or place of any kind where marijuana is grown, processed, manufactured, sold, bartered, distributed or given away in violation of state law or this chapter, or any place where marijuana is kept or possessed for sale, barter, distribution or gift in violation of state law or this chapter, is a public nuisance.
2. **Action to Remedy Public Nuisance.** The city may institute an action in circuit court in the name of the city to abate, and to temporarily and permanently enjoin, such nuisance. The court has the right to make temporary and final orders as in other injunction proceedings. The city shall not be required to give bond in such an action.

## Criminal Enforcement

### Discussion

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

## Confidentiality

### Sample Text

1. **Confidentiality.** Except as otherwise required by law, it shall be unlawful for the city, any officer, employee or agent to divulge, release or make known in any manner any financial or

employee information submitted or disclosed to the city under the terms of this chapter. Nothing in this section shall prohibit the following:

- a. The disclosure of names and facility addresses of any licensee under this chapter or of \_\_\_\_\_ [*other individuals associated with a marijuana business, such as other owners*];
- b. The disclosure of general statistics in a form which would prevent identification of financial information regarding a business [*or marijuana business operator*];
- c. The presentation of evidence to a court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the city under this chapter;
- d. The disclosure of information to and upon request of a local, state or federal law enforcement official or by order of any state or federal court; or
- e. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures [*or when such disclosure is ordered under the Oregon Public Records Law*].

## Emergency Clause

### Discussion

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

### Sample Text

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